

House Bill 1301

AN ACT TO PROVIDE AN INCENTIVE FOR PERSONS, CORPORATIONS OR OTHER ENTITIES THAT INCUR INDEBTEDNESS TO LOCATE CERTAIN FAMILY-ORIENTED ENTERPRISES IN THIS STATE; TO CREATE THE SALES TAX INCENTIVE FUND; TO AUTHORIZE INCENTIVE PAYMENTS FROM SUCH FUND TO PERSONS, CORPORATIONS OR OTHER ENTITIES THAT INCUR INDEBTEDNESS TO LOCATE CERTAIN FAMILY-ORIENTED ENTERPRISES IN THIS STATE; TO AUTHORIZE THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT TO DEVELOP A PROGRAM TO ADMINISTER THE INCENTIVE PAYMENT AUTHORIZED BY THIS ACT; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. As used in Sections 1 and 2 of this act, the following terms and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Approved participant" means a person, corporation or other entity issued a certificate by the Mississippi Department of Economic and Community Development under Section 2 of this act.

(b) "Department" means the Mississippi Department of Economic and Community Development.

(c) "Project" means any family-oriented entertainment enterprise such as campgrounds and theme parks, as designated by the Mississippi Department of Economic and Community Development, with an initial capital investment of not less than Five Million Dollars (\$5,000,000.00) if located in a county in a developed area, as designated under Section 57-73-21, or with an initial capital investment of not less than Three Million Dollars (\$3,000,000.00) if located in a county in a moderately developed area or less developed area as designated in Section 57-73-21. Whether a county is in a developed area, moderately developed area or less developed area shall be determined by the classification of the area at the time the initial investment is made. The term "project" also means any of the following if located on the project site or within one (1) mile of the project and owned by the owner of the family-oriented entertainment enterprise: (a) auditoriums, (b) dining facilities, (c) gift shops and (d) lodging facilities. However, the capital investment in any such dining facility or lodging facility shall not be included for purposes of meeting the minimum capital investment requirement for a project. The term "project" does not mean any business, corporation or entity having a gaming license issued under Section 75-76-1 et seq., Mississippi Code of 1972, but may include a family-oriented entertainment enterprise owned by such a business, corporation or entity that is in excess of development that the State Gaming Commission requires for the issuance or renewal of a gaming license.

(d) "State" means the State of Mississippi.

SECTION 2. (1) The department shall develop, implement and administer the incentive program authorized in this section and shall promulgate rules and regulations necessary for the development, implementation and administration of such program.

(2) A person, corporation or other entity desiring to participate in the incentive payment program authorized in this section must submit an application to the department. Such application must contain (a) plans for the proposed project; (b) a detailed description of the proposed project; (c) the method of financing the proposed project and the terms of such financing; and (d) any other information required by the department. The executive director of the department shall review the application and

determine whether it qualifies as a project. If the executive director determines the proposed project qualifies as a project, he shall issue a certificate to the person, corporation or other entity designating such person, corporation or other entity as an approved participant and authorizing the approved participant to participate in the incentive payment program provided for in this section.

(3) (a) There is created in the State Treasury a special fund to be known as the "Sales Tax Incentive Fund," into which shall be deposited such money as provided in Section 27-65-75(16). The monies in the fund shall be used for the purpose of making the incentive payments authorized in this section. The fund shall be administered by the department, and monies in the fund shall be expended upon appropriation by the Legislature. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the General Fund, and any interest earned on or investment earnings on the amounts in the fund shall be deposited to the credit of the fund. The department may use not more than one percent (1%) of interest earned or investment earnings, or both, on amounts in the fund for administration and management of the incentive program.

(b) Incentive payments may be made by the department to an approved participant that incurs indebtedness or incurs capital costs, or both, to locate a project in the state. The payments to an approved participant shall be for the amount of sales tax revenue collected on the gross proceeds of sales of a project, after making the diversions required in Section 27-65-75, except the diversion provided for in Section 27-65-75(1). The department shall ensure that payments made pursuant to this section are utilized to pay the debt service incurred by the approved participant for the project as approved by the department or any project capital cost incurred by the approved participant for the project as approved by the department, or both. The department shall make payments to an approved participant on a semiannual basis with payments being made in the months of January and July. The aggregate amount that an approved participant may receive shall not exceed thirty-five percent (35%) of the original indebtedness or project capital cost, or both, incurred by such participant for the project. The department shall make the calculations necessary to make the payments provided for in this section. The department shall cease making incentive payments to an approved participant on the occurrence of the earlier of (i) the date thirty-five percent (35%) of the original indebtedness, or any refinancing of the original indebtedness, incurred for the project or original project capital cost incurred for the project, or both, is satisfied, (ii) ten (10) years from the date the original indebtedness for the project was incurred, without regard to any refinancing or additional financing for any addition to or expansion of the project, or (iii) the project ceases operations.

(4) At such time as payments are no longer required to be made to an approved participant, the department shall notify the State Tax Commission and the sales tax revenue collected from such project shall no longer be deposited into the Sales Tax Incentive Fund, and any amounts remaining in the fund that were collected from such participant shall be transferred to the State General Fund; provided, however, if the project is located in a municipality, a portion of such amount shall be paid to such municipality in the same manner and amounts as provided for in Section 27-65-75(1).

SECTION 3. Section 27-65-75, Mississippi Code of 1972, as amended by Senate Bill No. 2512, 2000 Regular Session, and House Bill No. 1486, 2000 Regular Session, is amended as follows:

* * *

27-65-75. On or before the fifteenth day of each month, the revenue collected under the provisions of this chapter during the preceding month shall be paid and distributed as follows:

(1) On or before August 15, 1992, and each succeeding month thereafter through July 15, 1993, eighteen percent (18%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities within a municipal corporation shall be allocated for distribution to such municipality and paid to such municipal corporation. On or before August 15, 1993, and each succeeding month thereafter, eighteen and one-half percent (18-1/2%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities within a municipal corporation shall be allocated for distribution to such municipality and paid to such municipal corporation.

A municipal corporation, for the purpose of distributing the tax under this subsection, shall mean and include all incorporated cities, towns and villages.

Monies allocated for distribution and credited to a municipal corporation under this subsection may be pledged as security for any loan received by the municipal corporation for the purpose of capital improvements as authorized under Section 57-1-303, or loans as authorized under Section 57-44-7, or water systems improvements as authorized under Section 41-3-16.

In any county having a county seat which is not an incorporated municipality, the distribution provided hereunder shall be made as though the county seat was an incorporated municipality; however, the distribution to such municipality shall be paid to the county treasury wherein the municipality is located and such funds shall be used for road, bridge and street construction or maintenance therein.

(2) On or before September 15, 1987, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month One Million One Hundred Twenty-five Thousand Dollars (\$1,125,000.00) shall be allocated for distribution to municipal corporations as defined under subsection (1) of this section in the proportion that the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each such municipality during the preceding fiscal year bears to the total gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in municipalities statewide during the preceding fiscal year. The State Tax Commission shall require all distributors of gasoline and diesel fuel to report to the commission monthly the total number of gallons of gasoline and diesel fuel sold by them to consumers and retailers in each municipality during the preceding month. The State Tax Commission shall have the authority to promulgate such rules and regulations as is necessary to determine the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each municipality. In determining the percentage allocation of funds under this subsection for the fiscal year beginning July 1, 1987, and ending June 30, 1988, the State Tax Commission may consider gallons of gasoline and diesel fuel sold for a period of less than one (1) fiscal year. For the purposes of this subsection, the term "fiscal year" means the fiscal year beginning July 1 of a year.

(3) On or before September 15, 1987, and on or before the fifteenth day of each succeeding month, until the date specified in Section 65-39-35, the proceeds derived from contractors' taxes levied under Section 27-65-21 on contracts for the construction or reconstruction of highways designated under the Four-Lane Highway Program created under Section 65-3-97 shall, except as otherwise provided in Section 31-17-127, be deposited into the State Treasury to the credit of the State Highway Fund to be used to fund such Four-Lane Highway Program. The Mississippi Department of Transportation shall provide to the State Tax Commission such information as is necessary to determine the amount of proceeds to be distributed under this subsection.

(4) On or before August 15, 1994, and on or before the fifteenth day of each succeeding month through July 15, 1999, from the proceeds of gasoline, diesel fuel or kerosene taxes as provided in Section 27-5-101(a)(ii)1, Four Million Dollars (\$4,000,000.00) shall be deposited in the State Treasury to the credit of a special fund designated as the "State Aid Road Fund," created by Section 65-9-17. On or before August 15, 1999, and on or before the fifteenth day of each succeeding month, from the total amount of the proceeds of gasoline, diesel fuel or kerosene taxes apportioned by Section 27-5-101(a)(ii), Four Million Dollars (\$4,000,000.00) or an amount equal to twenty-three and one-fourth percent (23.25%) of such funds, whichever is the greater amount, shall be deposited in the State Treasury to the credit of the "State Aid Road Fund," created by Section 65-9-17. Such funds shall be pledged to pay the principal of and interest on state aid road bonds heretofore issued under Sections 19-9-51 through 19-9-77, in lieu of and in substitution for the funds heretofore allocated to counties under this section. Such funds may not be pledged for the payment of any state aid road bonds issued after April 1, 1981; however, this prohibition against the pledging of any such funds for the payment of bonds shall not apply to any bonds for which intent to issue such bonds has been published, for the first time, as provided by law prior to March 29, 1981. From the amount of taxes paid into the special fund pursuant to this subsection and subsection (9) of this section, there shall be first deducted and paid the amount necessary to pay the expenses of the Office of State Aid Road Construction, as authorized by the Legislature for all other general and special fund agencies. The remainder of the fund shall be allocated monthly to the several counties in accordance with the following formula:

(a) One-third (1/3) shall be allocated to all counties in equal shares;

(b) One-third (1/3) shall be allocated to counties based on the proportion that the total number of rural road miles in a county bears to the total number of rural road miles in all counties of the state; and

(c) One-third (1/3) shall be allocated to counties based on the proportion that the rural population of the county bears to the total rural population in all counties of the state, according to the latest federal decennial census.

For the purposes of this subsection, the term "gasoline, diesel fuel or kerosene taxes" means such taxes as defined in paragraph (f) of Section 27-5-101.

The amount of funds allocated to any county under this subsection for any fiscal year after fiscal year 1994 shall not be less than the amount allocated to such county for fiscal year 1994. Monies allocated to a county from the State Aid Road Fund for fiscal year 1995 or any fiscal year thereafter that exceed the amount of funds allocated to that county from the State Aid Road Fund for fiscal year 1994, first must be expended by the county for replacement or rehabilitation of bridges on the state aid road system that have a sufficiency rating of less than twenty-five (25), according to National Bridge Inspection standards before such monies may be approved for expenditure by the State Aid Road Engineer on other projects that qualify for the use of state aid road funds.

Any reference in the general laws of this state or the Mississippi Code of 1972 to Section 27-5-105 shall mean and be construed to refer and apply to subsection (4) of Section 27-65-75.

(5) One Million Six Hundred Sixty-six Thousand Six Hundred Sixty-six Dollars (\$1,666,666.00) each month shall be paid into the special fund known as the "State Public School Building Fund" created and existing under the provisions of Sections 37-47-1 through 37-47-67. Such payments into said fund are to be made on the last day of each succeeding month hereafter.

(6) An amount each month beginning August 15, 1983, through November 15, 1986, as specified in Section 6 of Chapter 542, Laws of 1983, shall be paid into the special fund known as the Correctional Facilities Construction Fund created in Section 6 of Chapter 542, Laws of 1983.

(7) On or before August 15, 1992, and each succeeding month thereafter through July 15, 2000, two and two hundred sixty-six one-thousandths percent (2.266%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2) shall be deposited by the commission into the School Ad Valorem Tax Reduction Fund created pursuant to Section 37-61-35. On or before August 15, 2000, and each succeeding month thereafter, two and two hundred sixty-six one-thousandths percent (2.266%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35 until such time that the total amount deposited into the fund during a fiscal year equals Forty-two Million Dollars (\$42,000,000.00). Thereafter, the amounts diverted under this subsection (7) during the fiscal year in excess of Forty-two Million Dollars (\$42,000,000.00) shall be deposited into the Education Enhancement Fund created under Section 37-61-33 for appropriation by the Legislature as other education needs and shall not be subject to the percentage appropriation requirements set forth in Section 37-61-33.

(8) On or before August 15, 1992, and each succeeding month thereafter, nine and seventy-three one-thousandths percent (9.073%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2) shall be deposited into the Education Enhancement Fund created pursuant to Section 37-61-33.

(9) On or before August 15, 1994, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month, Two Hundred Fifty Thousand Dollars (\$250,000.00) shall be paid into the State Aid Road Fund.

(10) On or before August 15, 1994, and each succeeding month thereafter through August 15, 1995, from the revenue collected under this chapter during the preceding month, Two Million Dollars (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(11) Notwithstanding any other provision of this section to the contrary, on or before February 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(2) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited, without diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(12) Notwithstanding any other provision of this section to the contrary, on or before August 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(1) on retail sales of private carriers of passengers and light carriers of property, as defined in Section 27-51-101 and the corresponding levy in Section 27-65-23 on the rental or lease of these vehicles, shall be deposited, after diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(13) On or before July 15, 1994, and on or before the fifteenth day of each succeeding month thereafter, that portion of the avails of the tax imposed in Section 27-65-22, which is derived from activities held on the Mississippi state fairgrounds complex, shall be paid into a special fund

hereby created in the State Treasury and shall be expended pursuant to legislative appropriations solely to defray the costs of repairs and renovation at such Trade Mart and Coliseum.

(14) On or before August 15, 1998, and each succeeding month thereafter through July 15, 2005, that portion of the avails of the tax imposed in Section 27-65-23 which is derived from sales by cotton compresses or cotton warehouses and which would otherwise be paid into the General Fund, shall be deposited in an amount not to exceed Two Million Dollars (\$2,000,000.00) into the special fund created pursuant to Section 69-37-39.

(15) Notwithstanding any other provision of this section to the contrary, on or before September 15, 2000, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-19(f), shall be deposited, without diversion, into the Telecommunications Ad Valorem Tax Reduction Fund established in Section 4 of Senate Bill No. 2512, 2000 Regular Session.

(16) On or before August 15, 2000, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of this chapter on the gross proceeds of sales of a project as defined in Section 1 of House Bill

No. 1301, 2000 Regular Session, shall be deposited, after all diversions except the diversion provided for in subsection (1) of this section, into the Sales Tax Incentive Fund created in Section 2 of House Bill No. 1301, 2000 Regular Session.

(17) The remainder of the amounts collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the General Fund.

(18) It shall be the duty of the municipal officials of any municipality which expands its limits, or of any community which incorporates as a municipality, to notify the commissioner of such action thirty (30) days before the effective date. Failure to so notify the commissioner shall cause such municipality to forfeit the revenue which it would have been entitled to receive during this period of time when the commissioner had no knowledge of the action. If any funds have been erroneously disbursed to any municipality or any overpayment of tax is recovered by the taxpayer, the commissioner may make correction and adjust the error or overpayment with such municipality by withholding the necessary funds from any subsequent payment to be made to the municipality.

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SECTION 4. This act shall take effect and be in force from and after July 2, 2000.

Passed State Senate
May 3, 2000

Passed House of Representatives
May 3, 2000

APPROVED BY GOVERNOR

GOVERNOR