

By: Representative Baker (74th)

To: Ways and Means

HOUSE BILL NO. 1265

1 AN ACT TO AMEND SECTION 27-69-75, MISSISSIPPI CODE OF 1972,
2 AS AMENDED BY SENATE BILL NO. 2310, 2006 REGULAR SESSION, TO
3 PROVIDE THAT THE AMOUNT OF REVENUE FROM THE TOBACCO EXCISE TAX
4 THAT IS DEPOSITED INTO THE MUNICIPAL TOBACCO TAX DIVERSION FUND
5 SHALL BE AN AMOUNT SUFFICIENT TO OFFSET THE MONTHLY AMOUNT OF
6 REVENUE LOST AS A RESULT OF THE REDUCTION IN THE SALES TAX
7 COLLECTIONS FROM RETAIL SALES OF FOOD; TO PROVIDE THAT IN THE
8 EVENT THAT THE REVENUE COLLECTED FROM THE TOBACCO EXCISE TAX IS
9 INSUFFICIENT TO MAKE THE REQUIRED DEPOSITS, THERE SHALL BE AN
10 ADDITIONAL DIVERSION FROM THE TOTAL SALES TAX REVENUE COLLECTED
11 WITHIN ALL MUNICIPALITIES IN THE SPECIFIC SUM NECESSARY TO MAKE
12 THE REQUIRED DEPOSIT INTO THE MUNICIPAL TOBACCO TAX DIVERSION
13 FUND; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972, IN
14 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** Section 27-69-75, Mississippi Code of 1972, as
17 amended by Senate Bill No. 2310, 2006 Regular Session, is amended
18 as follows:

19 27-69-75. (1) All taxes levied by this chapter shall be
20 payable to the commissioner in cash, or by personal check,
21 cashier's check, bank exchange, post office money order or express
22 money order, and shall be deposited by the commissioner in the
23 State Treasury on the same day collected. No remittance other
24 than cash shall be a final discharge of liability for the tax
25 assessed and levied under this chapter, unless and until it has
26 been paid in cash to the commissioner.

27 (2) (a) Of the revenue collected monthly as a result of the
28 tax assessed and levied under this chapter:

29 (i) Such amount as calculated by the State Tax
30 Commission on July 15, 2006, and on July 15 of each year
31 thereafter through July 15, 2013, that is sufficient to offset the
32 monthly amount of revenue lost as a result of the reduction in the
33 sales tax collections from retail sales of food pursuant to

34 Section 27-65-26 and 27-65-111 by the municipalities of the state
35 during the preceding fiscal year shall be deposited by the
36 commissioner into the Municipal Tobacco Tax Diversion Fund created
37 under Section 5 of Senate Bill No. 2310, 2006 Regular Session; and
38 such amount as calculated by the commission on July 15, 2014, and
39 on July 15 of each year thereafter, that is equal to the deposit
40 made to the fund in the preceding fiscal year, plus an amount
41 determined by applying the United States inflation rate for the
42 preceding fiscal year to the deposit made to the fund for that
43 preceding fiscal year. The United States inflation rate shall be
44 the Consumer Price Index for all urban consumers as calculated by
45 the Bureau of Labor Statistics of the United States Department of
46 Labor.

47 (ii) Such amount as calculated by the State Tax
48 Commission on July 15, 2006, and on July 15 of each year
49 thereafter, that is sufficient to offset the monthly amount of
50 revenue that, as a result of the reduction in the sales tax
51 collections from retail sales of food pursuant to Section 27-65-26
52 and 27-65-111, has not been deposited during the preceding fiscal
53 year into the Education Enhancement Fund created under Section
54 37-61-33 shall be deposited by the commissioner into the Education
55 Enhancement Fund.

56 (iii) Such amount as calculated by the State Tax
57 Commission on July 15, 2006, and on July 15 of each year
58 thereafter, that is sufficient to offset the monthly amount of
59 revenue that, as a result of the reduction in the sales tax
60 collections from retail sales of food pursuant to Section 27-65-26
61 and 27-65-111, has not been deposited during the preceding fiscal
62 year into the School Ad Valorem Tax Reduction Fund created under
63 Section 37-61-35 shall be deposited by the commissioner into the
64 School Ad Valorem Tax Reduction Fund.

65 * * *

66 (b) * * * In the event that the revenue collected in
67 any fiscal year as a result of the tax assessed and levied under
68 this chapter is insufficient to make the deposits required by
69 subparagraph (a)(i) of this subsection (2), the provisions of
70 Section 27-65-75(1)(b) shall apply.

71 * * *

72 (3) Except as otherwise provided in subsection (2) of this
73 section, all tobacco taxes collected, including tobacco license
74 taxes, shall be deposited into the State Treasury to the credit of
75 the General Fund.

76 (4) Wholesalers who are entitled to purchase stamps at a
77 discount, as provided by Section 27-69-31, may have consigned to
78 them, without advance payment, those stamps, if and when the
79 wholesaler gives to the commissioner a good and sufficient bond
80 executed by some surety company authorized to do business in this
81 state, conditioned to secure the payment for the stamps so
82 consigned. The commissioner shall require payment for those
83 stamps not later than thirty (30) days from the date the stamps
84 were consigned.

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

87 27-65-75. On or before the fifteenth day of each month, the
88 revenue collected under the provisions of this chapter during the
89 preceding month shall be paid and distributed as follows:

90 (1) (a) On or before August 15, 1992, and each succeeding
91 month thereafter through July 15, 1993, eighteen percent (18%) of
92 the total sales tax revenue collected during the preceding month
93 under the provisions of this chapter, except that collected under
94 the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
95 business activities within a municipal corporation shall be
96 allocated for distribution to the municipality and paid to the
97 municipal corporation. On or before August 15, 1993, and each
98 succeeding month thereafter, eighteen and one-half percent

99 (18-1/2%) of the total sales tax revenue collected during the
100 preceding month under the provisions of this chapter, except that
101 collected under the provisions of Sections 27-65-15, 27-65-19(3)
102 and 27-65-21, on business activities within a municipal
103 corporation shall be allocated for distribution to the
104 municipality and paid to the municipal corporation.

105 (b) In the event that the revenue collected in any
106 fiscal year as a result of the tobacco excise tax imposed by
107 Section 27-69-13 is insufficient to make the deposits to the
108 Municipal Tobacco Tax Diversion Fund required under Section
109 27-69-75(2)(a)(i), such additional amount of the total sales tax
110 revenue collected during the preceding month under the provisions
111 of this chapter on business activities within all municipalities
112 in the state, except that collected under the provisions of
113 Sections 27-65-15, 27-65-19(3) and 27-65-21, in the specific sum
114 that is necessary to make the total deposit required under Section
115 27-69-75(2)(a)(i), shall be deposited into the Municipal Tobacco
116 Tax Diversion Fund, on or before July 15, 2006, and each
117 succeeding month thereafter.

118 A municipal corporation, for the purpose of distributing the
119 tax under this subsection, shall mean and include all incorporated
120 cities, towns and villages.

121 Monies allocated for distribution and credited to a municipal
122 corporation under this subsection may be pledged as security for a
123 loan if the distribution received by the municipal corporation is
124 otherwise authorized or required by law to be pledged as security
125 for such a loan.

126 In any county having a county seat that is not an
127 incorporated municipality, the distribution provided under this
128 subsection shall be made as though the county seat was an
129 incorporated municipality; however, the distribution to the
130 municipality shall be paid to the county treasury in which the

131 municipality is located, and those funds shall be used for road,
132 bridge and street construction or maintenance in the county.

133 (2) On or before September 15, 1987, and each succeeding
134 month thereafter, from the revenue collected under this chapter
135 during the preceding month, One Million One Hundred Twenty-five
136 Thousand Dollars (\$1,125,000.00) shall be allocated for
137 distribution to municipal corporations as defined under subsection
138 (1) of this section in the proportion that the number of gallons
139 of gasoline and diesel fuel sold by distributors to consumers and
140 retailers in each such municipality during the preceding fiscal
141 year bears to the total gallons of gasoline and diesel fuel sold
142 by distributors to consumers and retailers in municipalities
143 statewide during the preceding fiscal year. The State Tax
144 Commission shall require all distributors of gasoline and diesel
145 fuel to report to the commission monthly the total number of
146 gallons of gasoline and diesel fuel sold by them to consumers and
147 retailers in each municipality during the preceding month. The
148 State Tax Commission shall have the authority to promulgate such
149 rules and regulations as is necessary to determine the number of
150 gallons of gasoline and diesel fuel sold by distributors to
151 consumers and retailers in each municipality. In determining the
152 percentage allocation of funds under this subsection for the
153 fiscal year beginning July 1, 1987, and ending June 30, 1988, the
154 State Tax Commission may consider gallons of gasoline and diesel
155 fuel sold for a period of less than one (1) fiscal year. For the
156 purposes of this subsection, the term "fiscal year" means the
157 fiscal year beginning July 1 of a year.

158 (3) On or before September 15, 1987, and on or before the
159 fifteenth day of each succeeding month, until the date specified
160 in Section 65-39-35, the proceeds derived from contractors' taxes
161 levied under Section 27-65-21 on contracts for the construction or
162 reconstruction of highways designated under the highway program
163 created under Section 65-3-97 shall, except as otherwise provided

164 in Section 31-17-127, be deposited into the State Treasury to the
165 credit of the State Highway Fund to be used to fund that highway
166 program. The Mississippi Department of Transportation shall
167 provide to the State Tax Commission such information as is
168 necessary to determine the amount of proceeds to be distributed
169 under this subsection.

170 (4) On or before August 15, 1994, and on or before the
171 fifteenth day of each succeeding month through July 15, 1999, from
172 the proceeds of gasoline, diesel fuel or kerosene taxes as
173 provided in Section 27-5-101(a)(ii)1, Four Million Dollars
174 (\$4,000,000.00) shall be deposited in the State Treasury to the
175 credit of a special fund designated as the "State Aid Road Fund,"
176 created by Section 65-9-17. On or before August 15, 1999, and on
177 or before the fifteenth day of each succeeding month, from the
178 total amount of the proceeds of gasoline, diesel fuel or kerosene
179 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million
180 Dollars (\$4,000,000.00) or an amount equal to twenty-three and
181 one-fourth percent (23-1/4%) of those funds, whichever is the
182 greater amount, shall be deposited in the State Treasury to the
183 credit of the "State Aid Road Fund," created by Section 65-9-17.
184 Those funds shall be pledged to pay the principal of and interest
185 on state aid road bonds heretofore issued under Sections 19-9-51
186 through 19-9-77, in lieu of and in substitution for the funds
187 previously allocated to counties under this section. Those funds
188 may not be pledged for the payment of any state aid road bonds
189 issued after April 1, 1981; however, this prohibition against the
190 pledging of any such funds for the payment of bonds shall not
191 apply to any bonds for which intent to issue those bonds has been
192 published, for the first time, as provided by law before March 29,
193 1981. From the amount of taxes paid into the special fund under
194 this subsection and subsection (9) of this section, there shall be
195 first deducted and paid the amount necessary to pay the expenses
196 of the Office of State Aid Road Construction, as authorized by the

197 Legislature for all other general and special fund agencies. The
198 remainder of the fund shall be allocated monthly to the several
199 counties in accordance with the following formula:

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

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

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

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

213 The amount of funds allocated to any county under this
214 subsection for any fiscal year after fiscal year 1994 shall not be
215 less than the amount allocated to the county for fiscal year 1994.

216 Any reference in the general laws of this state or the
217 Mississippi Code of 1972 to Section 27-5-105 shall mean and be
218 construed to refer and apply to subsection (4) of Section
219 27-65-75.

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

226 (6) An amount each month beginning August 15, 1983, through
227 November 15, 1986, as specified in Section 6 of Chapter 542, Laws
228 of 1983, shall be paid into the special fund known as the

229 Correctional Facilities Construction Fund created in Section 6 of
230 Chapter 542, Laws of 1983.

231 (7) On or before August 15, 1992, and each succeeding month
232 thereafter through July 15, 2000, two and two hundred sixty-six
233 one-thousandths percent (2.266%) of the total sales tax revenue
234 collected during the preceding month under the provisions of this
235 chapter, except that collected under the provisions of Section
236 27-65-17(2) shall be deposited by the commission into the School
237 Ad Valorem Tax Reduction Fund created under Section 37-61-35. On
238 or before August 15, 2000, and each succeeding month thereafter,
239 two and two hundred sixty-six one-thousandths percent (2.266%) of
240 the total sales tax revenue collected during the preceding month
241 under the provisions of this chapter, except that collected under
242 the provisions of Section 27-65-17(2), shall be deposited into the
243 School Ad Valorem Tax Reduction Fund created under Section
244 37-61-35 until such time that the total amount deposited into the
245 fund during a fiscal year equals Forty-two Million Dollars
246 (\$42,000,000.00). Thereafter, the amounts diverted under this
247 subsection (7) during the fiscal year in excess of Forty-two
248 Million Dollars (\$42,000,000.00) shall be deposited into the
249 Education Enhancement Fund created under Section 37-61-33 for
250 appropriation by the Legislature as other education needs and
251 shall not be subject to the percentage appropriation requirements
252 set forth in Section 37-61-33.

253 (8) On or before August 15, 1992, and each succeeding month
254 thereafter, nine and seventy-three one-thousandths percent
255 (9.073%) of the total sales tax revenue collected during the
256 preceding month under the provisions of this chapter, except that
257 collected under the provisions of Section 27-65-17(2), shall be
258 deposited into the Education Enhancement Fund created under
259 Section 37-61-33.

260 (9) On or before August 15, 1994, and each succeeding month
261 thereafter, from the revenue collected under this chapter during

262 the preceding month, Two Hundred Fifty Thousand Dollars
263 (\$250,000.00) shall be paid into the State Aid Road Fund.

264 (10) On or before August 15, 1994, and each succeeding month
265 thereafter through August 15, 1995, from the revenue collected
266 under this chapter during the preceding month, Two Million Dollars
267 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad
268 Valorem Tax Reduction Fund established in Section 27-51-105.

269 (11) Notwithstanding any other provision of this section to
270 the contrary, on or before February 15, 1995, and each succeeding
271 month thereafter, the sales tax revenue collected during the
272 preceding month under the provisions of Section 27-65-17(2) and
273 the corresponding levy in Section 27-65-23 on the rental or lease
274 of private carriers of passengers and light carriers of property
275 as defined in Section 27-51-101 shall be deposited, without
276 diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund
277 established in Section 27-51-105.

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

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

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

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

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

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

323 (18) On or before August 15, 2007, and each succeeding month
324 thereafter through July 15, 2008, from the sales tax revenue
325 collected during the preceding month under the provisions of this
326 chapter, Two Million Five Hundred Thousand Dollars (\$2,500,000.00)

327 shall be deposited into the Special Funds Transfer Fund created in
328 Section 4 of Chapter 556, Laws of 2003.

329 (19) (a) On or before August 15, 2005, and each succeeding
330 month thereafter, the sales tax revenue collected during the
331 preceding month under the provisions of this chapter on the gross
332 proceeds of sales of a business enterprise located within a
333 redevelopment project area under the provisions of Sections
334 57-91-1 through 57-91-11, and the revenue collected on the gross
335 proceeds of sales from sales made to a business enterprise located
336 in a redevelopment project area under the provisions of Sections
337 57-91-1 through 57-91-11 (provided that such sales made to a
338 business enterprise are made on the premises of the business
339 enterprise), shall, except as otherwise provided in this
340 subsection (19), be deposited, after all diversions, into the
341 Redevelopment Project Incentive Fund as created in Section
342 57-91-9.

343 (b) For a municipality participating in the Economic
344 Redevelopment Act created in Sections 57-91-1 through 57-91-11,
345 the diversion provided for in subsection (1) of this section
346 attributable to the gross proceeds of sales of a business
347 enterprise located within a redevelopment project area under the
348 provisions of Sections 57-91-1 through 57-91-11, and attributable
349 to the gross proceeds of sales from sales made to a business
350 enterprise located in a redevelopment project area under the
351 provisions of Sections 57-91-1 through 57-91-11 (provided that
352 such sales made to a business enterprise are made on the premises
353 of the business enterprise), shall be deposited into the
354 Redevelopment Project Incentive Fund as created in Section
355 57-91-9, as follows:

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

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

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

368 (iv) For the ninth year in which such payments are
369 made to a developer from the Redevelopment Project Incentive Fund,
370 sixty percent (60%) of the diversion shall be deposited into the
371 fund; and

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

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

378 (21) It shall be the duty of the municipal officials of any
379 municipality that expands its limits, or of any community that
380 incorporates as a municipality, to notify the commissioner of that
381 action thirty (30) days before the effective date. Failure to so
382 notify the commissioner shall cause the municipality to forfeit
383 the revenue that it would have been entitled to receive during
384 this period of time when the commissioner had no knowledge of the
385 action. If any funds have been erroneously disbursed to any
386 municipality or any overpayment of tax is recovered by the
387 taxpayer, the commissioner may make correction and adjust the
388 error or overpayment with the municipality by withholding the
389 necessary funds from any later payment to be made to the
390 municipality.

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