

By: Representatives Bozeman, Banks, Clarke, To: Ways and Means
Flaggs, Robinson (63rd), Wallace

HOUSE BILL NO. 1027

1 AN ACT TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A CERTAIN PORTION OF THE STATE'S SALES TAX REVENUE
3 COLLECTIONS ON BUSINESS ACTIVITY WITHIN A COUNTY, INCLUDING ALL OF
4 THE MUNICIPAL CORPORATIONS LOCATED WITHIN A COUNTY, SHALL BE
5 ALLOCATED FOR DISTRIBUTION AND PAID TO SUCH COUNTY; TO AMEND
6 SECTION 27-65-53, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
7 AND FOR RELATED PURPOSES.

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

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

11 **[Until July 1, 2002, this section reads as follows:]**

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

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

30 carriers of property as defined in Sections 27-51-101, on business
31 activities within a municipal corporation shall be allocated for
32 distribution to such municipality and paid to such municipal
33 corporation.

34 A municipal corporation, for the purpose of distributing the
35 tax under this subsection, shall mean and include all incorporated
36 cities, towns and villages.

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

43 In any county having a county seat which is not an
44 incorporated municipality, the distribution provided hereunder
45 shall be made as though the county seat was an incorporated
46 municipality; however, the distribution to such municipality shall
47 be paid to the county treasury wherein the municipality is located
48 and such funds shall be used for road, bridge and street
49 construction or maintenance therein.

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

68 consumers and retailers in each municipality. In determining the
69 percentage allocation of funds under this subsection for the
70 fiscal year beginning July 1, 1987, and ending June 30, 1988, the
71 State Tax Commission may consider gallons of gasoline and diesel
72 fuel sold for a period of less than one (1) fiscal year. For the
73 purposes of this subsection, the term "fiscal year" means the
74 fiscal year beginning July 1 of a year.

75 (3) On or before September 15, 1987, and on or before the
76 fifteenth day of each succeeding month, until the date specified
77 in Section 65-39-35, the proceeds derived from contractors' taxes
78 levied under Section 27-65-21 on contracts for the construction or
79 reconstruction of highways designated under the Four-Lane Highway
80 Program created under Section 65-3-97 shall be deposited into the
81 State Treasury to the credit of the State Highway Fund to be used
82 to fund such Four-Lane Highway Program. The Mississippi
83 Department of Transportation shall provide to the State Tax
84 Commission such information as is necessary to determine the
85 amount of proceeds to be distributed under this subsection.

86 (4) On or before August 15, 1994, and on or before the
87 fifteenth day of each succeeding month, from the proceeds of
88 gasoline, diesel fuel or kerosene taxes as provided in Section
89 27-5-101(a)(ii)1, Four Million Dollars (\$4,000,000.00) shall be
90 deposited in the State Treasury to the credit of a special fund
91 designated as the "State Aid Road Fund," created by Section
92 65-9-17. Such funds shall be pledged to pay the principal of and
93 interest on state aid road bonds heretofore issued under Sections
94 19-9-51 through 19-9-77, in lieu of and in substitution for the
95 funds heretofore allocated to counties under this section. Such
96 funds may not be pledged for the payment of any state aid road
97 bonds issued after April 1, 1981; however, this prohibition
98 against the pledging of any such funds for the payment of bonds
99 shall not apply to any bonds for which intent to issue such bonds
100 has been published, for the first time, as provided by law prior
101 to March 29, 1981. From the amount of taxes paid into the special

fund pursuant to this subsection and subsection (9) of this section, there shall be first deducted and paid the amount necessary to pay the expenses of the Office of State Aid Road Construction, as authorized by the Legislature for all other general and special fund agencies. The remainder of the fund shall be allocated monthly to the several counties in accordance with the following formula:

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

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

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

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

The amount of funds allocated to any county under this subsection for any fiscal year after Fiscal Year 1994 shall not be less than the amount allocated to such county for Fiscal Year 1994. Monies allocated to a county from the State Aid Road Fund for Fiscal Year 1995 or any fiscal year thereafter that exceed the amount of funds allocated to that county from the State Aid Road Fund for Fiscal Year 1994, first must be expended by the county for replacement or rehabilitation of bridges on the state aid road system that have a sufficiency rating of less than twenty-five (25), according to National Bridge Inspection standards before such monies may be approved for expenditure by the State Aid Road Engineer on other projects that qualify for the use of state aid road funds.

Any reference in the general laws of this state or the

Mississippi Code of 1972 to Section 27-5-105 shall mean and be construed to refer and apply to subsection (4) of Section 27-65-75.

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

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

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

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

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

(10) On or before August 15, 1994, and each succeeding month thereafter through August 15, 1995, from the revenue collected

under this chapter during the preceding month, Two Million Dollars (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

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

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

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

(14) On or before August 15, 1998, and each succeeding month thereafter through July 15, 2005, that portion of the avails of the tax imposed in Section 27-65-23 which is derived from sales by cotton compresses or cotton warehouses and which would otherwise be paid into the General Fund, shall be deposited in an amount not

to exceed Two Million Dollars (\$2,000,000.00) into the special fund created pursuant to Section 69-37-39.

(15) On or before August 15, 1999, and each succeeding month thereafter, two percent (2%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21, and that collected under the provisions of Section 27-65-17(2) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101, on business activities within a county, including all of the municipal corporations located within a county, shall be allocated for distribution to such county and paid to the county.

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

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

[From and after July 1, 2002, this section reads as follows:]

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

(1) On or before August 15, 1992, and each succeeding month

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

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

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

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

(2) On or before September 15, 1987, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month One Million One Hundred Twenty-five Thousand Dollars (\$1,125,000.00) shall be allocated for

distribution to municipal corporations as defined under subsection (1) of this section in the proportion that the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each such municipality during the preceding fiscal year bears to the total gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in municipalities statewide during the preceding fiscal year. The State Tax Commission shall require all distributors of gasoline and diesel fuel to report to the commission monthly the total number of gallons of gasoline and diesel fuel sold by them to consumers and retailers in each municipality during the preceding month. The State Tax Commission shall have the authority to promulgate such rules and regulations as is necessary to determine the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each municipality. In determining the percentage allocation of funds under this subsection for the fiscal year beginning July 1, 1987, and ending June 30, 1988, the State Tax Commission may consider gallons of gasoline and diesel fuel sold for a period of less than one (1) fiscal year. For the purposes of this subsection, the term "fiscal year" means the fiscal year beginning July 1 of a year.

(3) On or before September 15, 1987, and on or before the fifteenth day of each succeeding month, until the date specified in Section 65-39-35, the proceeds derived from contractors' taxes levied under Section 27-65-21 on contracts for the construction or reconstruction of highways designated under the Four-Lane Highway Program created under Section 65-3-97 shall be deposited into the State Treasury to the credit of the State Highway Fund to be used to fund such Four-Lane Highway Program. The Mississippi Department of Transportation shall provide to the State Tax Commission such information as is necessary to determine the amount of proceeds to be distributed under this subsection.

(4) On or before August 15, 1994, and on or before the fifteenth day of each succeeding month, from the proceeds of

gasoline, diesel fuel or kerosene taxes as provided in Section 27-5-101(a)(ii)1, Four Million Dollars (\$4,000,000.00) shall be deposited in the State Treasury to the credit of a special fund designated as the "State Aid Road Fund," created by Section 65-9-17. Such funds shall be pledged to pay the principal of and interest on state aid road bonds heretofore issued under Sections 19-9-51 through 19-9-77, in lieu of and in substitution for the funds heretofore allocated to counties under this section. Such funds may not be pledged for the payment of any state aid road bonds issued after April 1, 1981; however, this prohibition against the pledging of any such funds for the payment of bonds shall not apply to any bonds for which intent to issue such bonds has been published, for the first time, as provided by law prior to March 29, 1981. From the amount of taxes paid into the special fund pursuant to this subsection and subsection (9) of this section, there shall be first deducted and paid the amount necessary to pay the expenses of the Office of State Aid Road Construction, as authorized by the Legislature for all other general and special fund agencies. The remainder of the fund shall be allocated monthly to the several counties in accordance with the following formula:

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

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

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

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

340 The amount of funds allocated to any county under this
341 subsection for any fiscal year after Fiscal Year 1994 shall not be
342 less than the amount allocated to such county for Fiscal Year
343 1994. Monies allocated to a county from the State Aid Road Fund
344 for Fiscal Year 1995 or any fiscal year thereafter that exceed the
345 amount of funds allocated to that county from the State Aid Road
346 Fund for Fiscal Year 1994, first must be expended by the county
347 for replacement or rehabilitation of bridges on the state aid road
348 system that have a sufficiency rating of less than twenty-five
349 (25), according to National Bridge Inspection standards before
350 such monies may be approved for expenditure by the State Aid Road
351 Engineer on other projects that qualify for the use of state aid
352 road funds.

353 Any reference in the general laws of this state or the
354 Mississippi Code of 1972 to Section 27-5-105 shall mean and be
355 construed to refer and apply to subsection (4) of Section
356 27-65-75.

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

363 (6) An amount each month beginning August 15, 1983, through
364 November 15, 1986, as specified in Section 6 of Chapter 542, Laws
365 of 1983, shall be paid into the special fund known as the
366 Correctional Facilities Construction Fund created in Section 6 of
367 Chapter 542, Laws of 1983.

368 (7) On or before August 15, 1992, and each succeeding month
369 thereafter, two and two hundred sixty-six one-thousandths percent
370 (2.266%) of the total sales tax revenue collected during the
371 preceding month under the provisions of this chapter, except that
372 collected under the provisions of Section 27-65-17(2), not to
373 exceed the Fiscal Year 1997 appropriated level shall be deposited

by the commission into the School Ad Valorem Tax Reduction Fund created pursuant to Section 37-61-35, with the balance to be transferred to the Education Enhancement Fund created under Section 37-61-33 for appropriation by the Legislature as other education needs and not subject to the percentage set asides set forth in Section 37-61-33.

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

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

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

(11) Notwithstanding any other provision of this section to the contrary, on or before February 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(2) shall be deposited, without diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(12) Notwithstanding any other provision of this section to the contrary, on or before August 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(1) on retail sales of private carriers of passengers and light carriers of property, as defined in Section 27-51-101, shall be deposited,

after diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

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

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

(15) On or before August 15, 1999, and each succeeding month thereafter, two percent (2%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-17(2), 27-65-19(3) and 27-65-21, on business activities within a county, including all of the municipal corporations located within a county, shall be allocated for distribution to such county and paid to the county.

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

(17) It shall be the duty of the municipal officials of any municipality which expands its limits, or of any community which incorporates as a municipality, to notify the commissioner of such action thirty (30) days before the effective date. Failure to so notify the commissioner shall cause such municipality to forfeit the revenue which it would have been entitled to receive during

this period of time when the commissioner had no knowledge of the action. If any funds have been erroneously disbursed to any municipality or county or any overpayment of tax is recovered by the taxpayer, the commissioner may make correction and adjust the error or overpayment with such municipality or county by withholding the necessary funds from any subsequent payment to be made to the municipality or county.

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

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

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

If any overpayment of tax as reflected in an application or

476 amended return, or both, filed by the taxpayer, and verified by
477 the commissioner or otherwise determined to be due by the
478 commissioner or commission, is not refunded or credited to a
479 taxpayer's account within ninety (90) days after the application
480 or amended return is filed or the date the commission or
481 commissioner determines a refund is due, whichever is later,
482 interest at the rate of one percent (1%) per month shall be
483 allowed on such overpayment computed for the period after
484 expiration of the ninety-day period provided herein to the date of
485 payment.

486 SECTION 3. This act shall take effect and be in force from
487 and after July 1, 1999.