

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
)	
JEFFERSON COUNTY, ALABAMA,)	Case No. 11-05736-TBB9
A political subdivision of the State of)	
Alabama,)	Chapter 9
)	
Debtor.)	

**STIPULATIONS BY JEFFERSON COUNTY, ALABAMA
AND NORFOLK SOUTHERN RAILWAY COMPANY**

Jefferson County, Alabama (the “County”) and Norfolk Southern Railway Company (“Norfolk Southern”), upon the request of the Court at the hearing on October 22, 2014, stipulate to the following facts but make no stipulation as to the relevance of any of the following facts:

1. The County collects a two-percent (2%) use tax that consists of: (a) a one-percent (1%) education use tax (the “Education Use Tax”), and (b) a one-percent (1%) consumer use tax (the “Consumer Use Tax”).

2. The County levies the Education Use Tax under Alabama Code § 40-12-4 pursuant to Ordinance No. 1769, Substitute Ordinance Levying Sales and Use Tax for Educational Purposes Pursuant to Section 40-12-4 of Code of Alabama 1975, dated December 16, 2004 (“Ordinance No. 1769”). A true and correct copy of Alabama Code § 40-12-4 is attached as **Exhibit A**. A true and correct copy of Ordinance No. 1769 is attached as **Exhibit B**.

3. Alabama Code § 40-12-4(a) provides, among other things, that “[a]ll the proceeds of any tax levied pursuant to this section less the cost of collection thereof shall be used



exclusively for public school purposes, including specifically and without limitation capital improvements and the payment of debt service on obligations issued therefor.”

4. Section 9 of Ordinance No. 1769 provides that the “proceeds of the [Education Use Tax], less the County’s fee for collecting the same, shall be paid by the County to a trustee or paying agent for the Education Warrants to be applied for the scheduled payments of principal and interest on such warrants”¹ The County’s fee for collecting the Education Use Tax is four percent (4%) of the total proceeds. *See* Ordinance No. 1769 § 9(a).

5. Based on Alabama Code § 40-12-4 and Ordinance No. 1769, the County is required by law to pay the proceeds of the Education Use Tax, less a fee for collection, to the School Warrant Trustee to satisfy the School Warrants.² The Plan provides that the School Warrants will be repaid in full on the terms and conditions set forth in the School Warrant Indenture, as modified by the Plan.³ *See* Plan §§ 2.3(g)-(i).

6. The County levies the Consumer Use Tax under Alabama Act No. 67-405 (“Act No. 67-405”). A true and correct copy of Act No. 67-405 is attached hereto as **Exhibit C**.

7. Section 11 of Act No. 67-405 originally mandated the distribution of the proceeds of the Consumer Use Tax. Act No. 73-659 amends the distribution of the proceeds of the Consumer Use Tax. A true and correct copy of Act No. 73-659 is attached hereto as **Exhibit D**.

¹ The term “Education Warrants” are defined in Ordinance No. 1769 as, among other things, warrants “which will provide funds for capital improvements and instructional equipment and materials for public schools . . . in the County . . . the debt service which will be payable solely from, and will be secured by a pledge of, the entire proceeds of the [taxes authorized by Ordinance No. 1769].” *See* Ordinance No. 1769 § 1(a)(6).

² Unless otherwise defined, all capitalized terms shall have the meanings provided in the *Chapter 9 Plan of Adjustment for Jefferson County, Alabama* (Dated November 6, 2013) [Docket No. 2182] (the “Plan”).

³ Among other things, the Plan waived certain defaults under the School Warrant Indenture, changed the interest rate on the 2005-B School Warrants, and prioritized redemption of the 2005-B School Warrants with excess proceeds of pledged taxes. *See* Plan §§ 2.3(g)-(i).

8. As set forth in Act No. 73-659, the proceeds of the taxes imposed under Act No. 67-405, including the Consumer Use Tax, are divided into two equal shares, and distributed as follows:

a. From the first one-half share:

- i. An amount equal to one and one-half percent (1-1/2%) of the total proceeds collected is paid to the County's general fund for the collection and enforcement of the Consumer Use Tax;
- ii. An amount equal to nine percent (9%) of the remaining balance (after commissions) of the first one-half share is paid to the Jefferson County Department of Health (the "Department of Health")⁴; and
- iii. The balance of the first one-half share is paid into the Indigent Care Fund (as defined in Act No. 67-405).⁵

b. From the second one-half share:

- i. An amount equal to \$100,000 from the second one-half share is paid to the Birmingham-Jefferson Civic Center Authority monthly (the "BJCC")⁶;

⁴ The Department of Health is a local agency of the State and not an agency of the County. *See* Ala. Code § 22-3-1, *et seq.*; *Williams v. Madison Cnty. Bd. of Health*, 523 So. 2d 453, 455 (Ala. Civ. App. 1988).

⁵ The Indigent Care Fund was authorized by Act No. 65-387 to be used by the County "to acquire . . . a county hospital, hospitals and/or clinics, to operate, equip and maintain the same for the medical care and treatment of indigent persons of the county suffering from illness, injury, disability or infirmity . . ." *See* Act No. 65-387 at § 14. The County is also "authorized to provide such treatment . . . at a county hospital, out-patient clinic and/or emergency clinic or other hospitals located in the county under a contract . . ." *See id.*

⁶ The BJCC is a public corporation formed pursuant to Act No. 65-547. The County and the BJCC are distinct legal entities. Act No. 73-659 provides that the second one-half share of the Consumer Use Tax may supplement tax distributions to the BJCC in certain circumstances. At all times relevant to Norfolk Southern's

- ii. An amount equal to thirty-one percent (31%) of the total amount of the second one-half share is paid to the Department of Health⁷; and
- iii. The balance of the second one-half share is paid into the County's general fund.

9. During the period of November 2011 through June 2013, based upon the distribution scheme set forth in Act No. 73-659, the proceeds from the taxes imposed under Act No. 67-405, including the Consumer Use Tax, were distributed in the following percentages:

- a. Indigent Care Fund: 44.1%
- b. County general fund: 34.8%
- c. Department of Health: 19.9%
- d. BJCC: 1.2%

10. Norfolk Southern's claim in the amount of \$1,629,506.80 consists of \$814,753.40 in Education Use Tax payments and \$814,753.40 in Consumer Use Tax Payments for the period November 16, 2011 through June 20, 2013. The County general fund received 4% of Norfolk Southern's \$814,753.40 in Education Use Taxes as a fee for collection. The County general fund also received 34.8% of Norfolk Southern's \$814,753.40 in Consumer Use Taxes.

11. In the Fiscal Year ending September 30, 2014, the County collected a total of \$100,377,282.96 from all taxpayers under Ala. Code § 40-12-4 and Ordinance No. 1769. In the Fiscal Year ending September 30, 2014, the County collected a total of \$99,182,626.76 from all taxpayers under Act No. 67-405, as amended by Act No. 73-659. The total tax collections

claim, the County only distributed \$100,000 per month to the BJCC from the tax proceeds received under Act No. 67-405, as amended by Act No. 73-659.

⁷ Act No. 73-659 provides that part of the second one-half share of the Consumer Use tax that is paid to the Department of Health may be used to satisfy County issued bonds or warrants. At all times relevant to Norfolk Southern's claim, the County distributed thirty-one percent (31%) of the second one-half share of the Consumer Use Tax to the Department of Health.

described in this paragraph include both sales taxes and use taxes paid and collected under the referenced statutes and ordinances. Norfolk Southern's refund claim is solely for use taxes.

Stipulated:

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EXHIBIT A

Code of Alabama

Title 40. Revenue and Taxation. (Refs & Annos)

Chapter 12. Licenses. (Refs & Annos)

Article 1. . General Provisions. (Refs & Annos)

Ala.Code 1975 § 40-12-4

§ 40-12-4. County license tax for school purposes -- Authority to levy.

Currentness

(a) In order to provide funds for public school purposes, the governing body of each of the several counties in this state is hereby authorized by ordinance to levy and provide for the assessment and collection of franchise, excise and privilege license taxes with respect to privileges or receipts from privileges exercised in such county, which shall be in addition to any and all other county taxes heretofore or hereafter authorized by law in such county. Such governing body may, in its discretion, submit the question of levying any such tax to a vote of the qualified electors of the county. If such governing body submits the question to the voters, then the governing body shall also provide for holding and canvassing the returns of the election and for giving notice thereof. All the proceeds from any tax levied pursuant to this section less the cost of collection thereof shall be used exclusively for public school purposes, including specifically and without limitation capital improvements and the payment of debt service on obligations issued therefor.

(b) Notwithstanding anything to the contrary herein, said governing body shall not levy any tax hereunder measured by gross receipts, except a sales or use tax which parallels, except for the rate of tax, that imposed by the state under this title. Any such sales or use tax on any automotive vehicle, truck trailer, trailer, semitrailer, or travel trailer required to be registered or licensed with the probate judge, where not collected by a licensed Alabama dealer at time of sale, shall be collected and fees paid in accordance with the provisions of Sections 40-23-104 and 40-23-107, respectively. No such governing body shall levy any tax upon the privilege of engaging in any business or profession unless such tax is levied uniformly and at the same rate against every person engaged in the pursuit of any business or profession within the county; except, that any tax levied hereunder upon the privilege of engaging in any business or profession may be measured by the number of employees of such business or the number of persons engaged in the pursuit of such profession. In all counties having more than one local board of education, revenues collected under the provisions of this section shall be distributed within such county on the same basis of the total calculated costs for the Foundation Program for those local boards of education within the county.

Credits

(Acts 1969, Ex. Sess., No. 34, p. 85; Acts 1969, No. 688, p. 1226; Acts 1988, No. 88-336, p. 512, § 1; Acts 1989, No. 89-691, p. 1358, § 3; Acts 1995, No. 95-314, p. 634, § 51.)

Notes of Decisions (4)

Ala. Code 1975 § 40-12-4, AL ST § 40-12-4
Current through Act 2014-457 of the 2014 Regular Session.

EXHIBIT B

JEFFERSON COUNTY

**SUBSTITUTE ORDINANCE LEVYING
SALES AND USE TAX FOR
EDUCATIONAL PURPOSES PURSUANT TO
SECTION 40-12-4 OF CODE OF ALABAMA 1975**

BE IT ORDAINED by the Jefferson County Commission that Jefferson County Ordinance No. 1764 adopted on August 24, 2004, is hereby repealed in its entirety and that in lieu thereof the following ordinance is hereby ordained and adopted:

Section 1. (a) Definitions and Rules of Construction. For purposes of this ordinance, the following terms or phrases shall have the respective meanings ascribed by this section, except where the context clearly indicates a different meaning:

(1) "Commission" means the Jefferson County Commission or other duly constituted governing body of the County.

(2) "County" means Jefferson County, Alabama.

(3) "Education Sales Tax" means the privilege or license tax levied by Section 3 of this ordinance on the gross receipts of retail sales in the County pursuant to the authority of Code of Alabama 1975, § 40-12-4.

(4) "Education Taxes" means the combined taxes represented by the Education Sales Tax and the Education Use Tax, and the gross proceeds of the Education Taxes shall include the gross proceeds of both constituent taxes.

(5) "Education Use Tax" means the excise tax imposed by Section 4 of this ordinance on the storage, use or other consumption in the County of tangible personal

**APPROVED BY THE
JEFFERSON COUNTY COMMISSION**

DATE: 12-16-04

MINUTE BOOK: 146

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property purchased at retail pursuant to the authority of Code of Alabama 1975, § 40-12-4.

(6) "Education Warrants" means the warrants (i) which will be issued by the County in such aggregate principal amount, in such series, and in accordance with such terms and conditions as shall, from time to time, be determined by the Commission in the proceedings whereunder such warrants are issued, (ii) which will provide funds for capital improvements and instructional equipment and materials for public schools in the territorial jurisdictions of all the boards of education in the County, as well as for the retirement of debt previously incurred by certain of such boards of education, and (iii) the debt service on which will be payable solely from, and will be secured by a pledge of, the entire proceeds of the Education Taxes. The term Education Warrants includes all warrants issued by the County to refund all or any part of the debt represented by an original issue of the Education Warrants or any prior refunding thereof.

(7) "General Sales Tax" means the privilege or license tax levied on the gross receipts of retail sales in the County pursuant to the General Tax Statute.

(8) "General Tax Statute" means Act No. 405 enacted at the 1967 regular session of the Legislature of Alabama.

(9) "General Use Tax" means the excise tax imposed on the storage, use or other consumption in the County of tangible personal property purchased at retail pursuant to the General Tax Statute.

(10) "Gross Receipts Tax in the Nature of a Sales Tax" means a privilege or license tax imposed by a county as such term is defined in Code of Alabama 1975, § 40-2A-3(8).

(11) "Revenue Director" means the Director of Revenue or other officer responsible for collecting sales and license taxes for the County.

(12) "Self-Administered County" means a county that administers its own sales and use taxes as such term is defined in Code of Alabama 1975, § 40-2A-3(21).

(13) "State" means the State of Alabama.

(14) "State Sales Tax" means the privilege or license tax levied on the gross receipts of retail sales in the State pursuant to the State Sales Tax Statutes.

(15) "State Sales Tax Statutes" means Code of Alabama 1975, Title 40, Chapter 23, Article 1 and all other statutes of the State, whether now in existence or hereafter enacted and as at any time amended, directly relating to the privilege or license tax levied and collected by the State pursuant to said Article 1 or successor statutes.

(16) "State Use Tax" means the excise tax imposed on the storage, use or other consumption in the State of tangible personal property purchased at retail pursuant to the State Use Tax Statutes.

(17) "State Use Tax Statutes" means Code of Alabama 1975, Title 40, Chapter 23, Article 2 and all other statutes of the State, whether now in existence or hereafter enacted and as at any time amended, directly relating to the excise tax levied and collected by the State pursuant to said Article 2.

(b) For the purposes of this ordinance, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

(1) Words of masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number, and vice versa.

(2) All captions or headings of articles, sections or other subdivisions in this ordinance are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, the meaning of this ordinance.

(3) The terms "include", "including" and similar terms shall be construed as if followed by the phrase "without limitation".

(4) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this ordinance as a whole and not to any particular article, section or other subdivision thereof.

Section 2. Legislative Findings. As a basis for levying the Education Taxes, the Commission hereby finds and declares as follows:

(a) Pursuant to mandate of the Legislature of Alabama as provided in the General Tax Statute, there is now levied and collected in the County the General Sales Tax and the General Use Tax which parallel, except for the rate of tax, the State Sales Tax and the State Use Tax, respectively. In general, the General Sales Tax and the General Use Tax are levied at a rate equal to one-fourth of the rate of the parallel tax currently levied by the State, except that the rate of both County taxes applicable to automotive vehicles, truck trailers, house trailers and similar items described in Code of Alabama 1975, § 40-23-2(4) and § 40-23-61(c) is $\frac{3}{8}$ of one percent (0.375%).

(b) In order to provide funds for public school purposes in the County, Section 40-12-4 of the Code of Alabama 1975 authorizes the County to levy a sales tax and a use tax which respectively parallel, except for the rate of tax, the State Sales Tax and the State Use Tax. All the proceeds of taxes levied by the County pursuant to said § 40-12-4, less the cost of collecting the same, are required to be used exclusively for

public school purposes, including specifically and without limitation capital improvements and the payment of debt service on obligations issued therefor. In any county having more than one local board of education, revenues collected under Section 40-12-4 are required to be distributed within such county on the same basis as the total costs for the respective Foundation Programs (as determined by the State Department of Education in accordance with Code of Alabama 1975, Title 16, Chapter 13, Article 11) of the local boards of education within such county. Since it is entirely within the discretion of the County Commission as to whether any tax will be levied pursuant to Section 40-12-4, and since the elected members of the Commission are politically accountable for the proper and effective expenditure of the proceeds of such tax, the Commission has determined that Section 40-12-4 empowers the County to use the proceeds of the Education Taxes to pay debt service on the Education Warrants, provided that the proceeds of such warrants are either distributed to boards of education in the County in proportion to the costs of their Foundation Programs during the fiscal year in which such warrants are issued or, alternatively, are directly expended by the County for school purposes in the territorial jurisdictions of such boards of education in proportion to such costs of their Foundation Programs.

(c) The boards of education in the County have planned needs for capital improvements and instructional materials and equipment that, in the aggregate, exceed the sum of one billion dollars. To provide for these needs from current local taxes would cause an undesirable diminution of resources that would otherwise be available for programmatic improvements in the public schools, including funds needed for the recruitment and retention of qualified teachers. The geographical differences in property

values and the uneven distribution of commercial and industrial development make it impossible for certain municipalities to levy taxes at rates that would produce sufficient revenues to finance the capital improvements needed by their schools without imposing competitively disadvantageous tax burdens on property and commercial activities in such municipalities.

(d) It is desirable and necessary for the County to assure that the capital improvements and instructional materials and equipment needed by all the schools of the County will be met by the levy of uniform taxes throughout the County and that such taxes will be used to finance the borrowing of capital funds that will be distributed to all boards of education in the County in proportion to the costs of their respective Foundation Programs, which is a distribution that directly reflects the number of students under the jurisdiction of each board of education. These objectives will be accomplished by (i) the levy of the Education Taxes as provided in this ordinance, (ii) the issuance of the Education Warrants by the County, (iii) the distribution of the net proceeds derived from the sale of the Education Warrants to the boards of education in the County in proportion to the costs of their respective Foundation Programs pursuant to grants which require such proceeds to be expended in accordance with the County's purposes, and (iv) the pledge and appropriation of the entire proceeds of the Education Taxes to pay the debt service on such warrants on such terms and under such conditions as will assure the full payment of the principal thereof in the shortest practicable period.

(e) The County is levying the Education Taxes on the condition that the entire proceeds thereof, less the County's fee for collecting the same, shall be used for the payment of debt service on the Education Warrants. It is the intention of the County,

however, to allow each board of education to which proceeds of the Education Warrants are distributed to use such proceeds, in such amount, if any, as such board shall determine, to pay and retire outstanding debt originally incurred by such board to finance capital expenditures, either through the current payment of such debt or the establishment of escrows to provide for the future payment thereof; provided that any use of the proceeds of the Education Warrants to pay and retire outstanding debt shall be subject to the County's approval to assure that the interest on such warrants will be exempt from federal income taxation.

(f) The County has determined that neither the Education Sales Tax nor the Education Use Tax is a Gross Receipts Tax in the Nature of a Sales Tax, and the County is not prohibited from levying either thereof by Code of Alabama 1975, § 11-51-209.

(g) The County has determined that with respect to the levy of the Education Taxes it is a Self-Administered County and is entitled to all rights and privileges appertaining to such status.

Section 3. Levy of Education Sales Tax. (a) In addition to the State Sales Tax, the General Sales Tax and all other taxes of every kind now imposed by law, there is hereby levied and shall be collected as herein provided, a privilege or license tax herein called the Education Sales Tax, against each person hereby made subject thereto on account of the business activities covered hereby and in the amount to be determined by the application of the rates herein prescribed against gross sales or gross receipts, as the case may be.

(b) The Education Sales Tax levied by this Section 3 shall apply to and is imposed and levied upon every person required to pay, or upon whom shall have been

levied, the State Sales Tax on account of business done by such person in the County; provided, however that in the event the State Sales Tax shall cease to be levied and collected as a result of the repeal of the State Sales Tax Statutes, this ordinance shall continue to apply to, and the Education Sales Tax shall continue to be imposed and levied upon, every person who, had it not been for such repeal, would have been required to pay, or upon whom would have been levied, the State Sales Tax on account of business done by such person in the County.

(c) The rate of the Education Sales Tax shall be an amount equal to one percent (1%) of the gross sales or gross receipts, as the case may be, of any sale or transaction subject to such tax; provided, however, that the sales or transactions hereinafter described shall be subject to such different rates of tax as are respectively shown below as applying thereto:

(1) sales of machines used in the mining, quarrying, compounding, processing, and manufacturing of tangible personal property, as described in Code of Alabama 1975, § 40-23-2(3), shall be subject to a tax of $\frac{3}{8}$ of one percent (0.375%) of the gross proceeds of the sale of such machines;

(2) sales of automotive vehicles, truck trailers, semitrailers, house trailers, and mobile home set-up materials and supplies, as described in Code of Alabama 1975, § 40-23-2(4), shall be subject to a tax of $\frac{3}{8}$ of one percent (0.375%) of the gross proceeds of the sale of such items of property; and

(3) sales of food and beverage products sold through coin-operated dispensing machines, as described in Code of Alabama 1975, § 40-23-2(5), shall be subject to a tax of $\frac{3}{4}$ of one percent (0.75%) of the gross proceeds of the sale of such products.

(d) As used in this ordinance, the term "seller" means any person engaged in any business subject to the Education Sales Tax. Every seller upon whom the Education Sales Tax is levied shall collect such tax from the purchaser by adding the tax to the sales, admission or other price paid by the purchaser. The Revenue Director shall have discretion to administer the collection of the Education Sales Tax separate and apart from the General Sales Tax, but inasmuch as the General Sales Tax and the Education Sales Tax are levied at the same rate and are subject to the same exemptions, the Revenue Director shall also have discretion, pursuant to such rules and regulations as he deems necessary, to treat such taxes as a single tax to be collected by the seller from the purchaser and reported to the Revenue Director on the same tax returns.

(e) In order to facilitate the collection, by the seller from the purchaser, of the combined General Sales Tax and the Education Sales Tax, the seller shall, with respect to sales and transactions subject to this ordinance and the General Tax Statute, collect the following respective amounts on the sales of items at retail having a sales price of less than one dollar and on that portion of the sales price of any item that is a fractional part of a dollar:

<u>Sales Price</u>	<u>Tax</u>
0 to 35c	None
36c to 70c	1c
71c to 100c	2c

(f) Any sale or transaction in the County subject to the State Sales Tax shall be subject to the Education Sales Tax at the applicable rate herein prescribed; provided, however, that in the event of the repeal of the State Sales Tax Statutes, any sale or transaction in the County that was subject to the State Sales Tax immediately prior to any such repeal shall continue to be subject to the Education Sales Tax.

(g) Each exemption from the State Sales Tax allowed or required by the State Sales Tax Statutes shall, during the period of time for which such exemption shall be effective, be applicable to the Education Sales Tax; provided, however, that in the event the State Sales Tax shall cease to be levied and collected as a result of the repeal of the State Sales Tax Statutes, all exemptions from the State Sales Tax in effect immediately prior to such repeal shall thereafter continue to be applicable to the Education Sales Tax; provided further that if any particular exemptions from the State Sales Tax are repealed through amendment of the State Sales Tax Statutes, such exemptions shall thereafter cease to be applicable to the Education Sales Tax.

(h) In the absence of any express provision hereof to the contrary, or unless as may otherwise be provided by applicable law, all provisions and procedures with respect to the application for and issuance of licenses, the making of returns or reports, the contents of returns or reports, collection, and payment of taxes, keeping of records, reporting and paying taxes with respect to sales on credit, determination of the amount of

the tax due, penalties, assessments, notices and examinations of taxpayers and their books provided for in the State Sales Tax Statutes with respect to the State Sales Tax shall be applicable to the Education Sales Tax. Any procedure or provision involving the Alabama Department of Revenue that is incorporated herein by reference to the State Sales Tax statutes shall be deemed to apply, with respect to the Education Sales Tax, to the Revenue Director.

(i) Nothing contained in this ordinance, however, shall be construed as imposing the Education Sales Tax or any other additional tax upon or with respect to the sales made by the Alabama Alcoholic Beverage Control Board.

Section 4. Levy of Education Use Tax. (a) In addition to the State Use Tax, the General Use Tax and all other taxes of every kind now imposed by law, an excise tax, herein called the Education Use Tax, is hereby imposed on the storage, use or other consumption in the County of tangible personal property purchased at retail on or after the effective date of this ordinance, at the rate of one percent (1%) of the sales price of such property or the amount of tax collected by the seller, whichever is greater, regardless of whether the retailer who made the sale is, or is not, engaged in business in the County; provided, however, that the storage, use or other consumption in the County of tangible personal property hereinafter described shall be subject to such different rates of tax as are respectively shown below as applying thereto:

(1) machines purchased at retail that are used in the mining, quarrying, compounding, processing, and manufacturing of tangible personal property, as described in Code of Alabama 1975, § 40-23-61(b), shall be subject to a tax of 3/8 of one percent (0.375%) of the sales price

of such machines or the amount of the tax collected by the seller, whichever is greater; and

(2) automotive vehicles, truck trailers, semitrailers, house trailers, and mobile home set-up materials and supplies purchased at retail, as described in Code of Alabama 1975, § 40-23-61(c), shall be subject to a tax of $\frac{3}{8}$ of one percent (0.375%) of the sales price of such items of property or the amount of the tax collected by the seller, whichever is greater.

(b) Any storage, use or other consumption in the County of tangible personal property subject to the State Use Tax shall be subject to the Education Use Tax at the applicable rate herein prescribed; provided, however, that in the event the State Use Tax shall cease to be levied and collected as a result of the repeal of the State Use Tax Statutes, any such storage, use or other consumption in the County of tangible personal property purchased at retail that was subject to the State Use Tax immediately prior to such repeal shall continue to be subject to the Education Use Tax.

(c) Each exemption from the State Use Tax allowed or required by the State Use Tax Statutes shall, during the period of time for which such exemption shall be effective, be applicable to the Education Use Tax; provided, however, that in the event the State Use Tax shall cease to be levied and collected as a result of the repeal of the State Use Tax Statutes, all exemptions from the State Use Tax in effect immediately prior to such repeal shall thereafter continue to be applicable to the Education Use Tax; provided further that if any particular exemptions from the State Use Tax are repealed

through amendment of the State Use Tax Statutes, such exemptions shall thereafter cease to be applicable to the Education Use Tax.

(d) In the absence of any express provision hereof to the contrary, or unless as may otherwise be provided by applicable law, all provisions and procedures with respect to the filing of returns, collection and payment of taxes, keeping of records, making of reports, determination of the amount of the tax due, penalties, assessments, notices, examinations of taxpayers and their books provided in the State Use Tax Statutes with respect to the State Use Tax shall be applicable to the Education Use Tax. Any procedure or provision involving the Alabama Department of Revenue which is incorporated herein by reference to the State Use Tax Statutes shall be deemed to apply, with respect to the Education Use Tax, to the Revenue Director.

(e) Every person storing, using or otherwise consuming in the County tangible personal property purchased at retail shall be liable for the Education Use Tax, and the liability shall not be extinguished until such tax has been paid; provided, however, that a receipt from a retailer maintaining a place of business in the County, showing that the property in question was purchased at retail from such retailer and that the Education Sales Tax has been paid with respect to the purchase at retail of such property, shall be sufficient to relieve the purchaser from further liability for the Education Use Tax with respect to the use, storage or consumption of such property; provided further that, as provided in Code of Alabama 1975, § 40-23-2.1, the Education Use Tax shall not be collected for the storage, use or other consumption of tangible personal property in the County if any tax, regardless of rate, described in said § 40-

23-2.1 and levied by or on behalf of another Alabama county has been paid with respect to such property under a requirement of law.

Section 5. Payment and Returns. (a) Except as otherwise provided in subsection (b) of this section, the Education Sales Tax shall be due and payable monthly on or before the twentieth day of the month next succeeding the month in which such tax shall have accrued. On or before the day on which such tax becomes due and payable, every person on whom the tax is imposed shall render to the Revenue Director, on a form prescribed by the Revenue Director, a true and correct statement showing the gross sales, the gross proceeds of sales, or gross receipts of such person's business, as the case may be, for the then next preceding month, the amount of gross proceeds or gross receipts which are not subject to such tax or are not to be used for the measurement of the tax due from such person, and the nature thereof, together with such other information as the Revenue Director may require, and at the time of making such monthly report such person shall pay to the Revenue Director the amount of the tax shown to be due .

(b) When the total State Sales Tax owed by any person also liable for the Education Sales Tax averages less than two hundred dollars (\$200) per month during the preceding calendar year, a quarterly return and remittance in lieu of the monthly returns and remittances may be made by such person on or before the twentieth day of the month next succeeding the end of the quarter in which such tax shall have accrued when specially authorized by the Revenue Director, and under such rules and regulations as may be prescribed.

(c) The Revenue Director, for good cause, may extend the time for making any return required under the provisions of this ordinance, but the time for filing any such

return shall not be extended for a period greater than thirty (30) days from the date such return is due to be made.

(d) The Education Use Tax shall be due and payable quarterly on or before the twentieth day of the month next succeeding the quarterly period in which such tax shall have accrued for the storage, use or other consumption of tangible property. Every person purchasing tangible personal property the storage, use or other consumption of which is subject to the Education Use Tax and with respect to the retail sale of which the Education Sales Tax has not been paid, shall, on or before the twentieth day of the month following the close of the quarterly period within which such storage, use or other consumption shall have first occurred, file with the Revenue Director a return for the preceding quarterly period, in such form as may be prescribed by the Revenue Director, showing the total sales price of the tangible personal property purchased by such person, the storage, use or consumption of which became subject, during the preceding quarterly period, to the Education Use Tax, and such other information as the Revenue Director may deem necessary for the proper administration of this ordinance. The return shall be accompanied by a remittance of the amount of Education Use Tax then due.

(e) Any discount at any time allowed under the State Sales Tax Statutes, with respect to the State Sales Tax, shall at such time be applicable to the Education Sales Tax. Any discount at any time allowed by the State Use Tax Statutes, with respect to the State Use Tax, shall at such time be applicable to the Education Use Tax.

Section 6. Education Taxes Constitute Debt. The Education Taxes herein levied shall constitute a debt due the County, and may be collected by civil suit brought within three years after the taxes become due and payable or such other period as may be

provided by applicable law. The Revenue Director shall have the power to bring and prosecute any such suits, in the name of the County. The provisions of this Section 6 are cumulative, and this section shall not be deemed to abridge or limit the power of the Revenue Director to use all other methods of collection provided by applicable law.

Section 7. Taxes a Lien. The Education Taxes, together with all interest and penalties applicable thereto, shall constitute a lien upon the property of the persons required to pay such taxes and all of the provisions of the revenue laws of the State with respect to the enforcement of liens for comparable license or excise taxes owed to the State shall, to the extent authorized by applicable law, apply to the enforcement of the lien of the Education Taxes. The said lien shall attach as of the date any tax shall be due under this ordinance, and it shall, to the extent authorized by applicable law, be superior to all other liens, except the liens of the State, the County, and cities in the County securing ad valorem and license taxes and the liens of any such cities securing public improvement assessments.

Section 8. Enforcement Powers of the County. (a) In addition to all other powers and rights conferred by this ordinance, the Commission, and the Revenue Director as the delegate of the Commission, in connection with the administration and enforcement of this act and the levy and collection of the Education Taxes, shall have the same rights, remedies, power and authority, including the right to adopt and implement the same procedures, as would be available to the Alabama Department of Revenue if such taxes were being administered, enforced and collected by such Department, all as and to the extent authorized by Code of Alabama 1975, § 11-3-11.2. Any rules and regulations adopted, promulgated and utilized by the Commission or the Revenue Director for the

collection and enforcement of the Education Taxes shall, with the necessary changes in detail, be consistent with the rules and regulations of the Alabama Department of Revenue for the collection and enforcement of the corresponding state taxes, unless a specific provision of such Department's rules and regulations is inconsistent with any other local or general law applicable to the County's administration and enforcement of this ordinance and the levy and collection of the Education Taxes, in which case the provisions of such other local or general law will prevail. With respect to the applicability of the rights, remedies, power and authority of the Alabama Department of Revenue to the administration and enforcement of this ordinance, any reference to the Commissioner of Revenue or his delegate in any statute shall be deemed to refer to the Revenue Director, who shall exercise and implement the rights, remedies, power and authority under such statute that are hereby intended to be made available for the benefit of the County. In particular, the administration and enforcement of this ordinance and the levy and collection of the Education Taxes shall be subject to (i) the provisions of Section 40-2A-10, Section 40-2A-11, Section 40-2A-13 and Section 40-2A-14 of the Alabama Taxpayer's Bill of Rights and Uniform Revenue Procedures Act and (ii) the provisions of the Tax Enforcement and Compliance Act, Title 40, Chapter 29 of the Code of Alabama 1975 pertaining to (1) the imposition of liens on a taxpayer's property for the collection of taxes (Article 2), (2) the statute of limitations for the collection of taxes (Article 3), (3) the making of jeopardy assessments against taxpayers who present a risk of avoiding payment of taxes (Article 5), and (4) criminal penalties for tax evasion, willful violation of tax laws, and fraudulent conduct (Article 6).

(b) The Commission hereby elects (i) to assess interest on any delinquency in the payment of the Education Taxes and (ii) to pay interest on any refund of Education Taxes erroneously paid in accordance with the provisions of Code of Alabama 1975, § 11-3-11.3(g). The amount of interest to be assessed or paid by the County, as the case may be, shall be simple interest at the rate of one percent (1 %) per month.

Section 9. Use of Proceeds of Education Taxes; Cost of Collection. (a) The entire proceeds of the Education Taxes shall be collected by the Revenue Director and sequestered in a special account until applied in accordance with the provisions of this section, as such provisions may be supplemented or modified by subsequent ordinances or resolutions adopted by the Commission. As permitted by the provisions of Code of Alabama 1975, § 11-3-11.2(d), the County, subject to the gross pledge of the Education Taxes for the payment of the Education Warrants, shall retain as its fee for the cost of collecting the Education Sales Tax and the Education Use Tax an amount equal to four percent of the proceeds of each such tax or the County's actual cost of collection, whichever is less. After deducting the County's fee for collecting the Education Taxes, the net proceeds thereof shall, until applied in accordance with subsection (b) of this section, be kept invested in such interest bearing investments as are provided by law for the temporary investment of surplus funds of the County.

(b) Pursuant to agreements relating to the issuance of the Education Warrants, the proceeds of the Education Taxes, less the County's fee for collecting the same, shall be paid by the County to a trustee or paying agent for the Education Warrants to be applied for the scheduled payments of principal and interest on such warrants and then, to the extent that available proceeds exceed such scheduled payments, for the prepayment or

redemption of such warrants in accordance with the proceedings and instruments providing for their issuance.

(c) The costs of issuing the Education Warrants, as well as the costs of employing professional advisors and consultants to implement the grants of the proceeds of such warrants to the boards of education in the County and to assure compliance with the conditions imposed by the County on the use of such grants, shall be paid out of such proceeds and shall be charged proportionately against the share of such proceeds due to each board of education

Section 10. Period for the Levy of the Education Taxes. The Education Taxes shall be levied only for such period as shall be necessary to collect revenues for the full payment and retirement of the Education Warrants, and when such warrants have been fully paid in accordance with the terms thereof, the levy of the Education Taxes shall terminate unless extended by further action of the Commission.

Section 11. Construction of Ordinance. Except to such extent, if any, as may otherwise be provided by law, no board of education in the territory of the County shall have any right or claim to receive, hold, own, expend, or otherwise control the collection or disposition of any of the proceeds of the Education Taxes, or to direct the use thereof, or to contend that the use of such proceeds to pay debt service on the Education Warrants extinguishes or reduces any obligation, whether express or implied, of such board of education to pay or be liable for the payment of any debt service on such warrants, it being herein expressly provided that nothing in this ordinance shall be construed to justify, support or validate any such right or claim by any board of education.

Section 12. Severability. In the event that any section or provision of this ordinance shall be held invalid or unenforceable, such holding shall not invalidate or adversely affect the remainder of this ordinance, it being hereby declared that should any such section or provision be held invalid or unenforceable, the Commission would have adopted this ordinance without such invalid or unenforceable section or provision.

Section 13. Effective Date. This ordinance shall become effective on January 1, 2005.

413032.1

EXHIBIT C

Act No. 405

H. 823—Gloor, House, Bowers, Dill,
Sessions, Adwell, Money,
Meeks, Yeilding,
Waggoner, Crane

AN ACT

To levy in each county of the State having a population of 500,000 or more, according to the last or any subsequent federal census, a privilege or license tax, generally paralleling the State sales tax, upon persons engaged in said county in the business of selling tangible personal property at retail or conducting places of amusement or entertainment or engaged in said county in any business subject to the State sales tax, and to levy an excise tax, generally paralleling the State use tax, on the storage, use or other consumption in said county of tangible personal property purchased at retail, to provide that the said privilege or license tax is required to be passed on to the consumer or purchaser at retail, to the extent provided for in this act; to provide for the making of reports or returns and the keeping of records with respect to the taxes herein levied; to provide that the exemptions applicable to the State sales tax statutes and the State use tax statutes, as said statutes may from time to time be amended, shall be applicable respectively to the said privilege or license tax and the said excise tax, to confer power to administer the act upon the Commissioner of Licenses or other officer or employee of said county charged with the duty of collecting county business license taxes or other license taxes now or hereafter required by law to be paid; to provide for the collection of the taxes levied by this act; to authorize the said Commissioner of Licenses, or other county officer or employee collecting said business license taxes or other license taxes, as aforesaid, to enforce such collection by civil suit, injunction, and accounting, or any of them; to provide that the taxes levied by this act shall constitute a lien and to provide that such lien shall be superior to all other liens except the liens of ad valorem taxes, other license taxes, and municipal assessments; to provide for the enforcement of the lien of the taxes levied by this act; to provide that any taxpayer dissatisfied with the assessment made against him with respect to any such tax may appeal from the assessment to the Circuit Court of the county, sitting in equity, and to prescribe the procedure on such appeal; to provide that the proceeds collected each month from the taxes herein levied shall be divided into two equal shares; to provide that the first such one-half share, after payment into the general treasury of the county of a specified percentage to compensate the county for the administrative, collection, and enforcement expenses relating to such taxes, shall be paid into the County Indigent Care Fund created in Section 14 of Act No. 387 enacted at the 1965 Regular Session of the Legislature of Alabama; to provide that of such remaining one-half share, the first \$100,000 collected each such month shall be paid to the public corporation created in such county by Act No. 547 enacted at the 1965 Regular Session of the Legislature of Alabama for the purpose of establishing, constructing, maintaining and operating a civic center in the county seat of said county, for the payment to such public corporation of a certain additional portion of such one-half share, not exceeding \$100,000, per month, in the event the proceeds from certain other specified taxes paid to such corporation during such month are less than \$100,000, also for the payment each month out of the balance remaining an amount equal to twenty-two percent (22%) of such remaining one-half share to the treasurer or other custodian of funds for the Board of Health of any such county, and for the payment of the balance of such one-half share into the general treasury of said county; to repeal Sections

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2 to 13, inclusive, of Act No. 387 enacted at the 1965 Regular Session of the Legislature of Alabama; and to provide an effective date.

Be It Enacted by the Legislature of Alabama:

Section 1. Meaning of Terms Used in This Act. The following words, terms and phrases where used in this act shall have the following respective meanings, except where the context clearly indicates a different meaning: "**the State**" means the State of Alabama; "**the county**" means any county in the State having a population of 500,000 or more, according to the last or any subsequent Federal census; "**State sales tax statutes**" means Act No. 100 enacted at the 1959 Second Special Session of the Legislature of Alabama and all other statutes of the State (whether now in existence or hereafter enacted) directly relating to the subject matter of said Act No. 100 (including, without limiting the generality of the foregoing, all statutes exempting the gross proceeds from various sales from the measure of the tax levied thereby), as said Act No. 100 and said other statutes have been heretofore amended or as they may be hereafter amended; "**State sales tax**" means the tax imposed by the State sales tax statutes; "**State use tax statutes**" means Article 11 of Chapter 20 of Title 51 of the Code of Alabama of 1940 and all other statutes of the State (whether now in existence or hereafter enacted) directly relating to the subject matter of said Article 11 (including, without limiting the generality of the foregoing, all statutes exempting the storage, use or consumption of various items of personal property from the tax levied thereby), as said Article 11 and said other statutes have been heretofore amended or as they may hereafter be amended; "**State use tax**" means the tax imposed by the State use tax statutes; "**Commissioner of Licenses**" means the Commissioner of Licenses, the Director of the Department of Revenue of the county or any other county officer or employee charged by law with the duty of collecting county business license taxes or other license taxes now or hereafter required by law to be paid to the State of Alabama or the counties thereof, or both; "**quarterly period**" means the period of three calendar months commencing on each January 1, April 1, July 1 and October 1; "**Indigent Care Fund**" means the County Indigent Care Fund created in Section 14 of Act No. 387 enacted at the 1965 Regular Session of the Legislature of Alabama; and "**Authority**" means the public corporation created in the county by Act No. 547 enacted at the 1965 Regular Session of the Legislature of Alabama, for the purpose of establishing, constructing, maintaining and operating a civic center in the county seat of the county. In addition to the foregoing definitions, all words, terms and phrases that are defined in the State sales tax statutes or in the State use tax statutes shall, where used in this act, have the meanings respectively ascribed to them in the State sales

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tax statutes or in the State use tax statutes, as the case may be, except where otherwise specifically provided or where the context herein clearly indicates a different meaning.

Section 2. Legislative Intent. It is the intention of the Legislature by the passage of this act to levy in the county a sales tax and use tax which, with certain differences herein specifically provided, shall generally parallel the provisions of the State sales tax and State use tax, respectively, except that the rates of the taxes herein levied shall be as set forth herein. In order to facilitate administration of this act, and to permit the filing of returns by taxpayers to be made on the same or similar forms as those required under the State sales tax statutes and the State use tax statutes, (a) the procedures specified in those statutes are incorporated herein by reference, and (b) the sales and use taxes herein levied are made subject to all exemptions afforded by the State sales tax statutes and the State use tax statutes, respectively. This act shall be liberally construed to give effect to said intention.

Section 3. Levy of Sales Tax. (a) There is hereby levied in the county, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of the rates herein prescribed against gross sales or gross receipts, as the case may be.

(b) The tax levied by this Section 3 shall apply to and is imposed and levied upon every person required to pay, on account of business done by him in the county, the State sales tax or upon whom, on account of business done by him in the county, the State sales tax is levied; provided, that in the event of the repeal of the State sales tax statutes, this act shall apply to and be imposed and levied upon (i) every person who would, had it not been for such repeal, been required to pay, on account of business done by him in the county, the State sales tax, and (ii) every person upon whom, had it not been for such repeal, the State sales tax would, on account of business done by him in the county, been levied.

(c) The rate of the sales tax levied by this Section 3, with respect to any sale or transaction subject to such tax, shall be an amount equal to one-fourth ($\frac{1}{4}$) of the rate of the State sales tax applicable thereto, as said rate is in effect on the date of enactment of this act, subject however, to the qualifications, limitations and exceptions set forth below in this Section 3.

(d) As used in this subsection (d) and in the following subsection (e), the term "seller" means any person engaged in any business subject to the tax levied by Section 3 of this act.

It is the intention of the Legislature that every seller upon whom the tax levied by this Section 3 is imposed shall collect the tax from the purchaser by adding the said tax to the sales or admission price.

(e) The provisions of this subsection (e) shall apply only to those sales and transactions with respect to which the rate of the State sales tax is four per cent (4%) and only so long as such rate remains four per cent (4%) with respect to such sales and transactions. The term "sales price" as used in this subsection (e) shall have the same meaning herein as in the State sales tax statutes.

On all sales and transactions subject to the provisions of this subsection (e), the seller shall collect from the purchaser not only the tax levied in this Section 3 but also such amount as he is required to collect by the provisions of the State sales tax statutes. In order to facilitate the collection, by the seller from the purchaser, of the sales tax herein levied, the seller shall, with respect to sales and transactions subject to this act, collect the following respective amounts on the sales of items having a sales price of less than one dollar and on that portion of the sales price of any item that is a fractional part of a dollar (which amounts shall include not only the tax levied by this Section 3 but also the amount the seller is required to collect on account of the State sales tax):

Sales Price	Tax
0 to 10c	None
11c to 24c	1c
25c to 44c	2c
45c to 64c	3c
65c to 84c	4c
85c to 1.10	5c

All amounts collected by the seller under the foregoing schedule shall be applied by the seller, first, to the discharge of payment of the State sales tax, and, second, to the discharge of payment of the tax levied by Section 3 of this act.

(f) Any sale or transaction in the county subject to the State sales tax shall be subject to the tax levied in this Section 3; provided, however, that in the event of the repeal of the State sales tax statutes any sale or transaction in the county subject to the State sales tax immediately prior to any such repeal shall be subject to the tax levied by this Section 3.

(g) Any exemption provided for by the State sales tax statutes shall, during the period of time which such exemption shall be effective in said statutes, be applicable to the tax levied by this Section 3; provided, that in the event of the repeal of

the State sales tax immediately prior to the tax levied in this

(h) In the event of the repeal of the State sales tax statutes, notwithstanding any provision to the contrary, all provisions of the State sales tax statutes which apply to the tax levied in this Section 3 shall continue to apply to the tax levied in this Section 3 until the tax levied in this Section 3 is repealed. In the event of the repeal of the State sales tax statutes, the provisions of the State sales tax statutes which apply to the tax levied in this Section 3 shall continue to apply to the tax levied in this Section 3 until the tax levied in this Section 3 is repealed.

(i) Nothing in this act shall be construed as imposing any tax on the State Control Board.

Section 4. The tax imposed on the sale of tangible personal property effective date of the date of the sale in the county, at the State use tax apportioned to the date of enactment of the retailer who made the sale in the county.

(b) Any sale of tangible personal property subject to the tax herein prescribed shall be subject to the State use tax at retail which is levied by this Section 3.

(c) Each of the provisions of the State sales tax statutes shall, during the period of time which such exemption is there provided for, be applicable to the tax levied by this Section 4, provided,

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(h) In the absence of any express provision herein to the contrary, all provisions and procedures with respect to the application for and issuance of licenses, the making of returns or reports, the contents of returns or reports, collection, and payment of taxes, keeping of records, reporting and paying taxes with respect to sales on credit, determination of the amount of the tax due, penalties, assessments, notices and examinations of taxpayers and their books provided for in the State sales tax statutes with respect to the State sales tax shall be applicable to the tax levied in this Section 3, excepting, however, the procedure for appeals from assessments, which appeals shall be taken as hereinafter set forth. Any procedure or provision involving the State Department of Revenue which is incorporated herein by reference to the State sales tax statutes shall be deemed to apply, with respect to the tax levied in this Section 3, to the Commissioner of Licenses.

(i) Nothing contained in this act, however, shall be construed as imposing any additional tax or license upon or with respect to the sales made by the Alabama Alcoholic Beverage Control Board.

Section 4. Levy of Use Tax. (a) An excise tax is hereby imposed on the storage, use or other consumption in the county of tangible personal property purchased at retail on or after the effective date of this act for storage, use or other consumption in the county, at the rate of one-fourth ($\frac{1}{4}$) of the rate of the State use tax applicable thereto, as said rate is in effect on the date of enactment of this act, regardless of whether the retailer who made the sale is or is not engaged in business in the county.

(b) Any storage, use or other consumption in the county of tangible personal property subject to the State use tax shall be subject to the use tax levied hereby at the applicable rate herein prescribed; provided that in the event of the repeal of the State use tax statutes, any such storage, use or other consumption in the county of tangible personal property purchased at retail which was subject to the State use tax immediately prior to such repeal shall continue to be subject to the use tax levied by this Section 4.

(c) Each exemption provided for in the State use tax statutes shall, during the period of time for which such exemption is therein effective, be applicable to the tax levied by this Section 4, provided that in the event of the repeal of the

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(d) All provisions and procedures with respect to the filing of returns, collection and payment of taxes, keeping of records, making of reports, determination of the amount of the tax due, penalties, assessments, notices, examinations of taxpayers and their books provided in the State use tax statutes with respect to the State use tax shall be applicable to the tax levied in this Section 4 unless otherwise provided herein, excepting, however, the procedure for appeals from assessments, which appeals shall be taken as hereinafter set forth. Any procedure or provisions involving the State Department of Revenue which is incorporated herein by reference to the State use tax statutes shall be deemed to apply, with respect to the tax levied in this Section 4, to the Commissioner of Licenses.

(e) Every person storing, using or otherwise consuming in the county tangible personal property purchased at retail shall be liable for the tax imposed in this Section 4 and the liability shall not be extinguished until the tax has been paid; provided, however, that a receipt from a retailer maintaining a place of business in the county, showing that the property in question was purchased at retail from such retailer and that the tax levied in Section 3 of this act has been paid with respect to the purchase at retail of such property, shall be sufficient to relieve the purchaser from further liability for a tax under this Section 4 with respect to the use, storage or consumption of such property.

Section 5. Payment and Returns. (a) The tax levied in Section 3 hereof, except as otherwise provided, shall be due and payable monthly on or before the twentieth day of the month next succeeding the month in which the tax accrues. On or before the day on which said tax becomes due and payable, every person on whom said tax is imposed shall render to the Commissioner of Licenses, on a form prescribed by the said Commissioner, a true and correct statement showing the gross sales, the gross proceeds of sales, or gross receipts of his business, as the case may be, for the then next preceding month, the amount of gross proceeds or gross receipts which are not subject to the said tax or are not to be used for a measurement of the said tax due from such person, and the nature thereof, together with such other information as the Commissioner of Licenses may require, and at the time of making such monthly report such person shall pay to the Commissioner of Licenses the amount of the tax shown to be due; provided however, that when the total tax for which any person is liable under Section 3 of this act does not exceed Ten Dollars (\$10) for any month, a quarter-

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ly return and remittance in lieu of the monthly returns and remittances may be made on or before the twentieth day of the month next succeeding the end of the quarter for which the tax is due, when specially authorized by the Commissioner of Licenses, and under such rules and regulations as may be prescribed. The Commissioner of Licenses, for good cause, may extend the time for making any return required under the provisions of this act, but the time for filing any such return shall not be extended for a period greater than thirty (30) days from the date such return is due to be made.

(b) The tax levied in Section 4 hereof shall be due and payable quarterly on or before the twentieth day of the month next succeeding the quarterly period during which the said tax shall have accrued for the storage, use or other consumption of tangible property. Every person purchasing tangible personal property the storage, use or other consumption of which is subject to the tax levied in Section 4 hereof and with respect to the retail sale of which the tax levied in Section 3 hereof has not been paid, shall, on or before the twentieth day of the month following the close of the quarterly period within which such storage, use or other consumption shall first occur, file with the Commissioner of Licenses a return for the preceding quarterly period, in such form as may be prescribed by the said Commissioner, showing the total sales price of the tangible personal property purchased by such person, the storage, use or consumption of which became subject, during the preceding quarterly period, to the tax imposed by Section 4 hereof, and such other information as the said Commissioner may deem necessary for the proper administration of the act. The return shall be accompanied by a remittance of the amount of tax levied in Section 4 hereof.

(c) Any discount at any time allowed under the State sales tax statutes, with respect to the tax levied thereby, shall at such time be applicable to the tax levied in Section 3 hereof. Any discount at any time allowed by the State use tax statutes, with respect to the tax levied thereby, shall at such time be applicable to the tax levied in Section 4 hereof.

Section 6. Taxes Constitute Debt. The taxes herein levied shall constitute a debt due the Commissioner of Licenses, and may be collected by civil suit brought within three years after the taxes become due and payable. The Commissioner of Licenses shall have the power to bring and prosecute any such suits in his own name. The provisions of this Section 6 are cumulative and this Section shall not be deemed to abridge or limit the power of the Commissioner of Licenses to use all other methods of collection that are set forth in the State sales tax statutes and the State use tax statutes and that are herein con-

ferred on the Commissioner of Licenses by reference to such statutes or otherwise.

Section 7. Injunction Relief and Accounting. The Commissioner of Licenses may, by bill or petition filed in the Circuit Court of the county, in equity, obtain orders or decrees for either or both of the following: (a) enjoining the operation and conduct of any business activities which are subject to the tax imposed by Section 3 hereof and with respect to which the said tax is delinquent in whole or in part; and (b) an accounting as to the amount of said tax due from any person; any such bill or petition shall be brought in the name of the Commissioner of Licenses and shall be verified by him. All procedures provided for in Article 4 of Chapter 15 of Title 37 of the Code of Alabama, with respect to bills or petitions filed by municipalities under that article, the dissolution or reinstatement of injunctions, the making and forfeiting of bonds, appeals, and institution of subsequent suits shall be applicable to any proceedings for an injunction or accounting filed by the Commissioner of Licenses pursuant to the provisions of this section. The provisions of this section are cumulative and shall not be construed to replace or modify any other remedies or methods of collection available to the Commissioner of Licenses. The enforcement of the lien provided for in Section 8 hereof shall not be deemed a waiver of any right acquired by the Commissioner of Licenses against the bond of a respondent in any proceedings hereunder.

Section 8. Taxes a Lien. The taxes herein levied, together with all interest and penalties applicable thereto, shall be lien upon the property of the persons required to pay such taxes and all of the provisions of the revenue laws of the State of Alabama with respect to the enforcement of liens for license taxes to the State of Alabama shall apply to the enforcement of the lien of the taxes herein levied. The said lien shall attach as of the date any tax shall be due hereunder, and the said lien shall be superior to all other liens, except the liens of the State, the county, and cities in the county securing ad valorem and license taxes and the liens of any such city securing public improvement assessments.

Section 9. Powers of the Commissioner of Licenses. The Commissioner of Licenses shall have the following powers: (1) The power to administer this act including the collection of the taxes herein levied, the payment of the expenses incurred in the administration of this act and the collection of said taxes, the distribution of the proceeds in accordance with the provisions of Section 11; (2) the power to exercise, with respect to the tax levied in Section 3 of this act, all powers and functions as to collection of taxes, giving notices, making assessments and enforce-

ing penalties, is payers and other making of demerment of Revenue levied therein; levied in Section collection of t jeopardy determ ties, issuing ex and other with of demands tha nue by the Sta (4) the power as security for bring and pros other legal act act; (6) the po conflict with p cise all powers accomplishment (1) to (6) of t

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 ment of Revenue by the State sales tax statutes as to the tax
 levied therein; (3) the power to exercise, with respect to the tax
 levied in Section 4 of this Act, all powers and functions as to
 collection of taxes, giving notices, making assessments and
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 and other witnesses, examining books and papers, and making
 of demands that are conferred on the State Department of Reve-
 nue by the State use tax statutes as to the tax levied therein;
 (4) the power to file and enforce the lien provided for herein
 as security for each of the taxes herein levied; (5) the power to
 bring and prosecute suits, to conduct litigation and to take any
 other legal action necessary to enforce the provisions of this
 act; (6) the power to prescribe forms and fix regulations not in
 conflict with provisions of this act; and (7) the power to exer-
 cise all powers incidental to, and reasonably necessary to the
 accomplishment of, the powers hereinabove set forth in clauses
 (1) to (6) of this Section.

Section 10. Appeals from Assessments. Whenever any
 taxpayer who has duly appeared and protested a final assess-
 ment made by the Commissioner of Licenses is dissatisfied with
 the assessment finally made, he may appeal from said final as-
 sessment to the Circuit Court of the county, sitting in Equity,
 by filing notice of appeal with the Commissioner of Licenses
 and with the register of said court within thirty (30) days from
 the date of said final assessment, and in addition thereto by giv-
 ing bond conditioned to pay all costs, such bond to be filed with
 and approved by the register of said court. All provisions of
 Section 140 of Title 51, Code of Alabama of 1940, as presently
 drawn or as hereafter amended, pertaining to payment of an
 assessment unless a supersedeas bond shall be filed and ap-
 proved, the burden of proof, and the procedure to be followed
 in appeals from the judgment of the said court, shall be applica-
 ble to appeals from final assessments made hereunder, and the
 Commissioner of Licenses shall have with request to such appeals
 all the rights conferred on and the functions assigned to the De-
 partment of Revenue by said Section 140.

Section 11. Application of Proceeds. On or before the
 twentieth day of each calendar month, commencing with the
 calendar month next following that during which the Commis-
 sioner of Licenses first collects any of the taxes levied hereby,
 the Commissioner of Licenses shall divide into two equal shares
 the total proceeds (including any interest and penalties) col-
 lected by him during the then preceding calendar month from
 the license and privilege taxes levied hereby.

The first such one-half shall be applied by the Commissioner of Licenses as follows: (a) he shall pay into the general treasury of the county, for the collection of the taxes levied hereby and for the enforcement and administration of this act, an amount equal to one and one-half per cent (1½%) of the total proceeds so collected, and (b) he shall pay the balance of such one-half share into the Indigent Care Fund.

The second such one-half share shall be applied by the Commissioner of Licenses as follows:

(a) He shall pay \$100,000 of such one-half share to the Authority (or, in the event that such one-half share of the proceeds collected by him during such preceding calendar month is less than \$100,000, he shall pay all such one-half share to the Authority);

(b) In the event that the total of the amounts paid to the Authority during such calendar month (but out of collections from the then preceding calendar month) from the taxes levied by Acts numbered 524 and 525, both enacted at the 1965 Regular Session of the Legislature of Alabama, aggregates less than \$100,000, he shall also pay to the Authority such amount of such one-half share as, when added to the amounts so paid to the Authority from the taxes levied by said Acts numbered 524 and 525, will equal the sum of \$100,000; and

(c) He shall pay to the Treasurer or other custodian of funds for the Board of Health of any such county an amount equal to twenty-two percent (22%) of the total amount of the second such one-half share.

(d) He shall pay into the general treasury of the county the entire balance of such one-half share.

In the event that the county or the Authority issues any bonds, warrants or other securities for the payment of which any part of the taxes levied in this act are pledged, this act shall be deemed to constitute a contract with the holders of such bonds, warrants or other securities.

Section 12. Certain Prior Statutes Repealed. Sections 2 to 13, inclusive, of Act No. 387 enacted at the 1965 Regular Session of the Legislature of Alabama shall be repealed, as of the effective date of this act; provided, however that any person subject to Act No. 387 shall remain liable for the tax on business done by him up to the date of the repeal of said Sections of said Act the same as if said Sections had not been repealed; and all remedies for enforcing the collection of any tax due under said Act shall continue to be available the same as if the said Act had not been repealed.

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Approved

Time: 10

Act No. 406

Section 13. Severability. In the event that any clause, sentence, paragraph, section, part, portion or provision of this act is held invalid or unenforceable such holding shall not invalidate or adversely affect the remainder of this act, it being hereby declared that should any such clause, sentence, paragraph, section, part, portion or provision be held invalid or unenforceable, the Legislature would have enacted this act without such invalid or unenforceable clause, sentence, paragraph, section, part, portion or provision. Without in any way limiting the generality of the foregoing, the Legislature expressly declares as follows: (a) that if the provisions of this act requiring the seller to pass on to the purchaser the tax levied in Section 3 hereof should be held invalid or unenforceable, the provisions of this act levying such tax against persons on account of business activities done by them in the county and based on gross sales or gross receipts shall nonetheless remain in full force and effect in order to subject such persons to the said tax; (b) that if the provisions of subsection (e) of Section 3 of this act (establishing a so-called breakdown schedule) should be held invalid or unenforceable, the provisions of Section 3 of this act levying a privilege license tax against persons on account of business activities done by them in the county and based on gross sales or gross receipts shall nonetheless remain in full force and effect so as to subject said persons to the said privilege or license tax; (c) that if those provisions of this act incorporating by reference future amendments to the aforesaid Act No. 100, to the aforesaid Article 11 of Chapter 20 of Title 51 or to any other statutes now in existence directly relating to the subject matter of said Act No. 100 or said Article 11 or those provisions of this act incorporating by reference statutes hereafter enacted directly relating to the subject matter of said Act No. 100 or said Article 11 and future amendments to such hereafter enacted statutes should be held invalid or unenforceable, the remaining provisions of this act shall continue in full force and effect and only those of the aforesaid statutes that are now in existence, as they now exist, shall be deemed to have been incorporated by reference herein.

Section 14. Effective Date. This act shall become effective on the first day of the calendar month next succeeding that during which it becomes a law.

Approved September 7, 1967.

Time: 10:35 A.M.

Act No. 406

H. 832—House, Cherner, Waggoner, Holman,
Crane, Yeilding, Ellis, Adwell,
Gloor, Jackson (T), Money, Bowers

EXHIBIT D

Section 4. All laws or parts of laws which conflict with this Act are hereby repealed.

Section 5. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved: August 30, 1973

Time: 4:45 P.M.

Act No. 659 H. 995—Timmons, Doss, Erdreich, Adwell,
Weeks, Ellis, McNair, McMillan,
Falkenburg, Waggoner

AN ACT

To amend Section 11 of Act No. 405 enacted at the 1967 Regular Session of the Legislature of Alabama (applicable to any county in the state having a population of 500,000 or more, according to the last or subsequent federal census), so as to allocate to the Board of Health of any such county (effective with the distribution required to be made on or before July 20, 1974) nine per cent (9%) of the first one-half share of proceeds from the taxes levied by said Act No. 405 over and above that portion allocated for the costs of collection, administration and enforcement and so as to increase (effective with the distribution required to be made on or before October 20, 1973) from twenty-two per cent (22%) to thirty-one per cent (31%) the portion of the total amount of the second one-half share of proceeds from the taxes levied by said Act No. 405 required to be paid to the Treasurer or other custodian of funds for the Board of Health of any such county.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 11 of Act No. 405 enacted at the 1967 Regular Session of the Legislature of Alabama is hereby amended to read as follows:

“Section 11. Application of Proceeds. On or before the twentieth day of each calendar month, commencing with the calendar month next following that during which the Commissioner of Licenses first collects any of the taxes levied hereby, the Commissioner of Licenses shall divide into two equal shares the total proceeds (including any interest and penalties) collected by him during the then preceding calendar month from the license and privilege taxes levied hereby.

The first such one-half shall be applied by the Commissioner of Licenses as follows: (a) he shall pay into the general treasury of the county, for the collection of the taxes levied hereby and for the enforcement and administration of this act, an amount equal to one and one-half percent (1-1/2%) of the total proceeds

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so collected, (b) he shall, commencing with the payment or distribution required to be made on or before July 20, 1974, pay to the Treasurer or other custodian of funds for the Board of Health in any such county an amount equal to nine per cent (9%) of such one-half share, and (c) he shall pay the balance of such one-half share into the Indigent Care Fund.

The second such one-half share shall be applied by the Commissioner of Licenses as follows:

(a) He shall pay \$100,000 of such one-half share to the Authority (or, in the event that such one-half share of the proceeds collected by him during such preceding calendar month is less than \$100,000, he shall pay all of such one-half share to the Authority);

(b) In the event that the total of the amounts paid to the Authority during such calendar month (but out of collections from the then preceding calendar month) from the taxes levied by Acts numbered 524 and 525, both enacted at the 1965 Regular Session of the Legislature of Alabama, aggregates less than \$100,000, he shall also pay to the Authority such amount of such one-half share as, when added to the amounts so paid to the Authority from the taxes levied by said Acts numbered 524 and 525, will equal the sum of \$100,000;

(c) He shall pay to the Treasurer or other custodian of funds for the Board of Health of any such county an amount equal to twenty-two (22%) of the total amount of the second such one-half share; and

(d) He shall pay to the Treasurer or other custodian of funds for the Board of Health of any such county an amount equal to nine per cent (9%) of the total amount of the second such one-half share; provided however, that if

(i) prior to June 15, 1973, the county has issued any bonds, warrants or other securities for the payment of which there have been specially pledged any part of the tax proceeds provided by this paragraph (d) to be paid to the Treasurer or other custodian of funds for the Board of Health of any such county (said tax proceeds being herein called for the purposes of this paragraph (d) "the Paragraph (d) Tax Proceeds" , and

(ii) other tax proceeds and revenues pledged or otherwise available for the payment of said bonds, warrants or other securities are insufficient to pay the principal of or the interest on the said bonds, warrants or other securities as the same respectively mature or otherwise to comply with the agreements and covenants made by the county in connection with the issu-

ance of, and for the benefit of the holders of, said bonds, warrants or other securities,

then so much of the Paragraph (d) Tax Proceeds as, when added to other moneys available therefor, shall be necessary to pay said principal or interest and to comply with said agreements and covenants shall be paid into general treasury of the county and applied for the payment of said principal or interest or in such manner as shall be necessary to comply with said agreements and covenants; and, provided further, that said payments to the Treasurer or other custodian for the Board of Health of an amount equal to nine per cent (9%) of the total amount of the second such one-half share shall not commence until the payment or distribution required to be made on or before October 20, 1973, and that until such time said nine per cent (9%) of such one-half share shall be paid into the general treasury of the County; and

(e) He shall pay into the general treasury of the county the entire balance of such one-half share.

In the event that the county or the Authority issues any bonds, warrants or other securities for the payment of which any part of the taxes levied in this act are pledged, this act shall be deemed to constitute a contract with the holders of such bonds, warrants or other securities."

Section 2. All laws or parts of laws which conflict with this Act are repealed.

Section 3. This Act shall become effective on the first day of the calendar month next succeeding that during which it becomes law.

Approved August 30, 1973.

Time: 4:45 P.M.

Act No. 660

H. 1371—Edwards

AN ACT

To provide an additional expense allowance for the chairman and members of the County Commission of all counties having a population of not less than 12,700 nor more than 13,100 according to the most recent federal decennial census.

Be It Enacted by the Legislature of Alabama:

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