

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

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A BILL

10 TO BE ENTITLED

11 AN ACT

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13 Relating to Jefferson County; to authorize the
14 Jefferson County Commission to levy and assess, subject to the
15 limitations set forth herein, a privilege or license tax
16 against retail sales of tangible personal property and
17 amusements (a "sales tax") and an excise tax on the storage,
18 use, or consumption of tangible personal property (a "use
19 tax"); to make legislative findings; to provide for
20 definitions; to provide that the rate of sales and use taxes
21 authorized by this act shall not exceed one percent; to
22 require the simultaneous cancellation of a certain existing
23 sales and use tax levy in the county if the taxes authorized
24 by this act are levied by the county; to provide additional
25 restrictions; to provide that the provisions of the state
26 sales and use tax laws and regulations which are not
27 inconsistent with this act shall be applicable with respect to

1 the taxes authorized by this act; to provide for the continued
2 levy of the taxes authorized herein following the repeal of
3 either or both of the state sales tax or the state use tax; to
4 provide for the collection and enforcement of the taxes
5 authorized by this act; to require the sales taxes authorized
6 by this act to be collected at the point of sale; to provide
7 for the promulgation of rules and procedures; to provide for
8 distribution of the proceeds of the taxes authorized herein
9 first to debt service and other amounts due with respect to
10 certain warrants issued for certain designated public school
11 purposes, second to the general fund of the county, third to
12 the Jefferson County 2015 Sales Tax Fund, fourth to the
13 Jefferson County Community Service Fund, fifth to the
14 Birmingham-Jefferson County Transit Authority, sixth to the
15 Birmingham Zoo, Inc., and seventh to the general fund of the
16 county; to create and provide for the Jefferson County 2015
17 Sales Tax Fund; to provide for distributions from the
18 Jefferson County 2015 Sales Tax Fund to schools serving county
19 residents; to create and provide for the Jefferson County
20 Community Service Committee; to create and provide for the
21 Jefferson County Community Service Fund; to provide for the
22 expenditure of amounts deposited in the Jefferson County
23 Community Service Fund by the Jefferson County Community
24 Service Committee upon recommendations from members of the
25 Jefferson County Legislative Delegation; to provide for the
26 termination of the taxes authorized by this act upon the
27 defeasance or other full payment of refunding school warrants

1 provided for herein; to provide that the provisions of this
2 act are severable; and to provide for an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall only apply to Jefferson
5 County.

6 Section 2. (a) It is the intention of the
7 Legislature by the passage of this act to authorize the county
8 to levy and provide for the collection of, in addition to all
9 other taxes authorized by law, except as provided in Section
10 4, a sales tax and a use tax conforming with and parallel to
11 the state sales tax and the state use tax at a rate not
12 exceeding the maximum rates set forth herein.

13 (b) The Legislature hereby finds and declares that
14 each tax authorized by this act is a sales or use tax and is
15 not a gross receipts tax in the nature of a sales tax, as such
16 term is defined in Section 40-2A-3(8) of the Code of Alabama
17 1975, as amended, and used in Section 11-51-209 of the Code of
18 Alabama 1975, as amended.

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

(d) The Legislature hereby finds and declares that providing additional funding for public schools in the county will benefit the public welfare and education of residents of the county.

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

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

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

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

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

(4) COUNTY. Jefferson County, Alabama.

(5) COUNTY COMMISSION. The Jefferson County Commission.

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

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

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

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

(10) STATE SALES TAX STATUTES. Division 1 of Article 1 of Chapter 23 of Title 40, Code of Alabama 1975, as heretofore or hereafter amended, including all other statutes of the state which expressly set forth any exemptions from the computation of the tax levied in the state sales tax statutes

1 and all other statutes of the state which expressly apply to
2 or purport to affect the administration of the state sales tax
3 statutes, and the incidence and collection of the taxes
4 imposed therein.

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

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

15 (13) 2015 SALES TAX FUND. A governmental fund of the
16 county which is created hereunder and shall be entitled
17 "Jefferson County 2015 Sales Tax Fund."

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

have where used in the state sales tax statutes or the state use tax statutes.

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

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

(c) Notwithstanding the foregoing, the taxes authorized to be levied pursuant to this act shall not apply to the sale or use of property or services which are exempt under the state sales tax statutes or the state use tax statutes and corresponding regulations promulgated thereunder.

(d) Upon initial levy by the county of the taxes authorized by this act, the county commission shall

1 simultaneously cancel the county's existing sales and use
2 taxes currently being levied by the county under Ordinance
3 1769 of the county commission, as amended, that are pledged to
4 the existing school warrants, provided that the county has
5 previously or will simultaneously retire or defease the
6 existing school warrants. The sales and use taxes authorized
7 by this act and the sales and use taxes authorized to be
8 levied by the county pursuant to Ordinance 1769 of the county
9 commission shall not both apply to any taxable sale or
10 storage, use, or consumption so as to result in a cumulative
11 tax rate from both such taxes that is greater than one
12 percent.

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

17 Section 5. Pursuant to and in conformity with
18 Article 1 of Chapter 3 of Title 11, Code of Alabama 1975, the
19 county may, by ordinance or resolution, administer and
20 collect, or contract for the collection of, the sales and use
21 taxes authorized by this act.

22 Section 6. Each person engaging or continuing in a
23 business subject to the sales taxes authorized to be levied by
24 this act shall add to the sales price or admission fee and
25 collect from the purchaser or the person paying the admission
26 fee the amount due by the taxpayer on account of the sale or
27 admission. It shall be unlawful for any person subject to the

1 sales taxes authorized to be levied by this act to fail or
2 refuse to add to the sales price or admission fee and not
3 collect from the purchaser or person paying the admission fee
4 the amount required to be added to the sale or admission
5 price. It shall be unlawful for any person subject to the
6 sales taxes authorized to be levied by this act to refund or
7 offer to refund all or any part of the amount collected or to
8 absorb or advertise directly or indirectly the absorption or
9 refund of any portion of such tax or taxes. The sales taxes
10 authorized by this act shall conclusively be presumed to be a
11 direct tax on the retail consumer, pre-collected for the
12 purpose of convenience only.

13 Section 7. The taxes authorized to be levied by this
14 act shall constitute a debt due the county. Such taxes,
15 together with any interest and penalties permitted by law,
16 shall constitute and be secured by a lien upon the property of
17 any person from whom the tax or taxes are due or that is
18 required to collect the tax or taxes.

19 Section 8. All provisions of the state sales tax
20 statutes and state use tax statutes with respect to the
21 payment, assessment, and collection of the state sales tax and
22 state use tax, making of reports, keeping and preserving
23 records, interest or penalties, or both, for failure to pay
24 such taxes or late payment of such taxes, promulgating rules
25 and regulations with respect to the state sales tax and state
26 use tax, and the administration and enforcement of the state
27 sales tax statutes and state use tax statutes shall apply to

1 the taxes authorized to be levied by this act, except for the
2 rate of tax and except where otherwise inapplicable or
3 otherwise expressly provided for by this act. The county and
4 any designee or agent shall have and exercise the same powers,
5 duties, and obligations with respect to the taxes authorized
6 to be levied under this act that are provided the Department
7 of Revenue and the Revenue Commissioner by the state sales tax
8 statutes or state use tax statutes or provided the county
9 under Act 405. All provisions of the state sales tax statutes
10 and state use tax statutes or of Act 405 that are made
11 applicable by this act to the taxes authorized to be levied
12 under this act, and the administration and enforcement of this
13 act, are incorporated by reference and made a part of this act
14 as if fully set forth herein.

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

20 (1) First, for so long as any refunding school
21 warrants are outstanding and are not defeased or otherwise
22 fully paid, so much of the proceeds received during a fiscal
23 year of the county as may be necessary to satisfy the county's
24 obligations with respect to the refunding school warrants,
25 including payment of the principal of, premium, if any, and
26 interest on the refunding school warrants due during such
27 fiscal year of the county, any ongoing expenses of

1 administration of the refunding school warrants, amounts
2 required to be deposited in any debt service reserve fund for
3 the refunding school warrants, and amounts necessary to
4 provide for payment of rebate, if any, or other amounts due to
5 the United States, shall be paid over to the trustee or paying
6 agent for the refunding school warrants to be held in a fund
7 or funds solely for payment of such amounts due with respect
8 to the refunding school warrants. The portion of the taxes
9 authorized herein and required to be paid over to the trustee
10 or paying agent for the refunding school warrants shall be
11 segregated from all other receipts from the taxes authorized
12 herein, shall be devoted solely to the payment of amounts due
13 with respect to the refunding school warrants, and shall not
14 be available to pay general governmental expenses of the
15 county.

16 (2) Second, to the extent that there remain
17 additional proceeds of the taxes authorized to be levied
18 herein following the applications authorized in subdivision
19 (1), such remaining additional proceeds, up to thirty-six
20 million three hundred thousand dollars (\$36,300,000) per
21 fiscal year of the county, shall be deposited into the general
22 fund of the county for use and appropriation as the county
23 commission shall determine in its discretion.

24 (3) Third, to the extent that there remain
25 additional proceeds of the taxes authorized to be levied
26 herein following the applications authorized in subdivisions
27 (1) and (2), such remaining additional proceeds, up to

eighteen million dollars (\$18,000,000) per fiscal year of the county, shall be deposited into the 2015 Sales Tax Fund. Funds on deposit in the 2015 Sales Tax Fund shall be distributed in accordance with the provisions of Section 10.

(4) Fourth, to the extent that there remain additional proceeds of the taxes authorized to be levied herein following the applications authorized in subdivisions (1), (2), and (3), such remaining additional proceeds, up to three million six hundred thousand dollars (\$3,600,000) per fiscal year of the county, shall be deposited in the Jefferson County Community Service Fund to be expended as provided in Section 11.

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

(6) Sixth, to the extent that there remain additional proceeds of the taxes authorized to be levied herein following the applications authorized in subdivisions (1), (2), (3), (4), and (5), such remaining additional proceeds, up to five hundred thousand dollars (\$500,000) per

fiscal year of the county, shall be paid over to Birmingham Zoo, Inc.

(7) Seventh, to the extent that there remain additional proceeds of the taxes authorized to be levied herein following the applications authorized in subdivisions (1), (2), (3), (4), (5), and (6), such remaining additional proceeds, shall be deposited into the general fund of the county for use and appropriation as the county commission shall determine in its discretion.

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

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

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

(1) Each county or city board of education serving any portion of the county shall certify in writing to the county commission its average daily membership of students

1 resident in the county, its certified enrollment, calculated
2 in accordance with Article 11 of Chapter 13 of Title 16, Code
3 of Alabama 1975, or any successor thereto. County or city
4 boards of education may use their certification to the state
5 Department of Education under the state Foundation Program for
6 this purpose to the extent such certification includes only
7 students resident in the county.

8 (2) Upon receipt of the certified enrollment from
9 each board of education described in this section, the county
10 commission shall determine the total number of students
11 resident in the county and enrolled in public schools serving
12 the county.

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

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

25 Section 11. (a) There is hereby created the
26 Jefferson County Community Service Committee. The committee
27 shall consist of four members, one of whom shall be elected by

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

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

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

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

26 (2) To support the performing arts;

(3) To support nonprofit entities that, at the time a recommendation for expenditure is filed with the committee, have received funding from the United Way of Central Alabama within the last 12 months and are not excluded from receiving additional United Way funding;

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

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

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

(e) The committee shall consider and approve or deny 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.