

By: Senator(s) Hewes, Gollott, Cuevas,
Dawkins

To: Local and Private;
Finance

SENATE BILL NO. 3107

1 AN ACT TO AMEND SECTIONS 1 THROUGH 12 OF CHAPTER 1012, LOCAL
2 AND PRIVATE LAWS OF 2004, TO REVISE THE DEFINITION OF THE TERM
3 "HOTEL" OR "MOTEL" UNDER THE LAW THAT AUTHORIZES THE BOARD OF
4 SUPERVISORS OF HARRISON COUNTY TO IMPOSE A SPECIAL TAX ON THE
5 GROSS PROCEEDS OF ROOM RENTALS OF HOTELS OR MOTELS; TO AUTHORIZE
6 CERTAIN DAMAGES TO BE IMPOSED IF THE PAYMENTS OF THE SPECIAL TAX
7 ARE DELINQUENT OR DEFICIENT; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Sections 1 through 12 of Chapter 1012, Local and
10 Private Laws of 2004, are amended as follows:

11 Section 1. For the purposes of Sections 1 through 12 of this
12 act:

13 (a) "Board of supervisors" means the Board of
14 Supervisors of Harrison County, Mississippi.

15 (b) "County" means Harrison County, Mississippi.

16 (c) "Hotel" or "motel" means and includes any
17 establishment engaged in the business of furnishing or providing
18 one or more * * * rooms intended or designed for dwelling, lodging
19 or sleeping purposes that at any one time will accommodate
20 transient guests on a daily or weekly basis and that are known to
21 the trade as such, and shall include every building or other
22 structure kept, used, maintained or advertised as, or held out to
23 the public to be, a place where sleeping accommodations are
24 supplied for pay or other consideration to transient or permanent
25 guests or tenants that have not entered into a bona fide written
26 lease for a term of more than ninety (90) consecutive days,
27 whether the establishment is known as a hotel, apartment hotel,
28 condominium, cooperative housing, time-share, bed and breakfast,
29 rooming house, recreational vehicle park, cabin, inn, tavern,

30 club, resort, tourist home, tourist court, motel, court, motor
31 court, motor lodge or by any other similar term, regardless of the
32 number of rooms, lots, units, suites, spaces or cabins available.
33 Nursing homes or institutions for the aged or infirm, as defined
34 in Section 43-11-1, and personal care homes shall be excluded from
35 the definition of the term "hotel" or "motel."

36 (d) "Bona fide written lease" means a written document
37 that clearly demonstrates it is intended for the transient guest
38 to have exclusive use of the leased unit in the hotel or motel.
39 Factors to be considered in evaluating the intent of the parties
40 shall include, but not be limited to:

41 (i) The length of the lease, including the
42 beginning and ending date;

43 (ii) A statement in the lease giving the lessee
44 complete and exclusive use of the property for the entire duration
45 of the lease;

46 (iii) Execution of the lease in good faith,
47 without deceit or fraud;

48 (iv) A sufficient description in the lease of the
49 leased property;

50 (v) A statement in the lease that the lease
51 contains the complete and sole agreement;

52 (vi) A statement in the lease that the lessee will
53 pay an agreed amount of rent;

54 (vii) A statement in the lease containing the due
55 date, frequency and address for payment of the rent;

56 (viii) A statement in the lease specifying what
57 conditions will result in early termination of the lease, the
58 rights and obligations of the parties at termination and any
59 penalties that will result from early termination; and

60 (ix) Signatures of the lessor and lessee on the
61 lease.

62 Section 2. (1) Before the issuance of bonds provided for in
63 Section 6 of this act, the board of supervisors shall levy, assess
64 and collect from every person, firm, corporation or other entity
65 operating hotels or motels in the county, a tax, in addition to
66 all other taxes or assessments now imposed, which shall be equal
67 to two percent (2%) of the gross proceeds from room rentals of all
68 hotels or motels in the county.

69 (2) Persons, firms, corporations or other entities liable
70 for the tax imposed by subsection (1) of this section shall add
71 the amount of such tax to the room rental and in addition thereto
72 shall collect, insofar as practicable, the amount of the tax due
73 from the person renting the room at the time of payment therefor.

74 Section 3. (1) Before any tax authorized under Sections 1
75 through 12 of this act may be imposed, the governing authorities
76 shall adopt a resolution declaring its intention to levy the
77 taxes, setting forth the amount of such tax to be imposed, the
78 date upon which such taxes shall become effective and calling for
79 a referendum to be held on the question. The date of the
80 referendum shall be the first Tuesday after the first Monday in
81 November 2004. Notice of such intention shall be published once
82 each week for at least three (3) consecutive weeks in a newspaper
83 published or having a general circulation in the county, with the
84 first publication of such notice to be made not less than
85 twenty-one (21) days before the date fixed in the resolution for
86 the referendum and the last publication to be made not more than
87 seven (7) days before the referendum. At the referendum, all
88 qualified electors of the county may vote, and the ballots used in
89 such referendum shall have printed thereon a brief statement of
90 the amount and purposes of the proposed tax levy and the words
91 "FOR THE HOTEL-MOTEL TAX TO FUND THE IMPROVEMENT AND EXPANSION OF
92 THE MISSISSIPPI COAST COLISEUM AND CONVENTION CENTER" and, on a
93 separate line, "AGAINST THE HOTEL-MOTEL TAX TO FUND THE
94 IMPROVEMENT AND EXPANSION OF THE MISSISSIPPI COAST COLISEUM AND

95 CONVENTION CENTER", and the voters shall vote by placing a cross
96 (X) or check (✓) opposite their choice on the proposition. When
97 the results of any such referendum shall have been canvassed by
98 the election commission and certified, the county may levy the
99 taxes beginning on the first day of the second month following the
100 referendum, only if at least sixty percent (60%) of the qualified
101 electors who vote in the election vote in favor of the tax. No
102 public funds shall be used for the purpose of promoting the
103 adoption of the referendum and no employee of the county or any
104 city located in the county, other than elected public officials,
105 may promote the referendum during business hours.

106 (2) If a referendum has been held under the provisions of
107 subsection (1) of this section, and the authority of the county to
108 impose the convention center taxes has been denied by the electors
109 of the county, a subsequent referendum on the issue may be held on
110 the first Tuesday after the first Monday in November 2006. If a
111 second referendum is held, and the authority to impose the
112 convention center taxes has been denied again by the electors of
113 the county, no further referendum may be held.

114 Section 4. (1) On or before the fifteenth day of the month
115 prior to the imposition of the tax authorized in Section 2 of this
116 act, the board of supervisors shall give written notification to
117 the Chairman of the State Tax Commission of the date on which the
118 tax will become effective.

119 (2) The tax shall be collected by and paid to the State Tax
120 Commission in the same manner as state sales taxes are computed,
121 collected and paid, and full enforcement provisions and all other
122 provisions of Chapter 65, Title 27, Mississippi Code of 1972,
123 shall apply as necessary to the implementation of Sections 1
124 through 12 of this act.

125 (3) Except as otherwise provided in Section 27-3-58, the
126 revenue from the special tax collected under the provisions of

127 this section during the preceding month shall be paid to the
128 county on or before the fifteenth day of each month.

129 (4) The proceeds of such taxes shall be placed into a
130 separate fund apart from the county general fund and any other
131 funds of the county, and shall be expended by the county as
132 provided in Section 10(1) of this act.

133 (5) (a) The State Tax Commission shall provide the county
134 with written verification of the total tax revenues collected each
135 month under Sections 1 through 12 of this act, together with all
136 penalties and interest collected thereon, and the names of all
137 hotels and motels that paid the special tax. The written
138 verification shall be delivered to the county at the same time as
139 the revenue from the special tax is paid to the county pursuant to
140 subsection (3) of this section.

141 (b) (i) If any part of the special tax required to be
142 paid by a hotel or motel under Sections 1 through 12 of this act
143 is deficient or delinquent due to negligence or failure to comply
144 with the provisions of Sections 1 through 12 of this act or the
145 rules and regulations of the State Tax Commission without the
146 intent to defraud, there may be added as damages an amount equal
147 to ten percent (10%) of the delinquent or deficient taxes for the
148 first offense, fifteen percent (15%) of the delinquent or
149 deficient taxes for the second offense, twenty-five percent (25%)
150 of the delinquent or deficient taxes for the third offense and
151 fifty percent (50%) of the delinquent or deficient taxes for the
152 fourth or any subsequent offense, or interest at the rate of one
153 percent (1%) per month from the date the special tax was due until
154 paid, or both. Damages shall become payable upon notice and
155 demand by the commissioner.

156 (ii) If any part of the special tax required to be
157 paid by a hotel or motel under Sections 1 through 12 of this act
158 is deficient or delinquent due to the intentional disregard of the
159 provisions of Sections 1 through 12 of this act or rules and

160 regulations of the State Tax Commission, or due to fraud with
161 intent to evade the law, there shall be added as damages an amount
162 equal to fifty percent (50%) of the delinquent or deficient taxes,
163 and in such case the total amount of the tax unpaid shall become
164 due and payable upon notice and demand by the commissioner, and
165 interest of one percent (1%) delinquent or deficient tax per month
166 shall be added from the date the special tax was due until the
167 date it was paid.

168 (iii) If the deficient or delinquent tax is not
169 paid pursuant to the commissioner's notice and it is necessary to
170 resort to the issuance of a notice of a tax lien or a warrant, the
171 damages may be increased by fifteen percent (15%) for the first
172 offense, twenty-five percent (25%) for the second offense and
173 fifty percent (50%) for any subsequent offense.

174 (6) The tax imposed by Sections 1 through 12 of this act
175 shall stand repealed on the first day of the month immediately
176 succeeding the date the payment of the principal of, redemption
177 premium, if any, and interest on the bonds issued pursuant to
178 Sections 1 through 12 of this act have been paid in full. Any
179 revenue from the tax remaining after the payment of the principal
180 of, redemption premium, if any, and interest on the bonds issued
181 pursuant to Sections 1 through 12 of this act have been paid in
182 full shall be transferred to the county general fund.

183 Section 5. The proceeds of the bonds issued pursuant to
184 Sections 1 through 12 of this act shall be utilized:

185 (a) For the purpose of defraying the cost of
186 constructing, repairing, equipping, remodeling, enlarging,
187 expanding or improving the Mississippi Coast Coliseum and
188 Convention Center; and

189 (b) To retire bonds issued by the county after May 1,
190 1995, but prior to the effective date of this act, to defray the
191 cost of expanding the Mississippi Coast Coliseum and Convention
192 Center.

193 Section 6. The board of supervisors is authorized and
194 empowered, in its discretion, to issue general obligation bonds of
195 the county in the aggregate principal amount not to exceed
196 Sixty-eight Million Dollars (\$68,000,000.00) for the purposes
197 provided for in Section 5 of this act. As used in Sections 1
198 through 12 of this act, "bonds" shall be deemed to mean and
199 include bonds, refunding bonds, notes or certificates of
200 participation. The full faith and credit of the county shall be
201 irrevocably pledged for the payment of the principal of and
202 interest on the bonds.

203 Section 7. Bonds authorized by Sections 1 through 12 of this
204 act, other than refunding bonds, shall be issued pursuant to
205 Sections 19-9-1 through 19-9-31 or as may be otherwise provided by
206 law; however, no election shall be held under the provisions of
207 Sections 19-9-1 through 19-9-31, upon the question of the issuance
208 of bonds authorized under Sections 1 through 12 of this act.

209 Section 8. Bonds issued pursuant to Sections 1 through 12 of
210 this act shall not be deemed indebtedness within the meaning of
211 Section 19-9-5. Bonds issued pursuant to Sections 1 through 12 of
212 this act shall be submitted by validation under Sections 31-13-1
213 through 31-13-11.

214 Section 9. Bonds issued under Sections 1 through 12 of this
215 act may be refunded at any time and from time to time by the
216 county pursuant to an authorizing resolution of the board of
217 supervisors, directing issuance of refunding bonds in accordance
218 with the "Mississippi Bond Refinancing Act" (Section 31-27-1 et
219 seq., Mississippi Code of 1972).

220 Section 10. (1) The avails of the tax provided for in
221 Sections 1 through 12 of this act shall be used solely for the
222 payment of the principal of, redemption premium, if any, and
223 interest on the bonds, and for the payment of expenses of issuance
224 thereof or reserve funds therefor.

225 (2) To the extent the proceeds of the tax provided for in
226 Sections 1 through 12 of this act and any other amounts which may,
227 from time to time, be available for the payment of the principal
228 of, redemption premium, if any, and interest on the bonds,
229 including any available revenues of the project, are not
230 sufficient for such purpose, the board of supervisors shall levy a
231 special ad valorem tax upon all of the taxable property within the
232 county which shall be sufficient, together with other money
233 available for such purpose, to provide for the payment of the
234 principal of, redemption premium, if any, and interest on such
235 bonds according to the terms thereof.

236 Section 11. Sections 1 through 12 of this act shall be
237 liberally construed for the purposes herein set out, the power
238 hereby granted shall be deemed to be full and complete authority
239 for the issuance of bonds under Sections 1 through 12 of this act
240 and shall be construed as additional, cumulative and supplemental
241 to any power granted to the county by any general or local and
242 private act of the Legislature.

243 Section 12. The provisions of Sections 1 through 12 of this
244 act shall be repealed in the event that two (2) referenda on the
245 question of imposing convention center taxes have been denied by
246 the electors of the county. If this event occurs, the Circuit
247 Clerk of Harrison County shall notify the Chairmen of the Local
248 and Private Committees of the House of Representatives and Senate
249 of the Mississippi State Legislature.

250 **SECTION 2.** This act shall take effect and be in force from
251 and after its passage.