

1 HB573
2 168286-4
3 By Representative Robinson (N & P)
4 RFD: Jefferson County Legislation
5 First Read: 30-APR-15

1
2 ENROLLED, An Act,

3 Relating to Jefferson County; to authorize the
4 Jefferson County Commission to levy and assess, subject to the
5 limitations set forth herein, a privilege or license tax
6 against retail sales of tangible personal property and
7 amusements (a "sales tax") and an excise tax on the storage,
8 use, or consumption of tangible personal property (a "use
9 tax"); to make legislative findings; to provide for
10 definitions; to provide that the rate of sales and use taxes
11 authorized by this act shall not exceed one percent; to
12 require the simultaneous cancellation of a certain existing
13 sales and use tax levy in the county if the taxes authorized
14 by this act are levied by the county; to provide additional
15 restrictions; to provide that the provisions of the state
16 sales and use tax laws and regulations which are not
17 inconsistent with this act shall be applicable with respect to
18 the taxes authorized by this act; to provide for the continued
19 levy of the taxes authorized herein following the repeal of
20 either or both of the state sales tax or the state use tax; to
21 provide for the collection and enforcement of the taxes
22 authorized by this act; to require the sales taxes authorized
23 by this act to be collected at the point of sale; to provide
24 for the promulgation of rules and procedures; to provide for
25 distribution of the proceeds of the taxes authorized herein

1 first to debt service and other amounts due with respect to
2 certain warrants issued for certain designated public school
3 purposes, second to the general fund of the county, third to
4 the Jefferson County 2015 Sales Tax Fund, fourth to the
5 Jefferson County Community Service Fund, fifth to the
6 Birmingham-Jefferson County Transit Authority, sixth to the
7 Birmingham Zoo, Inc., and seventh to the general fund of the
8 county; to create and provide for the Jefferson County 2015
9 Sales Tax Fund; to provide for distributions from the
10 Jefferson County 2015 Sales Tax Fund to schools serving county
11 residents; to create and provide for the Jefferson County
12 Community Service Committee; to create and provide for the
13 Jefferson County Community Service Fund; to provide for the
14 expenditure of amounts deposited in the Jefferson County
15 Community Service Fund by the Jefferson County Community
16 Service Committee upon recommendations from members of the
17 Jefferson County Legislative Delegation; to provide for the
18 termination of the taxes authorized by this act upon the
19 defeasance or other full payment of refunding school warrants
20 provided for herein; to provide that the provisions of this
21 act are severable; and to provide for an effective date.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This act shall only apply to Jefferson
24 County.

1 Section 2. (a) It is the intention of the
2 Legislature by the passage of this act to authorize the county
3 to levy and provide for the collection of, in addition to all
4 other taxes authorized by law, except as provided in Section
5 4, a sales tax and a use tax conforming with and parallel to
6 the state sales tax and the state use tax at a rate not
7 exceeding the maximum rates set forth herein.

8 (b) The Legislature hereby finds and declares that
9 each tax authorized by this act is a sales or use tax and is
10 not a gross receipts tax in the nature of a sales tax, as such
11 term is defined in Section 40-2A-3(8) of the Code of Alabama
12 1975, as amended, and used in Section 11-51-209 of the Code of
13 Alabama 1975, as amended.

14 (c) In view of the county's recent financial
15 difficulties, the invalidation of certain taxes that
16 previously provided significant revenues to the county, and
17 the conclusion of the county's Chapter 9 bankruptcy
18 proceedings, the Legislature hereby finds and declares that it
19 is necessary, desirable, and in the best interests of
20 residents of the county that the Jefferson County Commission
21 be provided additional flexibility with respect to its revenue
22 sources and budget.

23 (d) The Legislature hereby finds and declares that
24 providing additional funding for public schools in the county

1 will benefit the public welfare and education of residents of
2 the county.

3 (e) This act shall be liberally construed in
4 conformity with the intentions and findings expressed in this
5 section.

6 Section 3. (a) As used in this act, the following
7 words, terms, and phrases shall have the following respective
8 meanings except where the context clearly indicates a
9 different meaning:

10 (1) ACT 405. Act 405 of the 1967 Regular Session of
11 the Legislature (Acts 1967, p. 1021), as amended.

12 (2) AVERAGE DAILY MEMBERSHIP. The meaning ascribed
13 in Section 16-13-232, Code of Alabama 1975.

14 (3) COMMITTEE. The Jefferson County Community
15 Service Committee authorized in Section 11.

16 (4) COUNTY. Jefferson County, Alabama.

17 (5) COUNTY COMMISSION. The Jefferson County
18 Commission.

19 (6) EXISTING SCHOOL WARRANTS. Collectively, the
20 following limited obligation warrants issued by the county for
21 the benefit of public schools in the county: a. Limited
22 Obligation School Warrants, Series 2004-A, b. Limited
23 Obligation School Warrants, Series 2005-A and c. Limited
24 Obligation School Warrants, Series 2005-B.

1 (7) JEFFERSON COUNTY LEGISLATIVE DELEGATION. The
 2 elected members of the House of Representatives and the Senate
 3 from districts wholly or partially within the county.

4 (8) REFUNDING SCHOOL WARRANTS. Any warrants or other
 5 obligations of the county issued after the effective date of
 6 this act to refinance, on such terms as the county commission
 7 shall determine in its discretion, either a. the existing
 8 school warrants, or b. any warrants subsequently issued for
 9 the purpose of refinancing such warrants. Refunding school
 10 warrants shall be issued under the statutes codified as
 11 Chapter 28 of Title 11, Code of Alabama 1975, as heretofore or
 12 hereafter amended, or any other law of the state available for
 13 such purpose. Refunding school warrants shall be limited
 14 obligations of the county secured by, and payable solely from,
 15 the portion of the taxes authorized by this act and described
 16 in Section 9(a). Refunding school warrants shall not be
 17 payable from any other revenues of the county and shall not
 18 constitute a general debt or obligation of the county within
 19 the meaning of any provision of the Constitution of Alabama of
 20 1901, as heretofore or hereafter amended.

21 (9) STATE SALES TAX. The tax or taxes imposed by the
 22 state sales tax statutes.

23 (10) STATE SALES TAX STATUTES. Division 1 of Article
 24 1 of Chapter 23 of Title 40, Code of Alabama 1975, as
 25 heretofore or hereafter amended, including all other statutes

1 of the state which expressly set forth any exemptions from the
 2 computation of the tax levied in the state sales tax statutes
 3 and all other statutes of the state which expressly apply to
 4 or purport to affect the administration of the state sales tax
 5 statutes, and the incidence and collection of the taxes
 6 imposed therein.

7 (11) STATE USE TAX. The tax or taxes imposed by the
 8 state use tax statutes.

9 (12) STATE USE TAX STATUTES. Article 2 of Chapter 23
 10 of Title 40, Code of Alabama 1975, as heretofore or hereafter
 11 amended, including all other statutes of the state which
 12 expressly set forth any exemptions from the computation of the
 13 tax levied in the state use tax statutes and all other
 14 statutes of the state which expressly apply to or purport to
 15 affect the administration of the state use tax statutes, and
 16 the incidence and collection of the taxes imposed therein.

17 (13) 2015 SALES TAX FUND. A governmental fund of the
 18 county which is created hereunder and shall be entitled
 19 "Jefferson County 2015 Sales Tax Fund."

20 (b) Except where another meaning is clearly
 21 indicated by the context, all definitions set forth in the
 22 state sales tax statutes and the state use tax statutes shall
 23 be effective as definitions of the words, terms, and phrases
 24 used in this act. All words, terms, and phrases used herein,
 25 other than those hereinabove specifically defined, shall have

1 the respective meanings ascribed to them in the state sales
2 tax statutes or the state use tax statutes and shall have the
3 same scope and effect that the same words, terms, and phrases
4 have where used in the state sales tax statutes or the state
5 use tax statutes.

6 Section 4. (a) Subject to subsection (d) of this
7 section, the county commission is authorized, by resolution
8 duly adopted, to levy, in addition to all other taxes now
9 imposed or authorized by law, and to collect as herein
10 provided, a privilege or license tax, herein called a sales
11 tax, against each person making retail sales of tangible
12 personal property or amusements in the county at a rate not to
13 exceed one percent of gross proceeds of sales or gross
14 receipts, as the case may be, and an excise tax, herein called
15 a use tax, on the storage, use, or other consumption of
16 tangible personal property in the county purchased at retail
17 at a rate not to exceed one percent of the sales price of such
18 property.

19 (b) Any sales tax or use tax levied by the county
20 commission pursuant to this section shall apply to and be
21 levied upon every person or other entity required to pay, or
22 upon whom shall have been levied, the state sales tax or state
23 use tax.

24 (c) Notwithstanding the foregoing, the taxes
25 authorized to be levied pursuant to this act shall not apply

1 to the sale or use of property or services which are exempt
2 under the state sales tax statutes or the state use tax
3 statutes and corresponding regulations promulgated thereunder.

4 (d) Upon initial levy by the county of the taxes
5 authorized by this act, the county commission shall
6 simultaneously cancel the county's existing sales and use
7 taxes currently being levied by the county under Ordinance
8 1769 of the county commission, as amended, that are pledged to
9 the existing school warrants, provided that the county has
10 previously or will simultaneously retire or defease the
11 existing school warrants. The sales and use taxes authorized
12 by this act and the sales and use taxes authorized to be
13 levied by the county pursuant to Ordinance 1769 of the county
14 commission shall not both apply to any taxable sale or
15 storage, use, or consumption so as to result in a cumulative
16 tax rate from both such taxes that is greater than one
17 percent.

18 (e) In the event of the repeal of either or both of
19 the state sales tax statutes or state use tax statutes, the
20 county is authorized to continue to levy, administer, collect,
21 and enforce the sales and use taxes authorized by this act.

22 Section 5. Pursuant to and in conformity with
23 Article 1 of Chapter 3 of Title 11, Code of Alabama 1975, the
24 county may, by ordinance or resolution, administer and

1 collect, or contract for the collection of, the sales and use
2 taxes authorized by this act.

3 Section 6. Each person engaging or continuing in a
4 business subject to the sales taxes authorized to be levied by
5 this act shall add to the sales price or admission fee and
6 collect from the purchaser or the person paying the admission
7 fee the amount due by the taxpayer on account of the sale or
8 admission. It shall be unlawful for any person subject to the
9 sales taxes authorized to be levied by this act to fail or
10 refuse to add to the sales price or admission fee and not
11 collect from the purchaser or person paying the admission fee
12 the amount required to be added to the sale or admission
13 price. It shall be unlawful for any person subject to the
14 sales taxes authorized to be levied by this act to refund or
15 offer to refund all or any part of the amount collected or to
16 absorb or advertise directly or indirectly the absorption or
17 refund of any portion of such tax or taxes. The sales taxes
18 authorized by this act shall conclusively be presumed to be a
19 direct tax on the retail consumer, pre-collected for the
20 purpose of convenience only.

21 Section 7. The taxes authorized to be levied by this
22 act shall constitute a debt due the county. Such taxes,
23 together with any interest and penalties permitted by law,
24 shall constitute and be secured by a lien upon the property of

1 any person from whom the tax or taxes are due or that is
2 required to collect the tax or taxes.

3 Section 8. All provisions of the state sales tax
4 statutes and state use tax statutes with respect to the
5 payment, assessment, and collection of the state sales tax and
6 state use tax, making of reports, keeping and preserving
7 records, interest or penalties, or both, for failure to pay
8 such taxes or late payment of such taxes, promulgating rules
9 and regulations with respect to the state sales tax and state
10 use tax, and the administration and enforcement of the state
11 sales tax statutes and state use tax statutes shall apply to
12 the taxes authorized to be levied by this act, except for the
13 rate of tax and except where otherwise inapplicable or
14 otherwise expressly provided for by this act. The county and
15 any designee or agent shall have and exercise the same powers,
16 duties, and obligations with respect to the taxes authorized
17 to be levied under this act that are provided the Department
18 of Revenue and the Revenue Commissioner by the state sales tax
19 statutes or state use tax statutes or provided the county
20 under Act 405. All provisions of the state sales tax statutes
21 and state use tax statutes or of Act 405 that are made
22 applicable by this act to the taxes authorized to be levied
23 under this act, and the administration and enforcement of this
24 act, are incorporated by reference and made a part of this act
25 as if fully set forth herein.

1 Section 9. (a) The proceeds of the taxes authorized
2 herein collected each month by the county, after any
3 deductions for cost of collection, shall be distributed at
4 such times as ~~may~~ shall be directed by the county commission
5 in the priority and respective amounts set forth below:

6 (1) First, for so long as any refunding school
7 warrants are outstanding and are not defeased or otherwise
8 fully paid, so much of the proceeds received during a fiscal
9 year of the county as may be necessary to satisfy the county's
10 obligations with respect to the refunding school warrants,
11 including payment of the principal of, premium, if any, and
12 interest on the refunding school warrants due during such
13 fiscal year of the county, any ongoing expenses of
14 administration of the refunding school warrants, amounts
15 required to be deposited in any debt service reserve fund for
16 the refunding school warrants, and amounts necessary to
17 provide for payment of rebate, if any, or other amounts due to
18 the United States, shall be paid over to the trustee or paying
19 agent for the refunding school warrants to be held in a fund
20 or funds solely for payment of such amounts due with respect
21 to the refunding school warrants. The portion of the taxes
22 authorized herein and required to be paid over to the trustee
23 or paying agent for the refunding school warrants shall be
24 segregated from all other receipts from the taxes authorized
25 herein, shall be devoted solely to the payment of amounts due

1 with respect to the refunding school warrants, and shall not
2 be available to pay general governmental expenses of the
3 county.

4 (2) Second, to the extent that there remain
5 additional proceeds of the taxes authorized to be levied
6 herein following the applications authorized in subdivision
7 (1), such remaining additional proceeds, up to thirty-six
8 million three hundred thousand dollars (\$36,300,000) per
9 fiscal year of the county, shall be deposited into the general
10 fund of the county for use and appropriation as the county
11 commission shall determine in its discretion.

12 (3) Third, to the extent that there remain
13 additional proceeds of the taxes authorized to be levied
14 herein following the applications authorized in subdivisions
15 (1) and (2), such remaining additional proceeds, up to
16 eighteen million dollars (\$18,000,000) per fiscal year of the
17 county, shall be deposited into the 2015 Sales Tax Fund. Funds
18 on deposit in the 2015 Sales Tax Fund shall be distributed in
19 accordance with the provisions of Section 10.

20 (4) Fourth, to the extent that there remain
21 additional proceeds of the taxes authorized to be levied
22 herein following the applications authorized in subdivisions
23 (1), (2), and (3), such remaining additional proceeds, up to
24 three million six hundred thousand dollars (\$3,600,000) per
25 fiscal year of the county, shall be deposited in the Jefferson

1 County Community Service Fund to be expended as provided in
2 Section 11.

3 (5) Fifth, to the extent that there remain
4 additional proceeds of the taxes authorized to be levied
5 herein following the applications authorized in subdivisions
6 (1), (2), (3), and (4), such remaining additional proceeds, up
7 to two million dollars (\$2,000,000) per fiscal year of the
8 county, shall be paid over to the Birmingham-Jefferson County
9 Transit Authority for each of the first 10 fiscal years of the
10 county following the adoption of this act, and thereafter up
11 to one million dollars (\$1,000,000) per fiscal year of the
12 county.

13 (6) Sixth, to the extent that there remain
14 additional proceeds of the taxes authorized to be levied
15 herein following the applications authorized in subdivisions
16 (1), (2), (3), (4), and (5), such remaining additional
17 proceeds, up to five hundred thousand dollars (\$500,000) per
18 fiscal year of the county, shall be paid over to Birmingham
19 Zoo, Inc.

20 (7) Seventh, to the extent that there remain
21 additional proceeds of the taxes authorized to be levied
22 herein following the applications authorized in subdivisions
23 (1), (2), (3), (4), (5), and (6), such remaining additional
24 proceeds, shall be deposited into the general fund of the

1 county for use and appropriation as the county commission
2 shall determine in its discretion.

3 (b) The amounts specified in subdivisions (1)
4 through (6) shall be paid and distributed in full so long as
5 the proceeds of the taxes authorized to be levied herein are
6 sufficient for such purposes.

7 Section 10. (a) There is hereby created a
8 governmental fund of the county to be designated the Jefferson
9 County 2015 Sales Tax Fund. The county commission shall
10 maintain the 2015 Sales Tax Fund and shall administer it
11 according to its normal fund administration procedures.

12 (b) As promptly as practicable after the end of each
13 fiscal year of the county, funds on deposit in the 2015 Sales
14 Tax Fund as of September 30 of each year shall be distributed
15 to the city or county boards of education then serving
16 students resident in the county according to the following
17 procedure:

18 (1) Each county or city board of education serving
19 any portion of the county shall certify in writing to the
20 county commission its average daily membership of students
21 resident in the county, its certified enrollment, calculated
22 in accordance with Article 11 of Chapter 13 of Title 16, Code
23 of Alabama 1975, or any successor thereto. County or city
24 boards of education may use their certification to the state
25 Department of Education under the state Foundation Program for

1 this purpose to the extent such certification includes only
2 students resident in the county.

3 (2) Upon receipt of the certified enrollment from
4 each board of education described in this section, the county
5 commission shall determine the total number of students
6 resident in the county and enrolled in public schools serving
7 the county.

8 (3) As promptly as practicable thereafter, the
9 county commission shall distribute from the 2015 Sales Tax
10 Fund to each board of education described in this section an
11 amount equal to its pro rata share of the amount on deposit in
12 the 2015 Sales Tax Fund as of September 30 of the prior fiscal
13 year of the county, taking into account each board of
14 education's certified enrollment and the total number of
15 students resident in the county and enrolled in public schools
16 serving the county.

17 (c) Absent manifest error, the determination by the
18 county commission of the distribution of funds from the 2015
19 Sales Tax Fund shall be conclusive.

20 Section 11. (a) There is hereby created the
21 Jefferson County Community Service Committee. The committee
22 shall consist of four members, one of whom shall be elected by
23 each of the Jefferson County Democratic House Delegation, the
24 Jefferson County Republican House Delegation, the Jefferson
25 County Democratic Senate Delegation, and the Jefferson County

1 Republican Senate Delegation. Members of the Jefferson County
2 Legislative Delegation shall not be eligible for election to
3 the committee. Members of the committee shall be elected at a
4 meeting of the Jefferson County Legislative Delegation held in
5 the first year of each quadrennium of the Legislature and
6 shall be residents and qualified electors of the county. The
7 committee shall establish rules and procedures for its
8 proceedings and activities.

9 (b) There is hereby created a public fund to be
10 designated the Jefferson County Community Service Fund. The
11 committee shall be the custodian of, and shall be responsible
12 for the proper expenditure of, the Jefferson County Community
13 Service Fund.

14 (c) Funds on deposit in the Jefferson County
15 Community Service Fund shall be used solely for one or more of
16 the following purposes in the county, provided that any use of
17 such funds must serve a public purpose:

18 (1) To support public schools, public roads, public
19 museums, public libraries, public zoos, public parks,
20 neighborhood associations, public athletic facilities, public
21 youth sports associations, public sidewalks, public trails, or
22 public greenways;

23 (2) To support the performing arts;

24 (3) To support nonprofit entities that, at the time
25 a recommendation for expenditure is filed with the committee,

1 have received funding from the United Way of Central Alabama
2 within the last 12 months and are not excluded from receiving
3 additional United Way funding;

4 (4) To support police departments, the county's
5 sheriff's office, or fire departments or districts in the
6 county; or

7 (5) To support publicly available assistance
8 programs established for the benefit of low income residential
9 customers of the county's public sanitary sewer system.

10 (d) Subject to the provisions of this act, the
11 amount deposited in the Jefferson County Community Service
12 Fund shall be allocated equally between the Jefferson County
13 House Delegation and the Jefferson County Senate Delegation.
14 The amounts so allocated shall be further allocated equally
15 among the members of the House Delegation and the Senate
16 Delegation. From the amounts so allocated to them, the members
17 of the House and Senate Delegations may recommend one or more
18 expenditures from the Jefferson County Community Service Fund
19 for purposes described in subsection (c). Such expenditures
20 shall be made from revenues derived from the taxes authorized
21 herein for the prior fiscal year of the county and deposited
22 in the Jefferson County Community Service Fund.

23 (e) The committee shall consider and approve or deny
24 each recommended expenditure pursuant to its rules for review

1 and approval of disbursements from the Jefferson County
2 Community Service Fund.

3 (f) Any amounts derived from the taxes authorized
4 herein during the prior fiscal year of the county remaining on
5 deposit in the Jefferson County Community Service Fund on
6 September 30 of any year shall be paid over to the county for
7 deposit into the general fund.

8 Section 12. The taxes authorized to be levied by
9 this act shall be levied only for so long as any refunding
10 school warrants are outstanding and are not defeased or
11 otherwise fully paid, and when all refunding school warrants
12 have been fully paid in accordance with the terms thereof, the
13 levy of the taxes authorized by this act shall terminate
14 unless extended by law.

15 Section 13. The provisions of this act are
16 severable. If a court of competent jurisdiction adjudges
17 invalid or unconstitutional any clause, sentence, paragraph,
18 section, or part of this act, the judgment or decree shall not
19 affect, impair, invalidate, or nullify the remainder of this
20 act, but the effect of the decision shall be confined to the
21 clause, sentence, paragraph, section, or part of this act
22 adjudged to be invalid or unconstitutional.

23 Section 14. This act shall become effective
24 immediately following its passage and approval by the
25 Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 12-MAY-15, as amended.

Jeff Woodard
Clerk

Senate

21-MAY-15

Passed