

1 HB357
2 164820-2
3 By Representative Fincher (N & P)
4 RFD: Local Legislation
5 First Read: 31-MAR-15

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A BILL

10 TO BE ENTITLED

11 AN ACT

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13 Relating to Randolph County; to authorize the county
14 commission to levy additional sales and use taxes of up to one
15 percent to be used for the construction, maintenance, or
16 operation of licensed hospital facilities in Randolph County;
17 to provide 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 immediately upon
20 the debt incurred to construct and open for operation a
21 licensed hospital facility having been fully and completely
22 paid; to provide for an advisory referendum regarding the
23 authorization of the taxes; to provide that such taxes may not
24 be abated pursuant to Chapter 9B, Title 40, Code of Alabama
25 1975, or otherwise; and to authorize the pledge of such taxes
26 by Randolph County to secure indebtedness issued for the
27 purposes for which the taxes are authorized.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. This act shall only apply to Randolph
3 County.

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

8 (1) CODE. The Code of Alabama 1975, as amended.

9 (2) COMMISSIONER. The Commissioner of Revenue of the
10 state.

11 (3) COUNTY. Randolph County in the state.

12 (4) COUNTY COMMISSION. The Randolph County
13 Commission.

14 (5) STATE. The State of Alabama.

15 (6) STATE DEPARTMENT OF REVENUE. The Department of
16 Revenue of the state.

17 (7) STATE SALES TAX. The tax or taxes imposed by the
18 state sales tax statutes.

19 (8) STATE SALES TAX STATUTES. Division 1, commencing
20 with Section 40-21-1, of Article 1 of Chapter 23 of Title 40
21 of the code, including all other statutes of the state which
22 expressly set forth any exemptions from the computation of the
23 taxes levied in Division 1 and all other statutes which
24 expressly apply to, or purport to affect, the administration
25 of Division 1 and the incidence and collection of the taxes
26 imposed therein.

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

(10) STATE USE TAX STATUTES. Article 2, commencing with Section 40-23-60, of Chapter 23 of Title 40 of the code, including all other statutes of the state which expressly set forth any exemptions from the computation of the tax levied in Article 2 and all other statutes of the state which expressly apply to, or purport to affect, the administration of Article 2 and the incidence and collection of the taxes imposed therein.

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

Section 3. (a) The governing body is authorized to levy and impose in the county, in addition to all other taxes of every kind now imposed by law, and to collect as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be

1 determined by the application of rates against gross sales, or
2 gross receipts, as the case may be, as follows:

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

1 kept he or she shall pay the tax as retailer on the gross
2 sales of the business.

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

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

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

15 (3) Where any used automotive vehicle or truck
16 trailer, semitrailer, or house trailer is taken in trade or in
17 a series of trades, as a credit or part payment on the sale of
18 a new or used vehicle, the tax levied herein shall be paid on
19 the net difference, that is, the price of the new or used
20 vehicle sold less the credit for the used vehicle taken in
21 trade.

22 (4) Upon every person, firm, or corporation engaged
23 or continuing within the county in the business of selling
24 through coin-operated dispensing machines food and food
25 products for human consumption, including beverages other than
26 coffee, milk, milk products, and substitutes therefor, there
27 is levied a tax of up to one percent of the cost of the food,

1 food products, and beverages sold through the machines, which
2 cost for the purpose of this subdivision shall be the gross
3 proceeds of sales of the business.

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

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

20 (c) Any provision of this section to the contrary
21 notwithstanding, the amount of the additional levy shall not
22 exceed one percent.

23 Section 4. (a) The governing body of the county is
24 hereby authorized to levy and impose excise taxes on the
25 storage, use, or other consumption of property in the county
26 as hereinafter provided in this section:

(1) On the storage, use, or other consumption in the county of tangible personal property, not including, however, materials and supplies bought for use in fulfilling a contract for the painting, repairing, or reconditioning of vessels, barges, ships, other watercraft, and commercial fishing vessels of over five tons load displacement as registered with the United States Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources, purchased at retail on or after the effective date of such tax, for storage, use, or other consumption in the county at the rate of up to one percent of the sales price of such property or the amount of tax collected by the seller, whichever is greater, except as provided in subdivision (2) of this subsection.

(2) Where any used automotive vehicle or truck trailer, semitrailer, or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

(b) There are exempted from this section, and from the taxes authorized to be imposed by this section, the storage, use, or other consumption of property the storage, use, or other consumption of which is presently exempted under the state use tax statutes from the state use tax. Subject to those exemptions, every person storing or using or otherwise

1 consuming in the county tangible personal property purchased
2 at retail on or after the effective date of any such taxes
3 imposed pursuant to the authorization contained in this
4 section shall be liable for the taxes so imposed, and the
5 liability shall not be extinguished until the tax has been
6 paid by such person; provided, however, that a receipt from a
7 retailer maintaining a place of business in the county given
8 to the purchaser, or other receipt or documentation regarding
9 payment of tax permitted under applicable rules and
10 regulations, shall be sufficient to relieve the purchaser from
11 further liability for tax to which such receipt or
12 documentation may refer.

13 (c) Any provision of Section 4 to the contrary
14 notwithstanding, the amount of the additional levy shall not
15 exceed one percent.

16 Section 5. Each person engaging or continuing within
17 the county in a business subject to the sales tax authorized
18 to be levied in Section 3 shall add to the sales price and
19 collect from the purchaser the amount due by the taxpayer on
20 account of the tax. It shall be unlawful for any person
21 subject to the sales tax authorized to be levied in Section 3
22 to fail or refuse to add to the sales price and to collect
23 from the purchaser the amount herein required to be so added
24 to the sales price and collected from the purchaser, and it
25 shall likewise be unlawful for any person subject to the tax
26 to refund or offer to refund all or any part of the amount so

collected or to absorb or advertise directly or indirectly the absorption or refund of the tax or any portion thereof.

Section 6. (a) The governing body of the county shall administer and collect the taxes herein authorized to be levied and collected, or shall cause such taxes to be administered and collected by the State Department of Revenue or a private collection agency at the same time and in the same manner as the state sales tax and state use tax are collected, pursuant to, and in accordance with, the applicable provisions of Sections 11-3-11.2 and 11-3-11.3 of the code. Without limiting the generality of the foregoing, the governing body of the county or other collection agency 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 State Department of Revenue if the taxes herein authorized were being administered, enforced, and collected by the State Department of Revenue. The governing body may retain or may pay to the State Department of Revenue or a private collection agency, as a fee for the cost of collecting such taxes, an amount not to exceed five percent of the proceeds of such taxes so collected. If the governing body of the county or the State Department of Revenue administers and collects the taxes, the amount retained by the governing body or paid to the State Department of Revenue as a collection fee shall not exceed the actual cost of collection, or an amount that does not exceed

1 five percent of the proceeds of the taxes collected, whichever
2 amount is less.

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

7 Section 7. The governing body shall call an advisory
8 countywide referendum election on the question of whether the
9 qualified electors of the county support or oppose authorizing
10 the county commission to levy additional county sales and use
11 taxes. All costs of the advisory referendum, including, but
12 not limited to, the cost of publishing the notice and of
13 furnishing ballots or renting voting machines, shall be paid
14 by the county. If a majority of the voters voting in the
15 advisory referendum oppose authorizing the county commission
16 to levy additional county sales and use taxes, this act shall
17 be null and void and of no further effect. If a majority of
18 the voters voting in the advisory referendum approve
19 authorizing the county commission to levy additional county
20 sales and use taxes, the county commission shall have sole
21 discretion to determine whether to levy or not levy the taxes
22 authorized by this act.

23 Section 8. The taxes authorized to be levied
24 pursuant to this act shall constitute a debt due the county
25 and may be collected by civil suit, in addition to all other
26 methods provided by law and in this act. The taxes, together
27 with any interest and penalties with respect thereto, shall

1 constitute and be secured by a lien upon the property of any
2 person from whom the taxes are due or who is required to
3 collect the taxes. All the provisions of the revenue laws of
4 the state which apply to the enforcement of liens for license
5 taxes due the state shall apply fully to the collection of the
6 taxes herein authorized to be levied. The governing body of
7 the county, the State Department of Revenue, or private
8 collection agency, as determined by the governing body, shall
9 collect the taxes and enforce this act, and the governing body
10 of the county or any private collection agency collecting such
11 taxes shall have and exercise all rights and remedies that the
12 State Department of Revenue would have if the taxes herein
13 authorized were being administered, enforced, and collected by
14 the State Department of Revenue. The governing body of the
15 county, the State Department of Revenue, or private collection
16 agency may employ special counsel as it deems necessary from
17 time to time to enforce collection of the taxes levied
18 pursuant to this act and otherwise to enforce this act,
19 including the institution, prosecution, and defense of any
20 litigation involving this act. The governing body, the State
21 Department of Revenue, or private collection agency shall pay
22 such special counsel such fees as it deems necessary and
23 proper from the proceeds of the tax collected by it hereunder.

24 Section 9. All provisions of the state sales tax
25 statutes with respect to payment, assessment, and collection
26 of the state sales tax, making of reports, and keeping and
27 preserving records with respect thereto, interest after the

1 due date of the state sales tax, penalties for failure to pay
2 the tax, make reports or otherwise comply with the state sales
3 tax statutes, the promulgation of rules and regulations with
4 respect to the state sales tax, and the administration and
5 enforcement of the state sales tax statutes, which are not
6 inconsistent with this act, when applied to the sales taxes
7 authorized to be levied herein, shall apply to the sales taxes
8 authorized to be levied herein; and all provisions of the
9 state use tax statutes with respect to payment, assessment,
10 and collection of the state use tax, making of reports, and
11 keeping and preserving records with respect thereto, interest
12 after the due date of the state use tax, penalties for failure
13 to pay the tax, make reports, or otherwise to comply with the
14 state use tax statutes, the promulgation of rules and
15 regulations with respect to the state use tax and the
16 administration and enforcement of the state use tax statutes,
17 which are not inconsistent with this act, when applied to the
18 use taxes authorized to be levied herein, shall apply to the
19 use taxes authorized to be levied herein. The governing body,
20 the State Department of Revenue, or private collection agency
21 shall have and exercise the same powers, duties, and
22 obligations with respect to the taxes levied under this act
23 that are imposed on the Commissioner and State Department of
24 Revenue by the state sales tax statutes and state use tax
25 statutes. All provisions of the state sales tax statutes and
26 the state use tax statutes that are made applicable by this
27 act to the taxes herein authorized to be levied and to the

1 administration of this act are incorporated herein by
2 reference and made a part hereof as if fully set forth herein.

3 Section 10. Notwithstanding any provision of law to
4 the contrary, none of the taxes herein authorized to be levied
5 and collected may be abated by any governmental or other
6 public body pursuant to Chapter 9B of Title 40 of the code or
7 otherwise.

8 Section 11. The proceeds of any taxes levied
9 pursuant to the authorization contained in this act shall be
10 used only for the purpose of providing funds to pay the costs
11 of construction, maintenance, or operation of licensed
12 hospital facilities in the county. The entire proceeds derived
13 by the county from the taxes herein authorized to be levied,
14 including any income derived from the investment of such
15 proceeds, shall be paid over and deposited, promptly upon
16 receipt thereof, into a separate and distinct fund or account
17 of the county, which shall be accounted for as other county
18 funds. The county may anticipate the proceeds from the taxes
19 so required to be paid to it by issuing, for any of the
20 purposes for which the taxes are herein authorized to be
21 levied, funding or refunding bonds, warrants, or certificates
22 of indebtedness of the county, and may pledge for the payment
23 of the principal thereof and interest thereon the proceeds
24 from the taxes so paid to it; provided however, and
25 notwithstanding anything in this act to the contrary, the term
26 of any and all funding or refunding bonds, warrants, or
27 certificates of indebtedness of the county authorized to be

issued by this section shall not exceed 30 years. The pledge of such proceeds by the county for the payment of the principal of and interest on bonds, warrants, or certificates of indebtedness issued by the county shall constitute a part of the contract with the holders of the bonds, warrants, or certificates of indebtedness and such contract shall be protected from impairment to the fullest extent provided by the federal Constitution and the Constitution of Alabama of 1901, as amended.

Section 12. (a) If the governing body of the county elects to levy and impose any of the taxes herein authorized to be levied and imposed, it shall specify in the resolution levying and imposing such taxes the first day of the second calendar month next following that during which such levy is made as the effective date of such levy. Such resolution may provide such other terms or provisions relating to the levy, collection, administration, and enforcement of such taxes as are not contrary to or inconsistent with this act.

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

(c) No tax levied hereunder may be terminated by the county, as authorized in the preceding provisions of this section, if there are at the time outstanding and unpaid any

1 bonds, warrants, notes, or other securities or obligations
2 issued by the county, and which by their terms are payable, in
3 whole or in part, out of, or secured by a pledge of, any
4 revenues or proceeds from any of such taxes.

5 (d) The governing body of the county shall adopt a
6 resolution terminating any tax levied pursuant to this act
7 immediately upon all bonds, warrants, notes, or other
8 securities or obligations issued by the county to construct
9 and open for operation a licensed hospital facility, and which
10 by their terms are payable, in whole or in part, out of, or
11 secured by a pledge of, any revenues or proceeds from any of
12 such taxes, shall have been fully paid and retired. It is
13 expressly understood that the governing body of the county
14 shall not continue any such taxes to pay or retire any debt,
15 bonds, warrants, notes, or other securities or obligations
16 issued by the county not incurred to construct and open for
17 operation a licensed hospital facility.

18 (e) In the event that any or all such taxes are so
19 terminated, any proceeds thereof that are at the time on
20 deposit with the county that are thereafter received, shall be
21 held by the county and expended only for purposes for which
22 the taxes were herein authorized to be levied.

23 Section 13. The provisions of this act are
24 severable. If any part of this act is declared invalid or
25 unconstitutional, that declaration shall not affect the part
26 which remains.

1 Section 14. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.