

1 SB567
2 142409-4
3 By Senator Waggoner
4 RFD: Commerce, Transportation, and Utilities
5 First Read: 26-APR-12

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3
4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To authorize, in addition to such authorization
12 therefor as may be currently provided by law, the governing
13 body of any county in the State that is currently seeking or
14 that may hereafter seek relief under Chapter 9 of the United
15 States Bankruptcy Code, and in respect of whose petition
16 therefor an order for relief is entered under said Code, to
17 provide for and to levy and collect various described taxes,
18 including sales, use, and privilege license taxes, subject to
19 certain limitations and restrictions and for such period or
20 periods of time as herein described; to authorize the adoption
21 by said governing bodies of such ordinances, resolutions and
22 regulations as may be necessary or convenient to provide for
23 the levy and collection of any such additional taxes; to
24 require that a public hearing be held by said governing bodies
25 prior to the levy and collection of the same, and to make
26 provision for public notice thereof; to provide that any
27 additional tax authorized may not be levied and collected

1 unless the estimated revenues from the same for the first full
2 fiscal year shall not exceed, when added to all such other
3 additional taxes, twenty percent of the largest annual amount
4 of the county's expenditure budgets adopted in September of
5 each year for the three fiscal years of the county immediately
6 preceding the filing of its petition for relief under the
7 United States Bankruptcy Code; to provide other limitations on
8 the rate or rates of such taxes; to provide for the
9 establishment, membership, appointment, qualifications and
10 responsibilities of a financial advisory committee for any
11 county levying any additional tax as herein authorized and to
12 provide for the dissolution of such committee upon the earlier
13 of dismissal of the county from bankruptcy or confirmation of
14 a plan of adjustment with respect to such county; to restrict
15 the use of the proceeds of any additional taxes levied
16 pursuant to the authority herein contained; to provide for the
17 termination of the authority to provide for the initiation of
18 the levy and collection of the additional taxes authorized
19 hereby; to provide that in the event any such additional taxes
20 are levied and collected and the authority to provide for
21 initiation of the levy and collection thereof shall terminate
22 upon certain events, including vacation of the order for
23 relief in favor of the county or confirmation of the county's
24 plan for the adjustment of its debts under the United States
25 Bankruptcy Code, such county shall be authorized to continue
26 the levy and collection of such taxes and shall not be
27 obligated to refund or repay any amounts so collected prior to

1 such termination to any person or persons whatever; to provide
2 that the provisions of the act are severable; and to provide
3 for an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. This act may be cited and known as the
6 "Alabama Financially Distressed Counties Act."

7 Section 2. The Legislature finds that economic
8 conditions may place counties in Alabama under severe
9 financial pressures, which could eventually lead to a decision
10 by a county to seek, as authorized under state law, protection
11 under Chapter 9 of the United States Bankruptcy Code, and that
12 the adjustment of debts and the emergence from bankruptcy of
13 any county in the State that has sought bankruptcy protection
14 is a matter of critical importance to the State as a whole and
15 to its citizens. The Legislature further finds that counties
16 seeking confirmation of a plan of debt adjustment in a Chapter
17 9 bankruptcy case may need to have immediately available to
18 them additional sources of tax revenue to enable them to
19 develop plans of debt adjustment that would allow them to
20 emerge from bankruptcy in a timely manner, thereby allowing
21 for the restoration of essential county services that may have
22 been eliminated or reduced as a result of the events leading
23 up to the bankruptcy. The Legislature therefore finds that
24 there is a need to grant limited additional taxing power to
25 those severely financially distressed counties that have
26 sought relief under Chapter 9 of the United States Bankruptcy
27 Code, subject to the limitations set forth herein.

1 Section 3. As used herein, the term "business
2 activity" shall mean the carrying on or practice of any
3 business, vocation, occupation, work, calling, or profession;
4 the term "sales and use taxes" shall mean taxes paralleling
5 the taxes imposed by the state sales and use tax statutes,
6 including, but not limited to, Sections 40-23-1, 40-23-2,
7 40-23-3, 40-23-4, 40-23-60, 40-23-61, 40-23-62 and 40-23-63,
8 Code of Alabama 1975, as amended; and the term "Bankruptcy
9 Code" shall mean the United States Bankruptcy Code, Title 11
10 of the United States Code, (11 U.S.C. §§ 101 et seq.).

11 Section 4. (a) The governing body of any county in
12 the State (i) that has filed a petition for relief under
13 Chapter 9 of the Bankruptcy Code pursuant to Section 301 of
14 the Bankruptcy Code, whether prior to or within 36 months
15 after the effective date of this act, and (ii) in respect of
16 whose petition as aforesaid there has been entered an Order
17 for Relief under Section 921(d) of the Bankruptcy Code, shall
18 be authorized to provide for the levy and collection, for such
19 period or periods of time as such governing body shall
20 specify, of taxes in addition to those otherwise authorized by
21 law, in the form of (A) sales and use taxes on the sale,
22 storage, use or consumption in the county of tangible personal
23 property at a rate not exceeding one percent, or (B) a
24 privilege license tax on the gross receipts derived by natural
25 persons from business activity in the county at a rate not
26 exceeding one-half of one percent, the provisions of Title 40,
27 Chapter 12, Article 2, Code of Alabama 1975, as amended, to

1 the contrary notwithstanding, provided that any person made
2 liable for such tax hereunder and who is also required to
3 purchase a state license or licenses by the provisions of
4 Article 2 of Chapter 12 of Title 40, Code of Alabama 1975, as
5 amended, may in the determination of the amount of such
6 person's liability for tax due the county, at his or her
7 option exercised at such time and in such manner as the county
8 shall specify, (1) deduct from such gross receipts the amount
9 or amounts paid by such person for a state license issued for
10 the same period, excluding fees, interest, and penalties,
11 under said Article 2, or (2) deduct from the amount of the
12 privilege license tax due and levied under the authority of
13 this act the amount or amounts paid to the state and county
14 for the licenses, excluding fees, interest, and penalties,
15 issued under Chapter 12 of Title 40, Code of Alabama 1975, as
16 amended, provided however, that the levy and collection of the
17 taxes hereinabove described shall be subject to the
18 limitations and conditions set forth herein and otherwise
19 limited in such manner as shall be provided by state law.

20 (b) The governing body of each county authorized to
21 provide for the levy of additional taxes, as provided for in
22 this act, is authorized to promulgate such ordinances,
23 resolutions or regulations not in conflict with state law as
24 shall be necessary or convenient to provide for the levy and
25 collection of any tax authorized herein.

26 (c) Before the governing body of the county may
27 approve an ordinance providing for the levy and collection of

1 any additional tax permitted to be levied and collected
2 pursuant to this act, the governing body of such county shall
3 hold a public hearing on such proposed ordinance at a public
4 meeting of the governing body of the county. At least ten days
5 before the date fixed for such public hearing, the county
6 shall (1) provide appropriate notice to the public thereof and
7 (2) post on the county's public website the text of the
8 proposed ordinance, which shall remain on such website until
9 the conclusion of the public hearing described hereinabove;
10 provided that, if the county does not maintain a public
11 website, the text of the proposed ordinance shall be
12 advertised at least once in a newspaper of general circulation
13 published or distributed in the county not less than ten nor
14 more than fourteen days immediately prior to the date of the
15 public hearing described herein. Notice of the public hearing
16 required by this subsection shall also be posted in a public
17 and conspicuous location in the courthouse or courthouses of
18 the county and shall be forwarded to all local news media that
19 have on file with the governing body of the county a written
20 request for notification of the schedule of meetings of such
21 governing body.

22 Section 5. Prior to making provision for the levy
23 and collection of any tax pursuant to the authority granted
24 herein, the governing body of the county shall make a good
25 faith estimate of the gross revenues anticipated to be
26 generated from the levy and collection thereof during the
27 first full fiscal year of the county immediately following the

1 imposition of such levy, such estimate to be set forth in the
2 minutes of the meeting or meetings of the governing body at
3 which such tax or taxes shall be authorized to be levied. No
4 provision for the levy and collection of a tax pursuant to the
5 authority of this act shall be made unless the aforesaid
6 estimate of revenues therefrom, when added to the estimates of
7 first full fiscal year revenues made in respect of any other
8 taxes provision for the levy and collection of which are made
9 pursuant to the authority granted herein (provided that such
10 other taxes are being levied and collected at the time of such
11 calculation), shall not exceed twenty percent of the largest
12 annual amount of total county expenditures set forth in the
13 county's general fund budgets adopted in September of each
14 year by the governing body of the county, reflective of the
15 requirement so to do of subsection (a) of Section 11-8-3, Code
16 of Alabama 1975, as amended, for the three fiscal years of the
17 county immediately preceding the fiscal year in which the
18 county shall have filed its petition for relief pursuant to
19 Section 301 of the Bankruptcy Code. Notwithstanding anything
20 in this act to the contrary, such governing body may not
21 pursuant to this act (1) provide for an increase in the rate
22 of any tax levied pursuant to this act after the initial
23 imposition of the levy of such tax, provided that the
24 governing body may at any time provide for the reduction of
25 such rate, (2) levy and collect the privilege license tax
26 hereinabove described on those gross receipts from business
27 activity that are or may be otherwise subject to the levy by

1 the county of an entity business license tax, (3) levy and
2 collect any additional business license tax if the levy of
3 such tax by the county is otherwise authorized by a local act
4 of the Legislature then applicable to the county, (4) levy and
5 collect a privilege license tax as hereinabove described on
6 persons required to pay a license or privilege tax to either
7 the State of Alabama or the county pursuant to the provisions
8 of any of Sections 40-16-4, 40-21-50, 40-21-52, 40-21-53,
9 40-21-56 or 40-21-60 of the Code of Alabama 1975, as amended,
10 or (5) levy and collect sales and use taxes authorized to be
11 levied and collected pursuant to this act during such time as
12 the county shall be levying and collecting a sales and use tax
13 under the provisions of Section 40-12-4, Code of Alabama 1975,
14 as amended.

15 Section 6. For any county in the state in respect of
16 which an Order for Relief is entered under Section 921(d) of
17 the Bankruptcy Code, there shall be established within 30 days
18 following either the date of entry of such order, or the
19 effective date of this act in the case of any such county that
20 as of the effective date of this act has not been discharged
21 pursuant to Section 944(b) of the Bankruptcy Code, and in the
22 manner set forth below, a financial advisory committee to
23 review the financial operations of such county and to make
24 recommendations for improvements in its financial affairs. The
25 committee shall consist of five members, four of whom shall be
26 qualified electors of its county. Members of the committee and
27 their successors shall be appointed as follows: two members

1 selected by the Governor, one member selected by the Speaker
2 of the House of Representatives, one member selected by the
3 President Pro Tempore of the Senate, and one member selected
4 by the State Treasurer. Each committee member shall be an
5 individual holding at least a four-year undergraduate degree
6 or a master's degree in finance, business management,
7 accounting, or public administration and having not less than
8 ten years of experience in business or higher education; or,
9 in the alternative, having a minimum of ten years aggregate
10 experience as a chief executive officer, chief operating
11 officer or chief financial officer at a publicly-traded
12 company. The members of the financial advisory committee for a
13 county shall serve without compensation or reimbursement of
14 expenses. The committee shall stand dissolved as of the
15 earlier of (i) the date of entry of a final, unreviewable
16 determination by a court of competent jurisdiction vacating
17 the Order for Relief in favor of the county under Section
18 921(d) of the Bankruptcy Code, (ii) the date of entry of a
19 final, unreviewable order pursuant to Section 930 of the
20 Bankruptcy Code dismissing the county's Chapter 9 case or
21 (iii) the date as of which the county is discharged pursuant
22 to Section 944(b) of the Bankruptcy Code, unless further
23 extended by resolution of the governing body of the county.

24 Section 7. No County shall be permitted to utilize,
25 appropriate or pay from the proceeds or revenues generated
26 from the levy and collection of any of the additional taxes
27 authorized herein to be levied and collected to pay in whole

1 or in part (a) any non-recourse debt of the county, or (b) any
2 other debt obligation of the county that is payable in
3 accordance with the terms thereof solely from a specified
4 source or sources and for payment of which the full faith and
5 credit of the county has not been pledged.

6 Section 8. The authority of the governing body of
7 any county authorized by this act to provide for the
8 initiation of the levy and collection of any of the additional
9 taxes described herein shall terminate as of the earlier of
10 (i) the date of entry of a final, unreviewable determination
11 by a court of competent jurisdiction vacating the Order for
12 Relief in favor of the county under Section 921(d) of the
13 Bankruptcy Code, (ii) the date of entry of a final,
14 unreviewable order pursuant to Section 930 of the Bankruptcy
15 Code dismissing the county's Chapter 9 case, or (iii) the date
16 of entry of an order pursuant to Section 943 of the Bankruptcy
17 Code confirming the county's plan for the adjustment of its
18 debts, which plan may reference any taxes levied or to be
19 levied pursuant to the authority therefor herein contained,
20 provided however, any aforesaid termination of the authority
21 to provide for the initiation of the levy and collection of
22 said taxes pursuant to the authority herein contained shall
23 not (a) limit the authority of the governing body of the
24 county before, on, or after the date of said termination to
25 continue to levy or collect any such taxes as shall have
26 theretofore been levied or the levy of which shall have been
27 provided for by the county pursuant to the authorization

1 contained in this act prior to the termination of the
2 authority to levy and collect additional taxes pursuant to
3 this subsection, at rates not exceeding the rate or rates
4 thereof provided for upon the initial levy thereof, or (b)
5 abrogate the authority of said governing body to levy or
6 collect any taxes which shall have theretofore been provided
7 for in accordance with the provisions of this act, even if the
8 same are to be collected after the date of said termination.

9 Section 9. Notwithstanding any termination of
10 authority either to provide for the initiation of the levy or
11 for the collection of additional taxes provided for in this
12 act, a county shall be entitled to retain and use for its
13 benefit all proceeds collected, whether before, on, or after
14 the date of said termination, of any tax levied by such county
15 pursuant to this act prior to such termination and the county
16 shall not be obligated to refund or repay all or any portion
17 thereof to any taxpayer, government, person, or persons
18 whatsoever.

19 Section 10. The provisions of this act are
20 severable. If any part of this act is declared invalid or
21 unconstitutional, such declaration shall not affect the part
22 which remains.

23 Section 11. This act shall become effective
24 immediately upon its passage and approval by the Governor, or
25 upon its otherwise becoming a law.

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Senate

Read for the first time and referred to the Senate
committee on Commerce, Transportation, and Utili-
ties..... 26-APR-12

Read for the second time and placed on the calen-
dar..... 01-MAY-12

Read for the third time and passed as amended 03-MAY-12

Yeas 13
Nays 11
Abstaining 3

Patrick Harris
Secretary