

1 HB745  
2 141071-4  
3 By Representative Williams (J)  
4 RFD: County and Municipal Government  
5 First Read: 24-APR-12

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8 SYNOPSIS: This bill, in addition to such authorization  
9 as may be currently provided by law, would  
10 authorize the governing body of each county  
11 currently seeking or that may seek relief under  
12 Chapter 9 of the United States Bankruptcy Code, and  
13 in respect of whose petition an Order for Relief is  
14 entered pursuant thereto, to levy and collect  
15 various taxes, including sales, use, leasing,  
16 privilege license, and excise taxes, subject to  
17 certain limitations and restrictions.

18 This bill would require the governing body  
19 of such county to hold a public hearing regarding  
20 the levy of any additional tax allowed by this act,  
21 prior to the levy and collection of the additional  
22 tax.

23 This bill would provide that any tax  
24 authorized by this act may not be levied and  
25 collected if the estimated revenues from the tax  
26 for the first full fiscal year exceed, when added  
27 to all other additional taxes, 20 percent of the

1 largest annual amount of the county expenditures  
2 reflected in the budgets of the county adopted in  
3 September of each year for the five fiscal years of  
4 the county immediately preceding the filing of its  
5 petition for relief under the United States  
6 Bankruptcy Code.

7 This bill would provide for the  
8 establishment, membership, appointment,  
9 qualifications, and responsibilities of a financial  
10 advisory committee for any county levying any  
11 additional tax as authorized by this act.

12 This bill would provide for the termination  
13 of the authority to provide for the initiation of  
14 the levy and collection of the additional taxes  
15 authorized by this act.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
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21 To authorize, in addition to such authorization  
22 therefor as may be currently provided by law, the governing  
23 body of any county in the State that is currently seeking or  
24 that may hereafter seek relief under Chapter 9 of the United  
25 States Bankruptcy Code, and in respect of whose petition  
26 therefor an order for relief is entered under said Code, to  
27 provide for and to levy and collect various described taxes,

1 including sales, use, leasing, privilege license and excise  
2 taxes, subject to certain limitations and restrictions and for  
3 such period or periods of time as herein described; to  
4 authorize the adoption by said governing bodies of such  
5 ordinances, resolutions and regulations as may be necessary or  
6 convenient to provide for the levy and collection of any such  
7 additional taxes; to require that a public hearing be held by  
8 said governing bodies prior to the levy and collection of the  
9 same, and to make provision for public notice thereof; to  
10 provide that any additional tax authorized may not be levied  
11 and collected unless the estimated revenues from the same for  
12 the first full fiscal year shall not exceed, when added to all  
13 such other additional taxes, twenty percent of the largest  
14 annual amount of the county's expenditure budgets adopted in  
15 September of each year for the five fiscal years of the county  
16 immediately preceding the filing of its petition for relief  
17 under the United States Bankruptcy Code; to provide other  
18 limitations on the rate or rates of such taxes; to provide for  
19 the establishment, membership, appointment, qualifications and  
20 responsibilities of a financial advisory committee for any  
21 county levying any additional tax as herein authorized and to  
22 provide for the dissolution of such committee upon the earlier  
23 of dismissal of the county from bankruptcy or confirmation of  
24 a plan of adjustment with respect to such county; to restrict  
25 the use of the proceeds of any additional taxes levied  
26 pursuant to the authority herein contained; to provide for the  
27 termination of the authority to provide for the initiation of

1 the levy and collection of the additional taxes authorized  
2 hereby; to provide that in the event any such additional taxes  
3 are levied and collected and the authority to provide for  
4 initiation of the levy and collection thereof shall terminate  
5 upon certain events, including vacation of the order for  
6 relief in favor of the county or confirmation of the county's  
7 plan for the adjustment of its debts under the United States  
8 Bankruptcy Code, such county shall be authorized to continue  
9 the levy and collection of such taxes and shall not be  
10 obligated to refund or repay any amounts so collected prior to  
11 such termination to any person or persons whatever; to provide  
12 that the provisions of the act are severable; and to provide  
13 for an effective date.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

17 Section 2. The Legislature finds that economic  
18 conditions may place counties in Alabama under severe  
19 financial pressures, which could eventually lead to a decision  
20 by a county to seek, as authorized under state law, protection  
21 under Chapter 9 of the United States Bankruptcy Code, and that  
22 the adjustment of debts and the emergence from bankruptcy of  
23 any county in the State that has sought bankruptcy protection  
24 is a matter of critical importance to the State as a whole and  
25 to its citizens. The Legislature further finds that counties  
26 seeking confirmation of a plan of debt adjustment in a Chapter  
27 9 bankruptcy case may need to have immediately available to

1       them additional sources of tax revenue to enable them to  
2       develop plans of debt adjustment that would allow them to  
3       emerge from bankruptcy in a timely manner, thereby allowing  
4       for the restoration of essential county services that may have  
5       been eliminated or reduced as a result of the events leading  
6       up to the bankruptcy. The Legislature therefore finds that  
7       there is a need to grant limited additional taxing power to  
8       those severely financially distressed counties that have  
9       sought relief under Chapter 9 of the United States Bankruptcy  
10      Code, subject to the limitations set forth herein.

11               Section 3. As used herein, the term "business  
12      activity" shall mean the carrying on or practice of any  
13      business, vocation, occupation, work, calling, or profession;  
14      the terms "gasoline" and "motor fuel" shall have the  
15      respective meanings ascribed thereto by the state gasoline and  
16      diesel fuel tax statutes, including, but not limited to,  
17      Sections 40-17-1 and 40-17-30, Code of Alabama 1975, as  
18      amended, the term "sales and use taxes" shall mean taxes  
19      paralleling the taxes imposed by the state sales and use tax  
20      statutes, including, but not limited to, Sections 40-23-1,  
21      40-23-2, 40-23-3, 40-23-4, 40-23-60, 40-23-61, 40-23-62 and  
22      40-23-63, Code of Alabama 1975, as amended, and the term  
23      "Bankruptcy Code" shall mean the United States Bankruptcy  
24      Code, Title 11 of the United States Code, (11 U.S.C. §§ 101 et  
25      seq.).

26               Section 4. (a) The governing body of any county in  
27      the State (i) that has filed a petition for relief under

1 Chapter 9 of the Bankruptcy Code pursuant to Section 301 of  
2 the Bankruptcy Code, whether prior to or after the effective  
3 date of this act, and (ii) in respect of whose petition as  
4 aforesaid there has been entered an Order for Relief under  
5 Section 921(d) of the Bankruptcy Code, shall be authorized to  
6 provide for the levy and collection, for such period or  
7 periods of time as such governing body shall specify, of taxes  
8 in addition to those otherwise authorized by law, in the form  
9 of (A) sales and use taxes on the sale, storage, use or  
10 consumption in the county of tangible personal property at a  
11 rate not exceeding one percent, (B) taxes on the lease or  
12 rental of personal property in the county at a rate not  
13 exceeding three percent, provided that the rate of any such  
14 tax on the gross proceeds derived by a lessor from the lease  
15 or rental of an automotive vehicle or truck trailer,  
16 semitrailer, or house trailer shall not exceed 1.125 percent,  
17 (C) a privilege license tax on the gross receipts derived by  
18 natural persons from business activity in the county at a rate  
19 not exceeding one-half of one percent, the provisions of Title  
20 40, Chapter 12, Article 2, Code of Alabama 1975, as amended,  
21 to the contrary notwithstanding, or (D) excise taxes on the  
22 sale of gasoline or motor fuel in the county at a rate not  
23 exceeding ten cents (\$0.10) per gallon; provided however, that  
24 the levy and collection of the taxes hereinabove described  
25 shall be subject to the limitations and conditions set forth  
26 herein and otherwise limited in such manner as shall be  
27 provided by state law.

1           (b) The governing body of each county authorized to  
2 provide for the levy of additional taxes, as provided for in  
3 this act, is authorized to promulgate such ordinances,  
4 resolutions or regulations not in conflict with state law as  
5 shall be necessary or convenient to provide for the levy and  
6 collection of any tax authorized herein.

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



1 request for notification of the schedule of meetings of such  
2 governing body.

3 Section 5. Prior to making provision for the levy  
4 and collection of any tax pursuant to the authority granted  
5 herein, the governing body of the county shall make a good  
6 faith estimate of the gross revenues anticipated to be  
7 generated from the levy and collection thereof during the  
8 first full fiscal year of the county immediately following the  
9 imposition of such levy, such estimate to be set forth in the  
10 minutes of the meeting or meetings of the governing body at  
11 which such tax or taxes shall be authorized to be levied. No  
12 provision for the levy and collection of a tax pursuant to the  
13 authority of this act shall be made unless the aforesaid  
14 estimate of revenues therefrom, when added to the estimates of  
15 first full fiscal year revenues made in respect of any other  
16 taxes provision for the levy and collection of which are made  
17 pursuant to the authority granted herein (provided that such  
18 other taxes are being levied and collected at the time of such  
19 calculation), shall not exceed twenty percent of the largest  
20 annual amount of total county expenditures set forth in the  
21 county's general fund budgets adopted in September of each  
22 year by the governing body of the county, reflective of the  
23 requirement so to do of subsection (a) of Section 11-8-3, Code  
24 of Alabama 1975, as amended, for the five fiscal years of the  
25 county immediately preceding the fiscal year in which the  
26 county shall have filed its petition for relief pursuant to  
27 Section 301 of the Bankruptcy Code. Notwithstanding anything

1 in this act to the contrary, such governing body may not  
2 pursuant to this act (1) provide for an increase in the rate  
3 of any tax levied pursuant to this act after the initial  
4 imposition of the levy of such tax, provided that the  
5 governing body may at any time provide for the reduction of  
6 such rate, (2) levy and collect the privilege license tax  
7 hereinabove described on those gross receipts from business  
8 activity that are otherwise subject to the levy by the county  
9 of an entity business license tax, (3) levy and collect any  
10 additional business license tax if the levy of such tax by the  
11 county is otherwise authorized by a local act of the  
12 Legislature then applicable to the county, (4) levy and  
13 collect a privilege license tax as hereinabove described on  
14 persons required to pay a license or privilege tax to either  
15 the State of Alabama or the county pursuant to the provisions  
16 of any of Sections 40-16-4, 40-21-50, 40-21-52, 40-21-53,  
17 40-21-56 or 40-21-60 of the Code of Alabama 1975, as amended,  
18 or (5) levy and collect sales and use taxes authorized to be  
19 levied and collected pursuant to this act during such time as  
20 the county shall be levying and collecting a sales and use tax  
21 under the provisions of Section 40-12-4, Code of Alabama 1975,  
22 as amended.

23 Section 6. Within sixty days following the levy of  
24 any additional tax authorized herein, there shall be  
25 established for the county authorizing such tax, in the manner  
26 set forth below, a financial advisory committee to review the  
27 financial operations of such county and to make

1 recommendations for improvements in its financial affairs. The  
2 committee shall consist of five members, four of whom shall be  
3 qualified electors of its county. Members of the committee and  
4 their successors shall be appointed as follows: two members  
5 selected by the Governor, one member selected by such county's  
6 Senate delegation in the Legislature or the sole state senator  
7 representing such county should the county not include more  
8 than one state Senate district, one member selected by such  
9 county's House delegation in the Legislature or the sole state  
10 representative representing such county should the county not  
11 include more than one state House district, and one member  
12 selected by the governing body of the county. Each committee  
13 member shall be an individual holding at least a four-year  
14 undergraduate degree or a master's degree in finance, business  
15 management, accounting, or public administration and having  
16 not less than ten years of experience in business or higher  
17 education; or, in the alternative, having a minimum of ten  
18 years aggregate experience as a chief executive officer, chief  
19 operating officer or chief financial officer at a  
20 publicly-traded company. The members of the financial advisory  
21 committee for a county shall serve without compensation or  
22 reimbursement of expenses. The committee shall stand dissolved  
23 as of the earlier of (i) the date of entry of a final,  
24 unreviewable determination by a court of competent  
25 jurisdiction vacating the Order for Relief in favor of the  
26 county under Section 921(d) of the Bankruptcy Code, (ii) the  
27 date of entry of a final, unreviewable order pursuant to

1 Section 930 of the Bankruptcy Code dismissing the county's  
2 Chapter 9 case or (iii) the date as of which the county is  
3 discharged pursuant to Section 944(b) of the Bankruptcy Code,  
4 unless further extended by resolution of the governing body of  
5 the county.

6 Section 7. No County shall be permitted to utilize,  
7 appropriate or pay from the proceeds or revenues generated  
8 from the levy and collection of any of the additional taxes  
9 authorized herein to be levied and collected to pay in whole  
10 or in part (a) any non-recourse debt of the county, or (b) any  
11 other debt obligation of the county that is payable in  
12 accordance with the terms thereof solely from a specified  
13 source or sources and for payment of which the full faith and  
14 credit of the county has not been pledged.

15 Section 8. The authority of the governing body of  
16 any county authorized by this act to provide for the  
17 initiation of the levy and collection of any of the additional  
18 taxes described herein shall terminate as of the earlier of  
19 (i) the date of entry of a final, unreviewable determination  
20 by a court of competent jurisdiction vacating the Order for  
21 Relief in favor of the county under Section 921(d) of the  
22 Bankruptcy Code, (ii) the date of entry of a final,  
23 unreviewable order pursuant to Section 930 of the Bankruptcy  
24 Code dismissing the county's Chapter 9 case, or (iii) the date  
25 of entry of an order pursuant to Section 943 of the Bankruptcy  
26 Code confirming the county's plan for the adjustment of its  
27 debts, which plan may reference any taxes levied or to be

1 levied pursuant to the authority therefor herein contained,  
2 provided however, any aforesaid termination of the authority  
3 to provide for the initiation of the levy and collection of  
4 said taxes pursuant to the authority herein contained shall  
5 not (a) limit the authority of the governing body of the  
6 county before, on, or after the date of said termination to  
7 continue to levy or collect any such taxes as shall have  
8 theretofore been levied or the levy of which shall have been  
9 provided for by the county pursuant to the authorization  
10 contained in this act prior to the termination of the  
11 authority to levy and collect additional taxes pursuant to  
12 this subsection, at rates not exceeding the rate or rates  
13 thereof provided for upon the initial levy thereof, or (b)  
14 abrogate the authority of said governing body to levy or  
15 collect any taxes which shall have theretofore been provided  
16 for in accordance with the provisions of this act, even if the  
17 same are to be collected after the date of said termination.

18 Section 9. Notwithstanding any termination of  
19 authority either to provide for the initiation of the levy or  
20 for the collection of additional taxes provided for in this  
21 act, a county shall be entitled to retain and use for its  
22 benefit all proceeds collected, whether before, on, or after  
23 the date of said termination, of any tax levied by such county  
24 pursuant to this act prior to such termination and the county  
25 shall not be obligated to refund or repay all or any portion  
26 thereof to any taxpayer, government, person, or persons  
27 whatsoever.

1                   Section 10. The provisions of this act are  
2                   severable. If any part of this act is declared invalid or  
3                   unconstitutional, such declaration shall not affect the part  
4                   which remains.

5                   Section 11. This act shall become effective  
6                   immediately upon its passage and approval by the Governor, or  
7                   upon its otherwise becoming a law.