

1 HB547
2 184417-2
3 By Representatives McCampbell and Harbison (N & P)
4 RFD: Local Legislation
5 First Read: 20-APR-17

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Sumter County; to levy additional sales
14 and use taxes to be used for the construction, maintenance,
15 and operation of hospital facilities in Sumter County,
16 including the purchase of a certificate of need; to provide
17 for certain matters relating to the administration,
18 collection, and enforcement of such taxes; to provide for the
19 effective date and termination of such taxes; to provide for
20 an advisory referendum regarding the levy of the taxes; to
21 provide that such taxes may not be abated pursuant to Chapter
22 9B, Title 40, Code of Alabama 1975, or otherwise; and to
23 authorize the pledge of such taxes by Sumter County or a
24 public corporation acting as its agent to secure indebtedness
25 issued for the purposes for which the taxes are authorized.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall only apply to Sumter
2 County.

3 Section 2. (a) The following words, terms and
4 phrases where used in this act shall have the following
5 respective meanings except where the context clearly indicates
6 a different meaning:

7 (1) "Code" means the Code of Alabama 1975, as
8 amended.

9 (2) "Commissioner" means the Commissioner of Revenue
10 of the state.

11 (3) "County" means Sumter County in the state.

12 (4) "State" means the State of Alabama.

13 (5) "State Department of Revenue" means the
14 Department of Revenue of the state.

15 (6) "State sales tax" means the tax or taxes imposed
16 by the state sales tax statutes.

17 (7) "State sales tax statutes" means Division 1 of
18 Article 1 of Chapter 23 of Title 40 of the code, including all
19 other statutes of the state which expressly set forth any
20 exemptions from the computation of the taxes levied in
21 Division 1 and all other statutes which expressly apply to, or
22 purport to affect, the administration of Division 1 and the
23 incidence and collection of the taxes imposed therein.

24 (8) "State use tax" means the tax or taxes imposed
25 by the state use tax statutes.

26 (9) "State use tax statutes" means Article 2 of
27 Chapter 23 of Title 40 of the code, including all other

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

6 (10) "Sumter County Health Care Authority" means the
7 Sumter County Health Care Authority, as established by the
8 Sumter County Commission in 2017.

9 (b) Except where another meaning is clearly
10 indicated by the context, all definitions set forth in the
11 state sales tax statutes and the state use tax statutes shall
12 be effective as definitions of the words, terms, and phrases
13 used in this act. All words, terms, and phrases used herein,
14 other than those hereinabove specifically defined, shall have
15 the respective meanings ascribed to them in the state sales
16 tax statutes and the state use tax statutes and shall have the
17 same scope and effect that the same words, terms, and phrases
18 have where used in the state sales tax statutes and the state
19 use tax statutes.

20 Section 3. (a) The governing body of the county is
21 authorized to levy and impose in the county, in addition to
22 all other taxes of every kind now imposed by law, and to
23 collect as herein provided, a privilege or license tax against
24 the person on account of the business activities and in the
25 amount to be determined by the application of rates against
26 gross sales, or gross receipts, as the case may be, as
27 follows:

1 (1) Upon every person, firm, or corporation,
2 (including the State of Alabama, the University of Alabama,
3 Auburn University and all other institutions of higher
4 learning in the state, whether such institutions be
5 denominational, state, county, or municipal institutions, and
6 any association or other agency or instrumentality of such
7 institutions) engaged, or continuing within the county in the
8 business of selling at retail any tangible personal property
9 whatsoever, including merchandise and commodities of every
10 kind and character, (not including, however, bonds or other
11 evidences of debts or stocks, nor sales of material and
12 supplies to any person for use in fulfilling a contract for
13 the painting, repair, or reconditioning of vessels, barges,
14 ships, and other watercraft, and commercial fishing vessels of
15 over five tons displacement as registered with the United
16 States Coast Guard and licensed by the State of Alabama
17 Department of Conservation and Natural Resources), an amount
18 equal to one percent of the gross proceeds of sales of the
19 business except where a different amount is expressly provided
20 herein. Provided, however, that any person engaging or
21 continuing in business as a retailer and wholesaler or jobber
22 shall pay the tax required on the gross proceeds of retail
23 sales of the business at the rates specified, when his or her
24 books are kept so as to show separately the gross proceeds of
25 sales of each business, and when his or her books are not so
26 kept he or she shall pay the tax as retailer on the gross
27 sales of the business.

1 Where any used part including tires of an automotive
2 vehicle or a truck trailer, semitrailer, or house trailer is
3 taken in trade, or in a series of trades, as a credit or part
4 payment on the sale of a new or rebuilt part or tire, the tax
5 levied herein shall be paid on the net difference, that is,
6 the price of the new or used part or tire sold less the credit
7 for the used part or tire taken in trade, provided, however,
8 this provision shall not be construed to include batteries.

9 (2) Upon every person, firm, or corporation engaged,
10 or continuing within the county, in the business of conducting
11 or operating places of amusement or entertainment, billiard
12 and pool rooms, bowling alleys, amusement devices, musical
13 devices, theaters, opera houses, moving picture shows,
14 vaudevilles, amusement parks, athletic contests, including
15 wrestling matches, prize fights, boxing and wrestling
16 exhibitions, football and baseball games, (including athletic
17 contests, conducted by or under the auspices of any
18 educational institution within the county, or any athletic
19 association thereof, or other association whether the
20 institution or association be a denominational, a state, or
21 county, or a municipal institution or association or a state,
22 county, or city school, or other institution, association or
23 school), skating rinks, race tracks, golf courses, or any
24 other place at which any exhibition, display, amusement or
25 entertainment is offered to the public or place or places
26 where an admission fee is charged, including public bathing
27 places, public dance halls of every kind and description

1 within the county, an amount equal to one percent of the gross
2 receipts of any such business. Provided, however,
3 notwithstanding any language to the contrary in the prior
4 portion of this subdivision, the tax provisions so specified
5 shall not apply to any athletic event conducted by a public or
6 nonpublic primary or secondary school or any athletic event
7 conducted by or under the auspices of the Alabama High School
8 Athletic Association. The tax amount which would have been
9 collected pursuant to this subdivision shall continue to be
10 collected by the public or nonpublic primary or secondary
11 school, but shall be retained by the school which collected it
12 and shall be used by the school for school purposes.

13 (3) Upon every person, firm, or corporation engaged
14 or continuing within the county in the business of selling at
15 retail machines used in mining, quarrying, compounding,
16 processing, and manufacturing of tangible personal property,
17 an amount equal to one-half percent of the gross proceeds of
18 the sale of such machines. The term "machines," as herein
19 used, shall include machinery which is used for mining,
20 quarrying, compounding, processing, or manufacturing tangible
21 personal property, and the parts of the machines, attachments,
22 and replacements therefor, which are made or manufactured for
23 use on or in the operation of the machines and which are
24 necessary to the operation of such machines and are
25 customarily so used.

26 (4) Upon every person, firm, or corporation engaged
27 or continuing within the county in the business of selling at

1 retail any automotive vehicle or truck trailer, semitrailer,
2 or house trailer, or mobile home set-up materials and supplies
3 including but not limited to steps, blocks, anchoring, cable
4 pipes, and any other materials pertaining thereto an amount
5 equal to one-half percent of the gross proceeds of sale of the
6 automotive vehicle or truck trailer, semitrailer, or house
7 trailer, or mobile home set-up materials and supplies;
8 provided, however, where a person subject to the tax provided
9 for in this subdivision withdraws from his or her stock in
10 trade any automotive vehicle or truck trailer, semitrailer, or
11 house trailer for use by him or her or by his or her employee
12 or agent in the operation of the business, there shall be
13 paid, in lieu of the tax levied herein, a fee of five dollars
14 (\$5) per year or part thereof during which such automotive
15 vehicle, truck trailer, semitrailer, or house trailer shall
16 remain the property of such person. Each year or part thereof
17 shall begin with the day or anniversary date, as the case may
18 be, of such withdrawal and shall run for the 12 succeeding
19 months or part thereof during which such automotive vehicle,
20 truck trailer, semitrailer, or house trailer shall remain the
21 property of such person. Where any used automotive vehicle or
22 truck trailer, semitrailer, or house trailer is taken in trade
23 or in a series of trades, as a credit or part payment on the
24 sale of a new or used vehicle, the tax levied herein shall be
25 paid on the net difference, that is, the price of the new or
26 used vehicle sold less the credit for the used vehicle taken
27 in trade.

1 (5) Upon every person, firm, or corporation engaged
2 or continuing within the county in the business of selling
3 through coin-operated dispensing machines, food and food
4 products for human consumption, not including beverages other
5 than coffee, milk, milk products, and substitutes therefor,
6 there is levied a tax equal to one percent of the cost of the
7 food, food products, and beverages sold through the machines,
8 which cost for the purpose of this subdivision shall be the
9 gross proceeds of sales of the business.

10 (6) Upon every person, firm or corporation engaged
11 or continuing within the county in the business of selling at
12 retail any machine, machinery or equipment which is used in
13 planting, cultivating and harvesting farm products, or used in
14 connection with the production of agricultural produce or
15 products, livestock or poultry on farms, and the parts of such
16 machines, machinery or equipment, attachments and replacements
17 therefor which are made or manufactured for use on or in the
18 operation of such machine, machinery or equipment, and which
19 are necessary to and customarily used in the operation of such
20 machine, machinery or equipment, an amount equal to one-half
21 percent of the gross proceeds of the sale thereof; provided,
22 that the one-half percent rate herein prescribed with respect
23 to parts, attachments and replacements shall not apply to any
24 automotive vehicle or trailer designed primarily for public
25 highway use, except farm trailers used primarily in the
26 production and harvesting of agricultural commodities.

1 Where any used machine, machinery or equipment which
2 is used in planting, cultivating and harvesting farm products,
3 or used in connection with the production of agricultural
4 produce or products, livestock and poultry on farms is taken
5 in trade or in a series of trades as a credit or part payment
6 on a sale of a new or used machine, machinery or equipment,
7 the tax levied herein shall be paid on the net difference,
8 that is, the price of the new or used machine, machinery or
9 equipment sold, less the credit for the used machine,
10 machinery or equipment taken in trade.

11 (b) There are exempted, however, from this section
12 and from the computation of the amount of the tax authorized
13 to be imposed in this section, the gross receipts of any
14 business and the gross proceeds of all sales which are
15 presently exempted under the state sales tax statutes from the
16 computation of the amount of the state sales tax.

17 Section 4. (a) The governing body of the county is
18 hereby authorized to levy and impose excise taxes on the
19 storage, use or other consumption of property in the county as
20 hereinafter provided in this section: (1) On the storage, use
21 or other consumption in the county of tangible personal
22 property, not including, however, materials and supplies
23 bought for use in fulfilling a contract for the painting,
24 repairing or reconditioning of vessels, barges, ships, other
25 watercraft and commercial fishing vessels of over five tons
26 load displacement as registered with the United States Coast
27 Guard and licensed by the State of Alabama Department of

1 Conservation and Natural Resources, purchased at retail on or
2 after the effective date of such tax, for storage, use or
3 other consumption in the county at the rate of one percent of
4 the sales price of such property or the amount of tax
5 collected by the seller, whichever is greater, except as
6 provided in subdivisions (2), (3) and (4) of this subsection.

7 (2) On the storage, use or other consumption in the
8 county of any machines used in mining, quarrying, compounding,
9 processing and manufacturing of tangible personal property,
10 purchased at retail on or after the effective date of such
11 tax, at the rate of one-half percent of the sales price of any
12 such machine or the amount of tax collected by the seller,
13 whichever is greater; provided, that the term "machine," as
14 herein used, shall include machinery which is used for mining,
15 quarrying, compounding, processing, or manufacturing tangible
16 personal property, and the parts of such machines, attachments
17 and replacements therefor, which are made or manufactured for
18 use on or in the operation of such machines and which are
19 necessary to the operation of such machines and are
20 customarily so used.

21 (3) On the storage, use or other consumption in the
22 county of any automotive vehicle or truck trailer, semitrailer
23 or house trailer, and mobile home set-up materials and
24 supplies including but not limited to steps, blocks,
25 anchoring, cable pipes and any other materials pertaining
26 thereto, purchased at retail on or after the effective date of
27 such tax, for storage, use or other consumption in the county

1 at the rate of one-half percent of the sales price of such
2 automotive vehicle, truck trailer, semitrailer or house
3 trailer, and mobile home set-up materials and supplies as
4 specified above, or the amount of tax collected by the seller,
5 whichever is greater. Where any used automotive vehicle or
6 truck trailer, semitrailer or house trailer is taken in trade,
7 or in a series of trades, as a credit or part payment on the
8 sale of a new or used vehicle, the tax levied herein shall be
9 paid on the net difference, that is, the price of the new or
10 used vehicle sold less the credit for the used vehicle taken
11 in trade.

12 (4) On the storage, use or other consumption in the
13 county of any machine, machinery, or equipment which is used
14 in planting, cultivating and harvesting farm products, or used
15 in connection with the production of agricultural produce or
16 products, livestock or poultry, or farms, and the parts of
17 such machines, machinery or equipment, attachments and
18 replacements therefor which are made or manufactured for use
19 on or in the operation of such machine, machinery or
20 equipment, and which are necessary to and customarily used in
21 the operation of such machine, machinery or equipment, which
22 is purchased at retail after the effective date of the tax,
23 for storage, use or other consumption in the county, at the
24 rate of one-half percent of the sales price of such property
25 or the amount of tax collected by the seller, whichever is
26 greater. Provided, however, that the one-half percent rate
27 herein prescribed with respect to parts, attachments and

1 replacements shall not apply to any automotive vehicle or
2 trailer designed primarily for public highway use except farm
3 trailers used primarily in the production and harvesting of
4 agricultural commodities.

5 (b) There are exempted from the provisions of this
6 section, and from the taxes authorized to be imposed by this
7 section, the storage, use, or other consumption of property
8 the storage, use, or other consumption of which is presently
9 exempted under the state use tax statutes from the state use
10 tax. Subject to those exemptions, every person storing or
11 using or otherwise consuming in the county tangible personal
12 property purchased at retail on or after the effective date of
13 any such taxes imposed pursuant to the authorization contained
14 in this section shall be liable for the taxes so imposed, and
15 the liability shall not be extinguished until the tax has been
16 paid by such person; provided, however, that a receipt from a
17 retailer maintaining a place of business in the county given
18 to the purchaser or other receipt or documentation regarding
19 payment of tax permitted under applicable rules and
20 regulations, shall be sufficient to relieve the purchaser from
21 further liability for tax to which such receipt or
22 documentation may refer.

23 Section 5. Each person engaging or continuing within
24 the county in a business subject to the sales tax authorized
25 to be levied in Section 3 shall add to the sales price and
26 collect from the purchaser the amount due by the taxpayer on
27 account of the tax. It shall be unlawful for any person

1 subject to the sales tax authorized to be levied in Section 3
2 to fail or refuse to add to the sales price and to collect
3 from the purchaser the amount herein required to be so added
4 to the sales price and collected from the purchaser, and it
5 shall likewise be unlawful for any person subject to the tax
6 to refund or offer to refund all or any part of the amount so
7 collected or to absorb or advertise directly or indirectly the
8 absorption or refund of the tax or any portion thereof.

9 Section 6. (a) The governing body of the county
10 shall administer and collect the taxes herein authorized to be
11 levied and collected, or shall cause such taxes to be
12 administered and collected by the State Department of Revenue
13 or a private collection agency at the same time and in the
14 same manner as the state sales tax and state use tax are
15 collected, pursuant to, and in accordance with, the applicable
16 provisions of Sections 11-3-11.2 and 11-3-11.3 of the code.
17 Without limiting the generality of the foregoing, the
18 governing body of the county or other collection agency shall
19 have the same rights, remedies, power, and authority,
20 including the right to adopt and implement the same
21 procedures, as would be available to the State Department of
22 Revenue if the taxes herein authorized were being
23 administered, enforced, and collected by the State Department
24 of Revenue. The governing body of the county may retain or may
25 pay to the State Department of Revenue or a private collection
26 agency, as its fee for the cost of collecting such taxes, an
27 amount not to exceed five percent of the proceeds of such

1 taxes so collected; provided, if the governing body of the
2 county or the State Department of Revenue shall administer and
3 collect the taxes the amount retained by the governing body or
4 paid to the State Department of Revenue shall not exceed the
5 actual cost of collection, whichever is less.

6 (b) With respect to the taxes herein authorized to
7 be levied and imposed by it, the county shall be deemed to be
8 a self-administered county, as that term is defined in Section
9 40-2A-3 of the code.

10 Section 7. The taxes authorized to be levied
11 pursuant to this act shall constitute a debt due the county
12 and may be collected by civil suit, in addition to all other
13 methods provided by law and in this act. The taxes, together
14 with any interest and penalties with respect thereto, shall
15 constitute and be secured by a lien upon the property of any
16 person from whom the taxes are due or who is required to
17 collect the taxes. All the provisions of the revenue laws of
18 the state which apply to the enforcement of liens for license
19 taxes due the state shall apply fully to the collection of the
20 taxes herein authorized to be levied. The governing body of
21 the county, the State Department of Revenue or private
22 collection agency, as determined by the governing body, shall
23 collect the taxes, and enforce this act, and the governing
24 body of the county or any private collection agency collecting
25 such taxes shall have and exercise all rights and remedies
26 that the State Department of Revenue would have if the taxes
27 herein authorized were being administered, enforced and

1 collected by the State Department of Revenue. The governing
2 body of the county, the State Department of Revenue or private
3 collection agency may employ special counsel as it deems
4 necessary from time to time to enforce collection of the taxes
5 levied pursuant to this act and otherwise to enforce the
6 provisions of this act, including the institution,
7 prosecution, and defense of any litigation involving this act.
8 The governing body, the State Department of Revenue or private
9 collection agency shall pay such special counsel such fees as
10 it deems necessary and proper from the proceeds of the tax
11 collected by it hereunder.

12 Section 8. All provisions of the state sales tax
13 statutes with respect to payment, assessment, and collection
14 of the state sales tax, making of reports, and keeping and
15 preserving records with respect thereto, interest after the
16 due date of the state sales tax, penalties for failure to pay
17 the tax, make reports or otherwise comply with the state sales
18 tax statutes, the promulgation of rules and regulations with
19 respect to the state sales tax, and the administration and
20 enforcement of the state sales tax statutes, which are not
21 inconsistent with the provisions of this act, when applied to
22 the sales taxes authorized to be levied herein, shall apply to
23 the sales taxes authorized to be levied herein; and all
24 provisions of the state use tax statutes with respect to
25 payment, assessment, and collection of the state use tax,
26 making of reports, and keeping and preserving records with
27 respect thereto, interest after the due date of the state use

1 tax, penalties for failure to pay the tax, make reports or
2 otherwise to comply with the state use tax statutes, the
3 promulgation of rules and regulations with respect to the
4 state use tax and the administration and enforcement of the
5 state use tax statutes, which are not inconsistent with this
6 act, when applied to the use taxes authorized to be levied
7 herein, shall apply to the use taxes authorized to be levied
8 herein. The governing body, the State Department of Revenue or
9 private collection agency shall have and exercise the same
10 powers, duties, and obligations with respect to the taxes
11 levied under this act that are imposed on the Commissioner and
12 State Department of Revenue by the state sales tax statutes
13 and state use tax statutes. All provisions of the state sales
14 tax statutes and the state use tax statutes that are made
15 applicable by this act to the taxes herein authorized to be
16 levied and to the administration of this act are incorporated
17 herein by reference and made a part hereof as if fully set
18 forth herein.

19 Section 9. Notwithstanding any provision of law to
20 the contrary, none of the taxes herein authorized to be levied
21 and collected may be abated by any governmental or other
22 public body pursuant to Chapter 9B of Title 40 of the code or
23 otherwise.

24 Section 10. The proceeds of any taxes levied
25 pursuant to the authorization contained in this act shall be
26 used only for the purpose of providing funds to pay the costs
27 of construction, maintenance, and operation of hospital

1 facilities in the county, including the purchase of a
2 certificate of need. However, the county may withhold from the
3 proceeds of the additional sales tax a sum not to exceed forty
4 thousand dollars (\$40,000) for the actual cost of the special
5 election for the advisory referendum. The proceeds derived by
6 the county from the taxes herein authorized to be levied,
7 including any income derived from the investment of such
8 proceeds, shall be paid over and deposited, promptly upon
9 receipt thereof, into a separate and distinct fund or account
10 for the Sumter County Health Care Authority. The county or the
11 Sumter County Health Care Authority may anticipate the
12 proceeds from the taxes so required to be paid to it by
13 issuing, for any of the purposes for which the taxes are
14 herein authorized to be levied, funding or refunding bonds,
15 warrants, or certificates of indebtedness of the county or the
16 Sumter County Health Care Authority, and may pledge for the
17 payment of the principal thereof and interest thereon the
18 proceeds from the taxes so paid to it which shall constitute a
19 part of the contract with the holders of the bonds, warrants,
20 or certificates of indebtedness and such contract shall be
21 protected from impairment to the fullest extent provided by
22 the federal Constitution and the Constitution of Alabama of
23 1901, as amended.

24 Section 11. (a) If the governing body of the county
25 elects to levy and impose any of the taxes herein authorized
26 to be levied and imposed, it shall specify in the resolution
27 levying and imposing such taxes the first day of the second

1 calendar month next following that during which such levy is
2 made as the effective date of such levy. Such resolution may
3 provide such other terms or provisions relating to the levy,
4 collection, administration and enforcement of such taxes as
5 are not contrary to or inconsistent with the provisions of
6 this act.

7 (b) The governing body of the county may, at any
8 time and from time to time after the levy of any of the taxes
9 herein authorized, but subject to succeeding provisions of
10 this section, and subject to constitutional limitations on the
11 impairment of contracts, terminate any of the taxes herein
12 authorized to be levied by it.

13 (c) No tax levied hereunder may be terminated by the
14 county, as authorized in the preceding provisions of this
15 section, if there are at the time outstanding and unpaid any
16 bonds, warrants, notes, or other securities or obligations
17 issued by either the county or any public hospital
18 corporation, and which by their terms are payable, in whole or
19 in part, out of, or secured by a pledge of, any revenues or
20 proceeds from any of such taxes.

21 (d) The governing body of the county shall adopt a
22 resolution terminating any tax levied pursuant to this act no
23 later than four years from the date all bonds, warrants,
24 notes, or other securities or obligations issued by either the
25 county or any other public body, and which by their terms are
26 payable, in whole or in part, out of, or secured by a pledge
27 of, any revenues or proceeds from any of such taxes, shall

1 have been fully paid and retired. It is expressly understood
2 that the governing body of the county may continue any such
3 taxes for a period of up to four years after the payment in
4 full of any such indebtedness to provide funds for the
5 continued maintenance and operation of the hospital facilities
6 to be constructed from the proceeds of any such taxes.

7 (e) In the event that any or all such taxes are so
8 terminated, any proceeds thereof that are at the time on
9 deposit with the county or a public hospital corporation
10 designated as its agent under Section 11 hereof, or that are
11 thereafter received, shall be held by the county or such
12 public hospital corporation and expended only for purposes for
13 which the taxes were herein authorized to be levied.

14 Section 12. Sections 1 through 11 of this act shall
15 become operative only if approved by a majority of the
16 qualified electors of the county at a countywide election
17 called by the governing body of the county on the question of
18 whether or not the governing body should have the authority to
19 levy the additional sales and use taxes authorized in this
20 act. Subject to Section 10, all costs of the referendum,
21 including, but not limited to, the cost of publishing the
22 notice and of furnishing ballots or renting voting machines,
23 shall be paid by the county.

24 Section 13. This act shall become effective
25 immediately following its passage and approval by the
26 Governor, or its otherwise becoming law.