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Honorable Julia Jordan Weller
Clerk of the Court

No. 1190470

IN THE SUPREME COURT OF ALABAMA

Ray Long, Jeff Clark, Randy Vest, Don Stisher, Greg Abercrombie,

Defendants/Appellants,

v.

Dr. Danna Jones, Venita Jones, Dana Gladden, Hartselle City Education Association, Rodney Randell, Decatur Education Association, Rona Blevins, Morgan County Education Association,

Plaintiffs/Appellees,

v.

Morgan County Board of Education, Decatur City Board of Education,

Plaintiffs/Appellees in Intervention.

BRIEF OF APPELLANTS

APPEAL FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY
CIVIL ACTION NO. CV 2019-477

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June 3, 2020

ORAL ARGUMENT REQUESTED

STATEMENT REGARDING ORAL ARGUMENT

This case presents a substantial question of State constitutional law and a novel legal question, the resolution of which will have significant statewide impact. Case law interpreting Section 105 of the Alabama Constitution has been subject to conflicting interpretations, and the Court's ruling on this appeal will likely set the course for Section 105 jurisprudence for years to come, in addition to shaping, one way or another, funding for local governments - county commissions, municipal governments, and boards of education - across the State. Because of the importance of these issues, Appellant Morgan County Commission believes the Court's decisional process could benefit from oral argument.

TABLE OF CONTENTS

STATEMENT REGARDING ORAL ARGUMENT ii

STATEMENT OF JURISDICTION vi

(i) Basis for the Jurisdiction of the Court. vi

(ii) Filing Dates Establishing the Timeliness of the Appeal. vi

TABLE OF AUTHORITIES i

STATEMENT OF THE CASE vi

(i) The Nature of the Case. vi

(ii) The Course of Proceedings and Disposition in the Court Below. viii

STATEMENT OF THE ISSUE xi

STATEMENT OF THE FACTS xii

STANDARD OF REVIEW ii

SUMMARY OF THE ARGUMENT 1

ARGUMENT 4

A. The Court Interprets Section 105 to Render Unconstitutional Any Local Law that Creates a Variance from General Law. 5

1. The drafters of the 1875 and 1901 Constitutions knew from experience that for the sake of good governance, local laws should not be allowed to vary the requirements of general laws. 6

2. The Court initially failed to enforce Section 105 according to its plain language. 10

3. In the *Peddycoart* decision the Court applied Section 105 according to its

"unclouded language" and "express and obvious meaning." 14

4. Post-*Peddycoart* cases recognize that Section 105 prohibits more than local laws that directly conflict with general laws. 20

5. Section 105 prohibits a local law that creates a variance from the provisions of a general law. 23

B. Because the Local Law Creates a Variance from the SSUT General Law and the Allocation General Law, it is Unconstitutional. 27

C. The Appellees Arguments Below Lack Merit 30

1. Whether the County Commission has "sufficient" funds is irrelevant. 30

2. *Clay County Commission*, on which Appellees rely, is not a Section 105 case and could be relevant only if the Commission challenged the Legislature's ultimate control over County funds. 33

3. Local laws authorized by general laws do not violate Section 105, but Act 2019-272 is not such a local law. 34

4. The SSUT, as amended, clearly expresses the Legislature's intent as to the uses of SSUT funds by county commissions. 36

5. Section 105 specifically forbids the Legislature from doing indirectly what it cannot do directly. 38

D. Sustaining the Local Law will Open the Floodgates. 39

CONCLUSION 40

CERTIFICATE OF SERVICE 42

APPENDIX A, The Simplified Seller Use Tax Remittance Act 44

APPENDIX B, The Allocation General Law 58

APPENDIX C, Act 2019-272 64

APPENDIX D, The 2018 Amendment to §40-23-197 67

STATEMENT OF JURISDICTION

(i) Basis for the Jurisdiction of the Court.

The Circuit Court's final judgment granted equitable relief to the Plaintiffs/Appellees. Therefore the Court has jurisdiction under *Ala. Code § 12-2-7(1)*.

(ii) Filing Dates Establishing the Timeliness of the Appeal.

This appeal is timely. The Judgment being appealed was entered March 3, 2020. *C.445*. Defendant/Appellant Morgan County Commission filed its Notice of Appeal five days later, on March 10, 2020, *C.464*, and filed an amended Notice seven days later on March 12, 2020, *C.468*. The filing dates are within the 42 days allowed by Appellate Rule 4(1).

TABLE OF AUTHORITIES

Cases

ABC Bonding Co. v. Montgomery County Surety Comm'n, 372 So. 2d 4 (Ala. 1979) 21, 26

Alfa Mut. Ins. Co. v. Small, 829 So. 2d 743, 745 (Ala. 2002) ii

Amoco Production Co. v. White, 453 So. 2d 358 (Ala. 1984) 18

Arthur v. Bolen, 41 So. 3d 745,749 (Ala. 2010) 37

Baldwin County v. Jenkins, 494 So. 2d 584, 586 (Ala. 1986) 17, 36

Burnett v. Chilton County Health Care Auth., 278 So. 3d 1220, 1237 (Ala. 2018) 4

City of Birmingham v. City of Vestavia Hills, 654 So. 2d 532 (Ala. 1995) 27

City of Homewood v. Bharat, LLC, 931 So. 2d 697 (Ala. 2005) 23, 26, 29

Clarke v. Jack, 60 Ala. 271 (1877) 7, 40

Clay County Commission v. Clay County Animal Shelter, 283 So.3d 1218, 1234 (Ala. 2019) 33, 34

County Commission of Jefferson County v. Fraternal Order of Police, 558 So. 2d 893 (Ala. 1989) 23

Crandall v. City of Birmingham, 442 So. 2d 77, 80 (Ala. 1983) 24, 26

Drummond Co. v. Boswell, 346 So. 2d 955 (Ala. 1977) ..passim

Ellis v. Pope, 709 So. 2d 1161 (Ala. 1997) 26

Ex parte State ex rel. Patterson, 108 So. 2d 448 (Ala. 1958) 39

Hunt v. Decatur City Board of Education, 628 So. 2d 393, 395 n.2 (Ala. 1993 39

Jefferson County v. Taxpayers & Citizens of Jefferson County, 232 So. 3d 845 (Ala. 2017) 26

Johnson v. City of Fort Payne, 485 So. 2d 1152, 1154 (Ala. 1986) 30

Miller v. Marshall County Board of Education, 652 So. 2d 759 (Ala. 1995) 26

Norwood v. Goldsmith, 53 So. 84, 88 (Ala. 1910) 4

Opinion of the Justices No. 138, 81 So. 2d 277 (Ala. 1955) 12

Opinion of the Justices No. 159, 96 So. 2d 634 (Ala. 1957) 12

Opinion of the Justices No. 249, 357 So. 2d 648 (Ala. 1978) 27

Opinion of the Justices No. 311, 469 So. 2d 105 (Ala. 1985) 22

Opinion of the Justices No. 342, 630 So. 2d 444, 446 (Ala. 1994) ....vi, 24

Parker v. Amerson, 519 So. 2d 442, 446 (Ala. 1987) 4

Peddycoart v. City of Birmingham, 354 So. 2d 808 (Ala. 1978) ....passim

Polytinsky v. Wilhite, 99 So. 843 (Ala. 1924) 11, 13, 18

Standard Oil Co. v. Limestone County, 124 So. 523 (Ala. 1929) ....passim

State Board of Health v. Greater Birmingham Ass'n of Homebuilders, 384 So. 2d 1058 (Ala. 1980) 26

State ex rel. Brandon v. Prince, 74 So. 939 (Ala. 1917) .10, 12, 15, 16

Stokes v. Noonan, 534 So. 2d 237, 238 (Ala. 1988) 19

Town of Vance v. City of Tuscaloosa, 661 So. 2d 739 (Ala. 1995) 27

Van Sandt v. Bell, 71 So. 2d 529 (Ala. 1954) 12, 21

Yancey & Yancey Const. Co. Inc. v. Dekalb County Commission, 361 So. 2d 4 (Ala. 1978) 18

Statutes

Ala. Code § 11-3-1(b) 30

Ala. Code § 11-8-1 58

Ala. Code § 11-8-10 61

Ala. Code § 11-8-11 62

Ala. Code § 11-8-12 62

Ala. Code § 11-8-13 62

Ala. Code § 11-8-14 62
Ala. Code § 11-8-15 63
Ala. Code § 11-8-16 63
Ala. Code § 11-8-17 63
Ala. Code § 11-8-2 ....vii, 58
Ala. Code § 11-8-3 ....passim
Ala. Code § 11-8-3(c) vii
Ala. Code § 11-8-4 60
Ala. Code § 11-8-5 60
Ala. Code § 11-8-6 61
Ala. Code § 11-8-7 61
Ala. Code § 11-8-8 61
Ala. Code § 11-8-9 61
Ala. Code § 12-2-7(1) vi
Ala. Code § 28-3-190(c)(1) 30
Ala. Code § 28-3-190(c)(3) 35
Ala. Code § 28-7-16(c) 37
Ala. Code § 34-11-1 37
Ala. Code § 40-13-32(2) 37
Ala. Code § 40-16-6 37
Ala. Code § 40-22-1(g) 37
Ala. Code § 40-23-191 44
Ala. Code § 40-23-191(2) xii
Ala. Code § 40-23-192 45
Ala. Code § 40-23-192(a). xii
Ala. Code § 40-23-197 ....passim
Ala. Code § 40-23-197(a)& b) ....vi, xii
Ala. Code § 40-23-197(b) 27
Ala. Code § 40-23-197.1 51
Ala. Code § 40-23-198 51
Ala. Code § 40-23-199 52

Ala. Code § 40-23-199.1 53
Ala. Code § 40-23-199.2 53
Ala. Code § 40-23-199.3 57
Ala. Code § 40-25-2(f) 34
Ala. Code § 40-26-20 35
Ala. Code § 45-17-21 35
Ala. Code § 45-2-60 35
Ala. Code § 45-28-243.02 35
Ala. Code § 45-32-243 35
Ala. Code § 45-43-242.20 35
Ala. Code § 45-45-243 35
Ala. Code § 45-7-20 35
Ala. Code §§ 40-23-191 to -199.3 xii
Ala. Code §§ 40-23-191 to -199.7 vi
Ala. Code Title 11, Chapter 8, ...vi, 37

Other Authorities

Act 2007-488 ....60, 61, 62
Act 2015-448 ....passim
Act 2016-110 ....45, 52
Act 2017-82 ....45, 48, 49, 51
Act 2018-539 ....passim
Act 2018-539, § 1 ....xii, xiv
Act 2019-272 ....passim
Act 2019-382 ....48, 53
Acts 1935, No. 379 ....passim
Acts 1943, No. 505 62
Acts 1969, No. 838 62
Ala. Const. Art. IV, § 23 of the Alabama Constitution of 1875...6
Ala. Const. Section 105 ....passim

Amendment No. 229 to the Ala. Constitution 35

Howard P. Walthall, Sr., A Doubtful Mind: Understanding Alabama's State Constitution, 35 Cumb. L. Rev. 7, 74 (2004-2005)...7

Journal of the Constitutional Convention of the State of Alabama, September 6, 1875, p. 170.......................7

Official Proceedings of the Constitutional Convention of the State of Alabama, supra, at 1781....................30

Tit. 51, § 431 13

STATEMENT OF THE CASE

(i) The Nature of the Case.

This case is about whether a new local law "creates a variance from"[1] the provisions of two general laws and thus violates Section 105 of the Alabama Constitution.

One of the general laws is part of the Simplified Seller Use Remittance Tax ("SSUT"), *Ala. Code §§ 40-23-191* to *-199.7*, (Appendix A) a law that facilitates the State's collection of a use tax on internet sales of goods and services. This general law, *§ 40-23-197* (hereinafter, "the SSUT General Law") requires some of the State's SSUT revenues to be distributed to the separate General Funds of all county commissions in the State.[2]

The other general law is part of *Ala. Code Title 11, Chapter 8,* (Appendix B) whose legislatively declared purpose includes vesting in county commissions "more efficient power

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[1] *Robbins v. Cleburne County Commission*, 2020 WL 502541, *2 n.1 (Ala. Jan. 31, 2020)(explaining "this Court's current understanding of § 105 as a bar to any local law that 'create[s] a variance from the provisions of [a] general law.'"), quoting and citing *City of Homewood v. Bharat, LLC*, 931 So. 2d 696, 701 (Ala. 2005) (quoting *Opinion of the Justices No. 342*, 630 So. 2d 444, 446 (Ala. 1994) (brackets in *Robbins* added by the Court).

[2] *Ala. Code § 40-23-197(a)& b)*, as amended by Act 2018-539, § 1. (Appendix D).

and control over all public funds that may now or hereinafter be under [their] management and control." *Ala. Code § 11-8-2*. A specific general law, *§ 11-8-3* (hereinafter, "the Allocation General Law"), prescribes the uses to which money placed in the county General Funds are to be put and grants county commissions discretion in allocating money among those approved uses. For example, although the Allocation General Law requires all county commissions to fund their local "offices of the judge of probate, tax officials, sheriff, county treasurer, the county jail, the county courthouse, and other offices as required by law," it allows commissions discretion in allocating General Fund money among these obligations. *Ala. Code § 11-8-3(c)*. Taken together, the SSUT General Law and the Allocation General Law provide county commissions with SSUT proceeds that may be used only for purposes prescribed in the Allocation General Law and allocated among those purposes at the discretion of the county commissions.

The local law, *Act 2019-272*, *C.26* (text of Act 2019-272)(hereinafter, "Local Law"), (Appendix C) entirely abrogates the Morgan County Commission's discretion over a portion of its General Fund and expressly reallocates its

SSUT funds from the county uses prescribed in *§ 11-8-3* to Morgan County city and county boards of education (which the Commission would otherwise have no obligation to financially support).[3] Consequently, this case seeks a determination whether the Local Law violates Section 105 of the Alabama Constitution by mandating a variance from the requirements of the SSUT General Law and the Allocation General Law.

(ii) The Course of Proceedings and Disposition in the Court Below.

Act 2019-272, the Local Law in question, was passed in the 2019 regular session. *See C.26.* This case was commenced in the Circuit Court of Montgomery County on October 1, 2019, by the Superintendent of Hartselle City Schools, a member of the Hartselle Board of Education, members of the Hartselle, Decatur, and Morgan County Education Associations, and the Associations themselves. *C.9.* Named as defendants were the members of the Morgan County Commission, individually and officially (collectively, "Morgan County Commission" or "Commission"), and Alabama Commissioner of Revenue Vernon Barnett. *Id.* The complaint sought a writ of mandamus, declaratory judgment, injunctive relief, and a judgment

[3] Allocation of SSUT proceeds is explained in greater detail at pp. xii-xiii.

"declaring Act 2019-272 constitutional thus requiring Defendants to comply with Act 2019-272." *C.17.*

On October 15, 2019, the Circuit Court entered an Order that embodied an agreement negotiated among the parties, under which Commissioner Barnett continues to make monthly SSUT deposits into Morgan County's General Fund, which the Commission in turn delivers to the Montgomery County Circuit Clerk, who puts them into an escrow account. *C.50, 51.* This Order remains in effect.[4]

The Morgan County Commission answered the complaint on October 30, 2020, and asserted as defenses that Act 2019-272 is unconstitutional under Section 105 of the Alabama Constitution ("Section 105") because its subject is provided for, subsumed by, at variance with, and changes the result of application of general law. *C.84, 90.*

On October 29, 2019, the Decatur City Board of Education and the Morgan County Board of Education moved to intervene as plaintiffs. *C.5.* The complaint in intervention named the same defendants as the complaint and likewise sought

[4] The Circuit Court's final order, which required disbursal of the escrowed funds, *C.445, 447-448*, was stayed pending appeal, *C.486, 487*. Since then, the Morgan County Commission has continued to forward its monthly SSUT proceeds to the Montgomery County Circuit Clerk.

declaratory, injunctive, and mandamus relief to require defendants to comply with Act 2019-272. *C.70, 75, compare C.9, 17*. The Motion to Intervene was granted on October 31, 2019, *C.92*, and on November 25, 2019, the Morgan County Commission answered, asserting Act 2019-272's unconstitutionality as a defense. *C.104, 105-106*.

In January and February 2020[5] the parties submitted pre-hearing briefs detailing their respective positions. *C.115* (Plaintiffs' initial brief); *C.128* (Intervenors' initial brief); *C.218* (Morgan County Commission's brief); *C.293* (Plaintiffs' reply brief); and *C.302* (Intervenors' reply brief).

A final hearing was held on February 18, 2020, *R.1*, after which the parties filed proposed orders, *C.421, 425*. On March 3, 2020, the Circuit Court entered its Order and Final Judgment in favor of the Plaintiffs and Plaintiffs-in-Intervention. *C.445*. The Circuit Court declared the Local Act "does not violate Section 105" and ordered the Morgan County Commission "to pay all SSUT proceeds received after the date

[5]On February 4, 2020, the Attorney General acknowledged having been served with a complaint in the case, waived further service, and waived for the time being his right to be heard. *C.401*.

of the entry of this Order in accordance with the Local Act." *C.448*. This Judgment is the adverse ruling from which this appeal is taken. *C.445-448.*

Seven days later, the Morgan County Commission filed a Notice of Appeal, *C.464*, a Motion for Approval of Security for Appeal, *C.457*, and a Motion to Stay Judgment, *C.460.* Plaintiffs-in-Intervention opposed the latter two filings. *C.472, 4*75. An amended notice of appeal was filed March 12, 2020. *C.468*.

On March 17, 2020, the Circuit Court granted the motions for a stay pending appeal and for approval of security. *C. 486*.

STATEMENT OF THE ISSUE

Section 105 forbids local laws that directly or indirectly regulate a matter governed by general law. Two general laws require payment of state SSUT proceeds to county commissions for use in fulfilling the commissions' General Fund obligations. Act 2019-272 creates a variance from these general laws by reallocating, in Morgan County alone, SSUT proceeds from the Morgan County Commission to Morgan County city and county school boards. Does this local law violate Section 105?

STATEMENT OF THE FACTS

The SSUT General Law was first passed in 2016. *Act 2016-10, Ala. Code §§ 40-23-191 to -199.3.* The tax is funded through voluntary payments of an 8% state use tax by retailers who sell goods and services in Alabama but lack a physical presence in the State. *Ala. Code § 40-23-191(2) and § 40-23-192(a).*[6] In return for collecting and remitting to the State the SSUT, retailers are relieved of the burden of being audited by Alabama local governments to determine the value of goods and services each retailer sold and delivered within a local government's tax jurisdiction.

The SSUT is an important source of funds for state and local governments. Fifty percent of SSUT proceeds go to the State and are shared 75/25 between the State's General and Education Trust Funds, with the remaining 50% being divided 60/40 between municipalities and counties, and then further allocated on the basis of city or county populations. *See § 40-23-197(a) & (b), as amended by Act 2018-539, § 1.*

In FY 2019, the State received a hefty $203,303,334.75

[6] The tax is "Simplified" because it is collected and remitted at a uniform state-wide rate, regardless of local use-tax variations.

in SSUT proceeds, of which $39,874,859 was paid to the State's 67 counties pro rata and $23,292,598 to the Education Trust Fund.[7] SSUT proceeds are disbursed to city and county boards of education through the Education Trust Fund.[8] In FY 2018, the Hartselle City School System ranked 82 out of 139 school systems in per pupil expenditure ($9,058), the Morgan County School System ranked 56/139 ($9,380), and the Decatur City School System ranked 29/139 ($10,047).[9] (These per pupil expenditures are from all local, state, and federal sources.)

Despite its short life, the SSUT already has been amended several times by the Legislature, one of which is

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[7] Alabama Department of Revenue 2019 Annual Report at 15, 29 (https://revenue.alabama.gov/wp-content/uploads/2020/01/2019-Annual-Report.pdf)(last visited May 25, 2020). Pursuant to *Ala.R.Evid.201*, the Commission asks the Court to take judicial notice of the official reports cited in this footnote and footnotes 8, 9, 11, 13-16 and the October 31, 2019 and May 18, 2020 entries in the chart on page xiv. *See Ala.R.Evid. 201(d)*.

[8] See https://alsd.edu/dept/data/Quic%20Facts/QF-2019-Online.pdf(last visited May 25, 2020).

[9] See Alabama State Department of Education Report Card, Per Pupil Expenditures https://www.alsde.edu/dept/erc/Pages/per-pupil-expenditures.aspx#InplviewHash234fe88e-30c4-4071-a1c8-7cf68b07af12=Paged%3DTRUE-p_All_x0020_Sources_x0020_PPE_x002%3D28%252e000000000000-p_ID%3D28-SortField%3DAll%255fx0020%255fSources%255fx0020%255fPPE%255fx002-SortDir%3DAsc-PageFirstRow%3D31 (last visited May 25, 2020).

important to this case. Initially, SSUT proceeds were merely paid to the county commissions without specific limitation on their use. In 2018, the Legislature added the requirement that SSUT proceeds be "deposited into the general fund of the respective county commission." *Act 2018-539, § 1* (amending *§ 40-23-197*).[10] Specifying that SSUT proceeds must be deposited in the county General Funds limits the uses of those proceeds to purposes enumerated in *§ 11-8-3 (c)*:

> The budget adopted, at a minimum, shall include any revenue required to be included in the budget under the provisions of Alabama law and reasonable expenditures for the operation of the offices of the judge of probate, tax officials, sheriff, county treasurer, the county jail, the county courthouse, and other offices as required by law.

Id.

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[10] As thus amended, *§ 40-23-197 (b)* says: "Effective for tax periods beginning on or after January 1, 2019, the net proceeds after the distribution provided subdivision (1) of subsection (a) shall be distributed sixty percent (60%) to each municipality in the state on a basis of the ratio of the population of each municipality to the total population of all municipalities in the state as determined in the most recent federal census prior to distribution and forty percent (40%) to each county in the state, and **deposited into the general fund of the respective county commission**, on a basis of the ratio of the population of each county to the total population of all counties in the state as determined in the most recent federal census prior to the distribution." (emphasis added).

Accordingly, in FY 2018 the Morgan County Commission allocated $1,626,868.20 from its General Fund in support of county criminal and civil courts.[11] The Circuit Court erroneously states in its final Order that "[e]ven without SSUT funds, Morgan County has sufficient funds to comply with any and all other laws that dictate how it will spend money in its general fund. This fact is not disputed." *C.445*. The Court provides no cite for this statement.[12]

In the Local Law, Act 2019-272, the Legislature effectively amended the SSUT by taking from the Morgan County Commission, alone among the 67 county commissions, its SSUT proceeds and giving them to Morgan County municipal and county boards of education. The Local Law says: "Beginning October 1, 2019, . . . [the] proceeds of the simplified seller use tax distributed to Morgan County pursuant to Section 40-23-197 of the Code of Alabama 1975, shall be allocated by the county commission each fiscal year and distributed on a monthly basis" as follows:

- 5% to the Morgan County Commission to be used only

[11] Morgan County Disbursements FY2018, www.http//alacourt/gov/docs/disbursements/Morgan.pdf (last visited May 25, 2020).

[12] The statement comes from a draft order submitted by the Appellees. *C.421*. The Appellees made a similar unsupported assertion in their Reply Brief below. *C.293, 294*.

"for administrative purposes,"

• 85% of the remaining 95% to Morgan County municipal and county school systems on a pro rata basis "for public school purposes,"

• 13.5% of the remaining 85% the Morgan County Board of Education "for public school purposes," and

• 1.5% of the remaining 85% equally to Morgan County certified volunteer fire departments "for fire protection purposes."

Id., § 2, *C.27-28*.

The Local Law requires the Morgan County Commission to make these reallocations monthly. *Id.* Since October 2019, pursuant to the Circuit Court's October 19, 2019, escrow order, *C.50*, the Morgan County Commission has paid its SSUT proceeds over to the Clerk of the Montgomery County Circuit Court as follows:

Date		Amount
10/31/2019	--	$121,523.94
11/15/2019	*C.101*	$114,893.46
12/17/2019	*C.112*	$124,952.91
1/15/2020	*C.215*	$143,645.39
2/17/2020	*C.418*	$217,037.57
3/17/2020	*C.488*	$132,182.12
4/15/2020	*C.491*	$128,705.65
5/18/2020	*Doc. 149*	$144,575.66
	Total:	$1,127,516.70

As of February 2020, the Hartselle School System reported

having a budget surplus of $2,025,688.79.[13] For the Decatur School System, this figure was $11,464,626.18[14] The same entry as of March 2020 for the Morgan County School System was $27,827,625.30.[15] For the period of October 1, 2017, to September 30, 2018, the Morgan County Commission had a General Fund surplus of $5,041,006.48, and a Total Governmental Funds

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[13] Combined Statement of Revenues, Expenditures, and Changes in Fund Balances All Governmental Fund Types and Expendable Trust Funds For Fiscal Year 2020, Fiscal Period 05, Hartselle City Schools (see the entry titled "Excess Revenues and Other Sources Over (Under) Expenditures and Other Fund Uses")https://www.hartselletigers.org/cms/lib/AL02210041/Centricity/Domain/634/Exhibit%20F-II-A%20-%20Financial%20Summary.pdf, see the entry titled "Excess Revenues and Other Sources Over (Under) Expenditures and Other Fund Uses" (last visited May 28, 2020).

[14] Combined Statement of Revenues, Expenditures, and Changes in Fund Balances All Governmental Fund Types and Expendable Trust Funds For Fiscal Year 2020, Fiscal Period 05, Decatur City Schools (see the entry titled "Excess Revenues and Other Sources Over (Under) Expenditures and Other Fund Uses") https://4.files.edl.io/8fc3/03/10/20/150155-8cf381be-2591-42f7-80f6-1cf379a01ff0.pdf (last visited May 28, 2020).

[15] Combined Statement of Revenues, Expenditures, and Changes in Fund Balances All Governmental Fund Types and Expendable Trust Funds For Fiscal Year 2020, Fiscal Period 05, Morgan County Schools (see the entry titled "Excess Revenues and Other Sources Over (Under) Expenditures and Other Fund Uses")https://www.morgank12.org/site/handlers/filedownload.ashx?moduleinstanceid=4783&dataid=11781&FileName=Mar%202020%20financials.pdf (last visited May 28, 2020).

surplus of $166,785.60.[16]

STANDARD OF REVIEW

In the circuit court there were no disputed facts and the declaratory judgment was based entirely on documentary evidence. The standard of review is de novo. *Alfa Mut. Ins. Co. v. Small*, 829 So. 2d 743, 745 (Ala. 2002) (In cases "where there are no disputed facts and where the judgment is based entirely upon documentary evidence, no . . . presumption of correctness applies; our review is de novo.").

[16] Report on the Morgan County Commission, Morgan County, Alabama October 1, 2017 through September 30, 2018, by the Department of Examiners of Public Affairs at pp. 9-10, March 27, 2020 http://co.morgan.al.us/commission/finance/documents/statements/2017-18_Audited_FS.pdf (last visited May 29, 2020).

SUMMARY OF THE ARGUMENT

By general law, the Legislature allocated SSUT proceeds to the state, municipalities, county commissions, and boards of education. The commissions get their SSUT funds deposited directly into their General Funds from the Commissioner of Revenue. The boards of education get theirs indirectly, through the Department of Education. This case is about an attempt by the Morgan County boards of education to get not only their shares of SSUT funds, but to get the Morgan County Commissions' share also, using their Local Law, Act 2019-272.

As recently as January, this Court explained that its "current understanding of Section 105 [is] as a bar to any local law that 'create[s] a variance from the provisions of [a] general law.'" The Local Law fails this test. It creates a variance from the provisions of at least two general laws.

First is the SSUT General Law. The Local Law effectively amends the SSUT General Law to say that every county commission **except the Morgan County Commission** gets SSUT funds. Second, under the Allocation General Law, every county commission has discretion to use its SSUT funds as it chooses among the enumerated purposes for which General Fund monies may be spent. Under the Local Law, every county commission

except the Morgan County Commission would have this discretion. Consequently, the Local Law creates a variance from the provisions of the General Law and is unconstitutional.

In the Circuit Court, the Appellees responded to this argument with a series of straw-men arguments. First, they claim the Morgan County Commission doesn't need SSUT funds, which is an irrelevant diversion from the unconstitutionality of their Local Law and not justiciable. Second, they rely on a case, *Clay County Commission v. Clay County Animal Shelter,* that is not a Section 105 case and could be made relevant only by misrepresenting the Commission's argument. Third, they said that this argument ignored the Legislature's ultimate control over county funds. Not so; the Morgan County Commission merely insists that the Legislature act in a constitutional way, which the Legislature has shown it knows how to do, as in for example the case of beer taxes, for which the general law expressly allows local laws to vary the overall tax rate. Fourth, they ignore the significance of the Legislature's 2018 amendment to the SSUT General Law, which as amended requires SSUT proceeds to be deposited in the counties' General Funds, thereby limiting the allowable uses

of those funds to purposes that do not include funding boards of education. And fifth, they argue that because Morgan County's SSUT funds touch base in its General Fund before being legislatively re-appropriated to the boards of education, the Local Law does not violate the SSUT General Law. This argument overlooks the language in Section 105 – an artifact of the State's disastrous history with local laws under the 1875 Constitution – that forbids the Legislature from doing with a local law indirectly what it cannot do directly. Accordingly, the Court should declare the Local Law is unconstitutional under Section 105 and reverse and render judgment in favor of Appellants.

ARGUMENT

The issue to be decided is whether, in the words of Section 105, "the matter of [the L]ocal law is provided for by a general law." The Morgan County Commission contends that the matter is provided for by general law and that the trial court improperly narrowed the scope and application of Section 105, contrary to the *Peddycoart* line of cases.

The Constitution operates as a limitation on the power of the Legislature, and the Legislature cannot do what the Constitution forbids it to do. *Parker v. Amerson*, 519 So. 2d 442, 446 (Ala. 1987). An unconstitutional statute is void and is "as if it had never been." *Norwood v. Goldsmith*, 53 So. 84, 88 (Ala. 1910). The Morgan County Commission is aware of the well-known general principle favoring the constitutionality of legislative acts. Even so, the Legislature and the courts alike may not overlook the plain language of the Constitution, and if a statute violates the Constitution, it is the duty of the courts to declare it unconstitutional. *Burnett v. Chilton County Health Care Auth.*, 278 So. 3d 1220, 1237 (Ala. 2018). The general rule of deference to the Legislature is tempered further in this case because Section 105 expressly states that "the courts, and

not the legislature, shall judge as to whether the matter of said law is provided for by a general law." The plain language of Section 105, its history, and the rulings in the *Peddycoart* case and its progeny fully support the Morgan County Commission's position and mandate a reversal of the trial court.

A. The Court Interprets Section 105 to Render Unconstitutional Any Local Law that Creates a Variance from General Law.

Section 105 was intended to be broad in its application and certain in its effect: "No special, private, or local law . . . shall be enacted in any case which is provided for by a general law." General law is not simply favored over local law, it completely preempts the subject. A local law on the same matter is not permitted, whether it amends, adds to, takes away from, contradicts, supplements, or varies the general law, or picks up where the general law leaves off. As recently as January 2020, this Court reaffirmed that this is how it understands Section 105 by stating: "[T]his Court's current understanding of Section 105 [is] as a bar to any local law that 'create[s] a variance from the provisions of[a] general law.'" *Robbins, supra*. Yet after Section 105's adoption in the 1901 Constitution the legislature and the

courts frequently acted as if it were an annoyance to be circumvented rather than a constitutional requirement to be followed. The *Peddycoart* decision was intended to put an end to these machinations, but some subsequent cases have again clouded Section 105's clear and stern restraint on local legislation.

1. The drafters of the 1875 and 1901 Constitutions knew from experience that for the sake of good governance, local laws should not be allowed to vary the requirements of general laws.

Alabama has long been afflicted with the plague of local legislation. In his opening address to the Alabama Constitutional Convention of 1875, convention president Leroy Pope Walker stated in no uncertain terms:

> Local legislation, though sometimes seemingly exigent, should be absolutely forbidden. Its enactments are insidious, its excuses specious, and its aims often illegitimate and sometimes demoralizing and corrupt.

Journal of the Constitutional Convention of the State of Alabama, September 6, 1875, p. 7. The delegates were confident that their formulation, later adopted as *Art. IV, § 23 of the Alabama Constitution of 1875*, "No special or local law shall be enacted for the benefit of individuals or corporations, in cases which are or can be provided for by a general law," would effectively end local legislation in favor of laws of

a general and public character. *Journal of the Constitutional Convention of the State of Alabama, September 6, 1875, p. 170.*

That expectation was short-lived, however, as only two years later this Court, in *Clarke v. Jack, 60 Ala. 271 (1877)*, held that the determination whether the subject of a local law "can be provided for by a general law" is a question of legislative discretion not to be interfered with by the courts. In the resulting flood of local legislation, the legislature adopted twenty times more local laws than general laws, and in the session preceding the 1901 constitutional convention it adopted 949 local laws to only 48 general laws. *Howard P. Walthall, Sr., A Doubtful Mind: Understanding Alabama's State Constitution,* 35 Cumb. L. Rev. 7, 74 (2004-2005).

Mindful of this failure of purpose, the delegates to the 1901 constitutional convention (several of whom had been 1875 delegates) set out once again to stem the flood of local legislation. Section 105 is part of a set of constitutional provisions the 1901 delegates designed to severely restrict local legislation. Delegate Emmet O'Neal, later elected governor, addressed the convention and, after first listing

the evils of local legislation and noting the failure of the previous convention's effort to curtail the practice, summarized some of the detrimental effects of local laws as follows:

> It follows, therefore, that local, special or private legislation, embodies not the concurrent wisdom and approval of a majority of the Legislature, but is simply the expression of the desire of the local representative, who, by this courtesy, is made the sole and absolute arbiter of all legislation which may affect his particular locality. Nor do such bills ever receive the same careful scrutiny and examination by the Executive or Legislature which is given laws of a general character.

2 Official Proceedings of the Constitutional Convention of the State of Alabama, May 21st 1901 to September 3rd 1901, p. 1781.

That the drafters of the 1901 Constitution were unequivocal in their intent to prohibit local exceptions to general laws is abundantly clear:

> The demand in this State for additional and more stringent limitations upon the power and competence of the legislature has gradually grown from actual knowledge that the remedies heretofore adopted have proved unavailing. There is no reform in the constitution we are now framing more important than a check upon the evils of local and special legislation. . . . Mr. President, the forces of evil have grown too strong to yield without a struggle. The experience of States which have attempted to lessen the mischief of local or special legislation, show that even the most stringent provisions do not

> prevent evasions. We can not hope that our efforts will prove completely successful in removing from our legislation this danger, but we do believe that we have profited by the experience of our own and other States and that by the provisions of the article we have reported, local or special legislation will be largely eliminated and its evil minimized.

Id., pp. 1778, 1785.

Both in their recorded speeches and by the terms they included in the proposed constitution, the delegates clearly expressed their disfavor for local legislation. The emphasis was on general laws and their subject matter, and local laws were to be occasional and limited exceptions. However, as with the 1875 Constitution, the intent of the constitutional restrictions failed in actual practice. The delegates' earnest hope for improving the state's laws was undone as legislators, attorneys, and the courts found many ways to evade the constitutional restrictions intended to curtail local legislation. Over a period of 75 years, various means and rationales were adopted to uphold local laws in the face of existing general laws on the same subject. Eventually, the courts developed a "substantial difference" test to approve a local law that either conflicted with existing general law or added to or supplemented general law. As a result, local laws returned to favor.

2. The Court initially failed to enforce Section 105 according to its plain language.

In *State ex rel. Brandon v. Prince*, 74 So. 939 (Ala. 1917), a general law provided the method for drawing juries by jury commissioners appointed by the governor. A local law for Tuscaloosa County abolished its jury commission and transferred the power to select and draw jurors to a board of revenue created by the local law and elected by county voters. This Court found no violation of Section 105, reasoning:

> The fact that there was a general law by which the juries for that county could be drawn by other boards or officers did not prevent the Legislature from providing, by a local enactment, that the juries shall be drawn by other boards, officers, or persons than those provided for in the general law. . . . Herein we see that the object and effect of the local law was to work a radical change in the law applicable to Tuscaloosa county [*sic*] as to selecting and drawing the jurors and juries for that county. . . . If we should hold that, **merely because there is a general law** providing for the selecting and drawing of juries for the several counties, none of its provisions can be changed by a local law, it would be tantamount to holding that a local law cannot be passed upon that subject. We do not think that this is the meaning of section 105 of the Constitution, nor that such was the intent of the Constitution framers in ordaining it.

Id., 74 So. at 941 (emphasis added). With this decision, the Court abandoned the clearly expressed original intent behind Section 105 by shifting the focus of its Section 105 inquiry from the subject matter of the general law to the details or

effects of the local law. Under this new analysis, the more substantial the difference between the general and local laws, the stronger the argument for constitutionality.

In *Polytinsky v. Wilhite*, 99 So. 843 (Ala. 1924), this Court considered a local law establishing a county court for Morgan County and investing it with jurisdiction over appeals from justices of the peace. General law provided that appeals from a justice of the peace were to the circuit court. The Court sustained the local law against attack under Section 105 because "the object of the local law is to accomplish an end not substantially provided for and effectuated by a general law, notwithstanding there is a general law dealing with the subject or system affected by the local law." *Id.*, 99 So. at 844. This holding became part of the substantial difference test.

Later, in *Standard Oil Co. v. Limestone County*, 124 So. 523 (Ala. 1929), this Court reviewed a local law authorizing one county to impose for its own use a gallonage tax on gasoline sales in addition to an existing general law imposing a statewide gallonage tax distributed equally among all counties. The Court found that the local tax was not the same as the statewide tax, but instead was an additional tax. After

first noting the principle from *State ex rel. Brandon v. Prince*, *supra*, that Section 105 "does not forbid local legislation . . . merely because a general law deals with the same matter," the Court upheld the local law based upon a "substantial difference" test that became for some time the prevailing explanation of the meaning of Section 105:

> If, in the judgment of the Legislature, local needs **demand additional or supplemental laws substantially different** from the general law, the Legislature has the power to so enact. Courts are charged with the duty to determine whether there is a **substantial difference between the general and the local law**, but cannot invade the legislative domain to determine whether a county should have **a local law substantially different and in addition to the state law**.

Id., 124 So. at 526 (emphasis added). See also *Opinion of the Justices No. 138*, 81 So. 2d 277 (Ala. 1955) (additional local gross receipts tax on electric public utilities); and *Opinion of the Justices No. 159*, 96 So. 2d 634 (Ala. 1957) (additional local license tax on motor vehicles). Legislative discretion to circumvent general laws with local ones was restored.

This Court combined the various strands of the substantial difference test into one overall statement in *Van Sandt v. Bell*, 71 So. 2d 529 (Ala. 1954). The local law under consideration created, among other things, a county board of barber examiners for which there was no counterpart in general

law, although there were general health laws applicable to barbering. In upholding the local law under Section 105 attack, the Court quoted the substantial difference test from the *Standard Oil Co.* case and the passage quoted above from the *Polytinsky* opinion regarding a local law's "end [to be accomplished] not substantially provided for and effectuated by a general law."

The last "substantial difference" case prior to *Peddycoart* was *Drummond Co. v. Boswell*, 346 So. 2d 955 (Ala. 1977), in which a local law levying a coal severance tax for Cullman County in addition to the general statewide coal severance tax was challenged under Section 105. This Court upheld the local law, quoting the "end not substantially provided for" rule from *Polytinsky* and framing the issue to be decided as a narrow one:

> Does Tit. 51, § 431 the general coal severance taxing Act which provides the source and the objects of expenditure of the proceeds of the tax, in operation with § 105 of the Constitution, render void local Act No. 1005, which provides the same source but different objects of expenditure of the proceeds of the tax? Ultimately, then, we must decide if the use of the proceeds from this tax for highway maintenance in Cullman County, as provided in local Act No. 1005, is **substantially and materially different in the end to be accomplished** from the general law which provides for use of the proceeds from the same source for retirement of State Dock bonds. . . . It is not the broad, overall subject

> matter which is looked to in determining whether the local act, taken together with the general law, is violative of § 105; rather, it is whether the object of the local law is to accomplish an **end not substantially provided for** and effectuated by a general law.

Id. 346 So. 2d at 957-58. The Court then discussed the analysis of the local law in the *Standard Oil Co.* case and, finding no distinction between the local law upheld in that case and the local law under consideration, found *Standard Oil Co.* and its substantial difference test to be controlling.

As matters stood after the *Drummond* decision, a local law would not be declared in violation of Section 105 "merely because a general law deals with the same matter" if (1) the object of the local law is to accomplish an end not substantially provided for and effectuated by a general law and (2) the legislature in its discretion determines that local needs demand additional or supplemental laws substantially different from the general law. That interpretation of Section 105 was soon to change dramatically.

<u>3. In the *Peddycoart* decision the Court applied Section 105 according to its "unclouded language" and "express and obvious meaning."</u>

Modern Section 105 jurisprudence must begin with the landmark 1978 decision in *Peddycoart v. City of Birmingham*,

354 So. 2d 808 (Ala. 1978), issued less than eight months after *Drummond*, in which this Court threw out its previous Section 105 case law ("With conscious regard to the doctrine of stare decisis et non quieta movere, nevertheless our duty is to apply the highest law in our state as conscientiously as our abilities allow, even though this application runs counter to reasons which heretofore have been espoused for opposite views."). *Id.*, 354 So. 2d at 811. After noting that the Court intended to enforce the literal meaning of Section 105, which meant upsetting over 75 years of contrary precedent, Justice Beatty writing for an 8-1 majority repudiated the old rules and stratagems employed to evade the strictures of Section 105. The Court expressed no doubt as to the meaning of the "unclouded language" of Section 105, construing the term "provided for" as used in Section 105 as a term of "restraint and limitation pertaining to matters of the same import dealt with in the general law." *Id.*, 354 So. 2d at 811. The Court then proceeded to criticize the rationales and conclusions of previous Section 105 cases, specifically including *State ex rel. Brandon v. Prince* and *Standard Oil Co. v. Limestone County* discussed above.

> To summarize, this Court has interpreted § 105 in at least three different ways: (1) It was intended

to prevent local laws whose purposes might be accomplished outside the legislature; (2) It was intended to prevent duplication in legislative enactments; and (3) It was not intended to prevent the enactment of a local law on a subject already covered by a general law, when the local law is substantially different from the general law.

These differences present more than a mere play on words. If the facts in *State ex rel. Brandon v. Prince, supra*, are used as an example, the legislature changed the manner of statewide jury selection by establishing a different procedure in Tuscaloosa County. While the subject-matter of jury selection was already covered by general law, it might also be said that the different procedures established by the local law created a substantial difference between the local and general laws. Likewise, in *Standard Oil Co. v. Limestone County, supra*, the legislature authorized one county to impose a gallonage tax on gasoline sales even though there was already in existence a statewide gallonage tax. That Court found that this local tax was not "the same tax" (and thus there was a substantial difference), however, it cannot be reasonably maintained that the two laws did not concern the same subject matter because each provided for a gallonage tax on gasoline sales. In neither case was duplication present because there was a substantial difference between the two due to the effect of the local law. Indeed, it may be stated that every case involving a change in a general law by a local legislative act creates a "difference" which some could describe as "substantial," and that "substantial difference" might in any case justify the conclusion, therefore, that the local law does not concern the same subject matter.

Being a limitation upon legislative authority, **§ 105 clearly means just the opposite of what the Court in *State ex rel. Brandon v. Prince, supra*, held that it meant.** In the quotation we have noted earlier, that Court placed more emphasis upon the efficacy of local laws, and less upon that of general laws,

> than § 105 obviously intended to give them, for the Court stated "[i]f we should hold that, *merely* because there is a general law . . . ." 199 Ala. at 447, 74 So. at 941 (emphasis added). **We do not look upon the presence of a general law upon a given subject as a bare segment, but to the contrary, its presence is primary, and means that a local law cannot be passed upon that subject.** By constitutional definition a general law is one which applies to the whole state and to each county in the state with the same force as though it had been a valid local law from inception. Its passage is none the less based upon local considerations simply because it has a statewide application, and already having that effect, **the constitutional framers have prohibited the enactment of a local act when the subject is already subsumed by the general statute.**

Id., 354 So. 2d at 812-13 (emphasis added). In *Peddycoart* this Court discredited and rejected its "substantial difference" jurisprudence, up to and including *Drummond*.

The Court entertained no doubt that it had broken with the past and re-established a rule in keeping with the language and intent of Section 105. As stated in a subsequent opinion also authored by Justice Beatty, in *Peddycoart* "this court interpreted § 105, *supra*, in accord with its express and obvious meaning, contrary to at least three different interpretations previously applied to § 105 by this Court in upholding numerous local laws contrary to or duplicative of general laws on the same subject." *Baldwin County v. Jenkins*, 494 So. 2d 584, 586 (Ala. 1986). "Prior to *Peddycoart*, there

were numerous ingenious ways contrived to get around the constitutional prohibition. It was the understanding of both bench and bar that *Peddycoart* signaled the end of these contrivances, at least for the future." *Id.* at 589 (Adams, J., dissenting). The *Peddycoart* holding was made prospective only and pre-*Peddycoart* contrivances would still be used when addressing local laws enacted prior to that decision. See *Yancey & Yancey Const. Co. Inc. v. Dekalb County Commission*, 361 So. 2d 4 (Ala. 1978), contrasting the *Peddycoart* rule with the old rules in *Standard Oil Co.* and *Drummond,* which were followed only because *Peddycoart* is prospective in its application. In *Amoco Production Co. v. White*, 453 So. 2d 358 (Ala. 1984), this Court analyzed a local law passed seven years before *Peddycoart* by utilizing the "end not substantially provided for" and "substantial difference" rules from *Polytinsky*, *Standard Oil Co.*, and *Drummond*, recognizing that these were old rules that would otherwise be supplanted by *Peddycoart*.

Section 105, by its own terms, applies to a "case which is provided for by a general law" and when the "matter of said [local] law is provided for by a general law." Throughout *Peddycoart,* the Court by its use of varying terms emphasized

the breadth of Section 105's reach, e.g.:

- "subjects already covered by general acts",
- "subjects already affecting those localities through general laws",
- "matters of the same import dealt with in the general law",
- "general law upon a given subject",
- "subject is already subsumed by the general statute", and
- "subject of the same import."

A local law with a subject fitting this description is prohibited by Section 105 because the general law is primary and "a local law cannot be passed upon that subject." There is no suggestion in *Peddycoart* that its rule is limited to situations where the local law is in direct conflict with the general law, although such a local law would certainly violate Section 105. Rather, Section 105 is held to be a broad proscription of a local law that conflicts with, duplicates, adds to, supplements, varies, or extends a general law on that subject. The focus is now on the *general* subject of the general law and not the specifics of the local law. *See also Stokes v. Noonan*, 534 So. 2d 237, 238 (Ala. 1988) (general law governed "general subject" of filling county commission vacancies; local law on same subject violates Section 105).

4. Post-*Peddycoart* cases recognize that Section 105 prohibits more than local laws that directly conflict with general laws.

The effect of the *Peddycoart* rule was striking. The later cases confirm that the *Peddycoart* rule is not limited to direct conflicts between a local law and general law, and the substantial difference analysis is no longer a valid measure of whether or not a local law violates Section 105. *Peddycoart* declared that a general law, by definition, applies to each county in the state "as though it had been a valid local law from inception" and is thereby automatically based upon local considerations. *Peddycoart, supra,* 354 So. 2d at 813. Despite this holding, the majority of post-*Peddycoart* cases upholding local laws challenged under Section 105 are based upon a so-called "local needs" exception to the *Peddycoart* rule. However, in the present case, the Legislature made no findings of local needs and the parties have agreed that "local needs" are not a factor to be considered. Therefore, the validity of the "local needs" exception, *vel non,* will not be discussed in this brief, and those cases based upon an analysis of "local needs" will neither be distinguished nor relied upon by the Morgan County Commission in this appeal.

There are numerous examples of application of the

Peddycoart rule. In *ABC Bonding Co. v. Montgomery County Surety Comm'n*, 372 So. 2d 4 (Ala. 1979), a local law provided qualifications for both property bail and professional bail agents, including the establishment of a regulatory surety commission. At the time, however, no general law provided for a licensing board or surety commission for professional bail agents. Under the pre-*Peddycoart* "substantial difference" test, this absence would be enough to uphold the constitutionality of the local law establishing such a board for one judicial circuit only. See *Van Sandt* discussed above. The trial court in *ABC Bonding* erroneously applied the old test, finding that the local law "does not conflict in any substantial manner with, but merely enlarges, the general law." *Id.*, 372 So. 2d at 5. But on appeal, following *Peddycoart*, this Court found the fact that the local law contained a "material variation" and "substantially different and additional qualifications" led to its downfall rather than its salvation. Although the Court listed some direct conflicts between several provisions of the local law and the general law, it also noted "substantially different and additional qualifications" and the creation of the new surety commission as the basis for concluding that the local law

dealt "with a subject matter already provided for by general law" under Section 105: "Furthermore, bail bondsmen doing business in the Fifteenth Judicial Circuit are subject to the authority of a Surety Commission under Article 2 of the challenged Act, while no other bail bondsmen in the State are subject to such a Commission." *Id.*, 372 So. 2d at 6. Enlarging or supplementing the general law, or picking up where it left off by providing a licensing board, was not permitted under Section 105.

In *Opinion of the Justices No. 311*, 469 So. 2d 105 (Ala. 1985), this Court was called upon to give its opinion as to the constitutionality of a proposed local law. General law authorized all counties to levy sales or use taxes to generate revenue for all school systems within the county. The local law would have allowed Madison County to levy an additional sales or use tax solely to support its own county school system, omitting the city schools. The Court found that the proposed local law clearly violated Section 105 under the *Peddycoart* test because the general subject of county sales and use taxes for county school purposes was already subsumed by general law. An additional sales and use tax for a more limited purpose was not permissible under Section 105.

A local law providing a subsistence allowance for Jefferson County law enforcement officers in addition to other compensation, without imposing any additional duties upon the officers, was held to violate Section 105 in *County Commission of Jefferson County v. Fraternal Order of Police*, 558 So. 2d 893 (Ala. 1989). General law had previously established a personnel board for Jefferson County, whose duties included determination of salaries for law enforcement personnel. Although the general law did not address subsistence allowances, this Court held that the general law and the local law addressed the same general subject matter: compensation for certain classes of civil service employees. The Court looked to the broad overall subject matter to make its determination that the local law violated Section 105.

5. Section 105 prohibits a local law that creates a variance from the provisions of a general law.

More recently, in *City of Homewood v. Bharat, LLC*, 931 So. 2d 697 (Ala. 2005), general law authorized municipalities to enact ordinances levying a lodgings tax parallel to the state levy of 4%, with no cap as to the amount of the municipal tax. Local laws already provided for lodging taxes in Jefferson County totaling 7%, the proceeds of which would go to various named entities other than municipalities. A

subsequent local law capped total lodging taxes in Jefferson County at 14%. Subtracting the already existing state and other local lodging taxes left only 3% in additional lodging taxes that could be levied by municipalities in Jefferson County. Bharat sued, challenging a Homewood ordinance that levied a 6% lodging tax. Homewood countered by alleging that the local law capping the total lodging tax rate for Jefferson County violated Section 105. The Court upheld the ordinance and struck down the local law, stating:

> Section 105 of the Alabama Constitution prohibits the passage of local laws purporting to regulate matters that are "*provided for by a general law.*" A matter is "provided for by a general law" within the meaning of § 105 if the "*subject [of the local act] is already subsumed by [a] general statute.*" *Peddycoart*, 354 So. 2d at 813. . . . "The subject of a local law is deemed to be 'subsumed' in a general law if the effect of the local law is to *create a variance* from the provisions of the general law." *Opinion of the Justices No. 342*, 630 So. 2d 444, 446 (Ala. 1994) (emphasis added); see also *Crandall v. City of Birmingham*, 442 So. 2d 77, 80 (Ala. 1983).
>
> . . . .
>
> On the undisputed facts of this case, we are compelled to conclude, as did the Justices in *Opinion of the Justices No. 342*, that the local act *creates a variance* from the general act. In that case, the proposed local act purported to grant discretion as to certain duties where the general acts provided that those duties were mandatory. In this case, the local act purports to *limit the discretion* of municipalities in levying a lodgings tax, while the general act *specifically grants* that discretion. Section 7 [of the local act] necessarily

> **changes the result that would obtain without its application.** In effect, the legislature has purported to *cap by use of a local law a tax authorized by a general law*. This the constitution will not permit.
>
> Indeed, if the constitution did permit it, the legislature could, by a local act, entirely eliminate the City's right to levy lodging taxes, despite the unqualified right granted to it in the general act. . . .
>
> In conclusion, we hold that [the local act], to the extent it limits the amount of lodgings taxes municipalities located in Jefferson County may levy pursuant to [general law], violates § 105 of the Constitution of Alabama, and is, therefore, invalid.

Id., 931 So. 2d at 701-02, 703-04, 705 (some emphases added). There was no requirement stated in the opinion that a direct conflict must exist between the local and general laws in order for a local law to violate Section 105. In fact, the general law had no cap at all on total lodging tax rates. The local law created an additional or supplemental provision to the general law that was found to violate Section 105.

These and other post-*Peddycoart* cases have not limited the *Peddycoart* rule to direct conflicts between local and general law. Rather, they have recognized the broad nature of the *Peddycoart* rule and, without limiting the extent of the rule, have used the following phrases in addition to the ones in the *Peddycoart* opinion itself to describe situations in

which a local law violates Section 105: "directly conflict with the existing general law in this area," *ABC Bonding Co.*, *supra*, 372 So. 2d at 5; "at variance with an already existing general law on the same subject," *Crandall v. City of Birmingham*, 442 So. 2d 77, 80 (Ala. 1983); and "changes the result that would obtain without its application," *Bharat, supra*, 931 So. 2d at 704. As recently as January 31, 2020, this Court reiterated its current understanding of the rule to be that Section 105 bars any local law creating a variance from the provisions of general law. *Robbins, supra*, quoting *Bharat*.

Several post-*Peddycoart* opinions have cited pre-*Peddycoart* cases, despite the unequivocal repudiation of these cases in the *Peddycoart* opinion. Many of these citations are in "local needs" cases, which, as has been noted earlier, are not considered here. See, for example, *State Board of Health v. Greater Birmingham Ass'n of Homebuilders*, 384 So. 2d 1058 (Ala. 1980); *Miller v. Marshall County Board of Education*, 652 So. 2d 759 (Ala. 1995); *Ellis v. Pope*, 709 So. 2d 1161 (Ala. 1997); *Jefferson County v. Taxpayers & Citizens of Jefferson County*, 232 So. 3d 845 (Ala. 2017). Some other post-*Peddycoart* cases have upheld local laws against claims

of violation of Section 105 because there was no general law providing for the subject of the local law. For example, *Opinion of the Justices No. 249*, 357 So. 2d 648 (Ala. 1978), held that a proposed local law creating the office of Assistant Probate Judge did not violate Section 105 because there was no general law providing for that office. And in *City of Birmingham v. City of Vestavia Hills*, 654 So. 2d 532 (Ala. 1995), and *Town of Vance v. City of Tuscaloosa*, 661 So. 2d 739 (Ala. 1995), the Court held the annexation of land to municipalities by local law did not violate Section 105 because annexation by legislative act was not a matter provided for by a general law. These decisions do not contradict or modify the *Peddycoart* rule and are, instead, in compliance with that rule.

B. Because the Local Law Creates a Variance from the SSUT General Law and the Allocation General Law, it is Unconstitutional.

Weighed in the balance of the *Peddycoart* rule, the Local Law is found wanting. Using the formulations of the *Peddycoart* rule discussed above, it is apparent that the Local Law violates Section 105. *Ala. Code § 40-23-197(b)* directs 40% of local SSUT revenues to the General Funds of counties. Once there, county commissions are required to adopt budgets based

in part on those revenues and to expend those funds for described public purposes according to allocations entrusted to their discretion. *Ala. Code § 11-8-3*. The Local Law varies these requirements and changes the result. The test is not whether the Local Law is substantially different from the General Law, or whether it addresses an end not substantially provided for in the General Law, or whether demonstrated local needs justify the Local Law (albeit the parties agreed that "local need" is not an issue in this case[17]). Rather, Section 105 is violated because the Local Law addresses the same matter (or "case") as the General Law: the distribution of SSUT revenues to county commissions and what county commissions can do with those revenues once they are deposited in each county's General Fund.

The matter or general subject of the General Law is the distribution and subsequent allocation of state SSUT revenues; the matter or subject of the Local Law is a further refinement of the distribution and allocation of state SSUT revenues, a subject already covered and subsumed by, and a matter of the same import as, the General Law. Prior to the Local Law, the Morgan County Commission, like every other

[17] *See T55*, ll. 17-22.

county commission in the State, received and kept in its General Fund its share of SSUT revenues to allocate, in its discretion, among its public obligations as stated in the General Law. After the Local Law, the Commission no longer has any discretion in this matter, and all but 5% of its SSUT revenues are diverted to other entities that the Morgan County Commission has no legal obligation to fund. The Local Law is at variance with the General Law and certainly "changes the result that would obtain without its application." See *Bharat*, *supra*, 931 So. 2d at 703-04. This is not permitted under Section 105. To paraphrase *Bharat*: "[I]f the constitution did permit it, the legislature could, by a local act, entirely eliminate the [County's] right to [SSUT] taxes, despite the unqualified right granted to it in the general act. . . ."

All the parties agree that the Legislature can tell county commissions what to do with money in their General Funds. But the point is that the Legislature must tell county commissions what to do in a manner that does not violate Section 105. And the Legislature knows how to do this. It may pass a *general* law applicable statewide, changing the distribution of SSUT revenues. See *Johnson v. City of Fort*

Payne, 485 So. 2d 1152, 1154 (Ala. 1986) ("[T]he only method by which the State Government can dictate to city government a specific amount to be paid its policemen for hazardous duty, would be by a general law applicable to all municipalities of this State."). Or it may amend *§ 40-23-197* by a *general* law to expressly permit local laws. See, for example, *Ala. Code § 11-3-1(b)*, providing for filling vacancies on county commissions by the Governor "[u]nless a local law authorizes a special election", and *Ala. Code § 28-3-190(c)(1)*, establishing a general rule for distributing beer tax proceeds, followed by different rules for some named counties. Restricting the Legislature to general legislation helps assure that, as intended by the drafters of Section 105, the law has received "careful scrutiny and examination by the Executive or Legislature" as opposed to local legislation that "is simply the expression of the desire of the local representative" adopted by courtesy. *2 Official Proceedings of the Constitutional Convention of the State of Alabama, supra, at* 1781.

C. The Appellees Arguments Below Lack Merit

1. Whether the County Commission has "sufficient" funds is irrelevant.

The Appellees led the Circuit Court to err by claiming

in essence that the Morgan County Commission has enough money without SSUT revenues. The Circuit Court, copying the Appellee's Proposed Order, erroneously stated in its Judgment that

> Even without those SSUT funds, Morgan County has sufficient funds to comply with any and all other laws that dictate how it shall spend money in its general fund. This fact is not disputed.

C.445, see also *C.421* (Proposed Order making the same statement).

This statement is erroneous or irrelevant for three reasons. First, there is no evidence in the record to support it. Neither the Order nor the Proposed Order cite to evidence in the record.[18]

Second, in their initial brief to the Circuit Court, the Intervenors pointed out that the Commission's 2017 audited statements showed a surplus of "more than $4.5 million, and

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[18] The Circuit Court's statement is not entitled to ore tenus deference, even though the Court heard the case itself, without a jury. Ore tenus deference is based on the trial judge's ability to make credibility determinations about witnesses. *Ex parte Carroll*, 2019 WL 1499322, *6 (Ala. April 5, 2020)("When evidence is presented ore tenus, it is the duty of the trial court, which had the opportunity to observe the witnesses and their demeanors, and not the appellate court, to make credibility determinations and to weigh the evidence presented.") (citations omitted). No such credibility determination was made at the final hearing, at which no witnesses were presented.

that's after paying nearly a million dollars for 'Culture and Recreation.'" *C.302, 307*. Although that was an accurate fact, if it supports the Circuit Court's statement, then that same statement must be said of the intervenor school boards, too. As of March 2020 they have surpluses of $2,025,688.79 (Hartselle City School Board), $11,464,626.18 (Decatur City School Board), and $27,827,625.30 (Morgan County School Board).

In addition, Morgan County's surplus does not tell the Court anything about whether the County's roads are repaired, its bridges are in good shape, or the Sheriff's office and the local courts have been provided with everything they need. The surplus shows only that the County Commission, no less prudently than the School Boards, set aside money to deal with unexpected and costly circumstances, such as the one we now are in.

Third, whether the County Commission "needs" its SSUT funds was not before the Circuit Court and is not the test of constitutionality under Section 105. Embedded in the SSUT General Law is the Legislature's decision about how SSUT proceeds should be divided, which is not justiciable. The Legislature, of course, is free to change its mind on this

point, provided it complies with Section 105, and compliance *vel non* was the only issue before the Circuit Court.

2. *Clay County Commission*, on which Appellees rely, is not a Section 105 case and could be relevant only if the Commission challenged the Legislature's ultimate control over County funds.

In brief and in oral argument in the trial court, Appellees cited the recent case of *Clay County Commission v. Clay County Animal Shelter,* 283 So.3d 1218, 1234 (Ala. 2019), to make the point that "the legislature's power includes the ability to designate and to control public revenues being held in county funds." *C.116, R.8*. Yet *Clay County Commission* is not a Section 105 case, and the Morgan County Commission does not challenge the Legislature's ultimate authority over public funds being held at the county level. The Commission's argument is just the opposite: the Legislature both has this authority and has exercised it in the General Law to tell all county commissions how to allocate public funds in their respective General Funds. These general law provisions addressing the disposition and use of SSUT revenues are the reasons the Local Law, which would regulate and change the disposition and use of SSUT revenues by Morgan County alone, is made unconstitutional by Section 105. Despite being a Section 73 case and not a Section 105 case, *Clay County*

Commission bears on this point. At issue was the enforceability of a local law requiring the Clay County Commission to give 18% of its annual local tobacco-tax revenues to the county animal shelter. *Id.*, 283 So.3d at 1220. Because local tobacco-tax laws were authorized under the general tobacco-tax law, *§ 40-25-2(f)*, this case was about Section 73 rather than Section 105. Section 73 requires legislative appropriations to charities to be passed by a two-thirds majority in each house. *Id.*, 283 So.3d at 1221. The appropriation was passed with fewer than two-thirds vote, so the Court held it unconstitutional, thus reversing the trial court. *Id.*, 283 So.3d at 1235. *Clay County Commission* stands for the unremarkable but relevant point that the Legislature can allocate revenues in a county commission's General Fund, but only if it does so in compliance with every requirement of the constitution, be it Section 73, Section 105, or another provision.

3. Local laws authorized by general laws do not violate Section 105, but Act 2019-272 is not such a local law.

In an attempt to bolster their argument that the Local Law in the present case is constitutional, Appellees pointed to a number of local laws adopted after *Peddycoart* directing counties how to spend state tax revenues or other funds from

their General Funds. But these local laws are different – and thus add no support for Appellees – because the Legislature took care to avoid violating Section 105 by appropriate provisions in general law. For example, *Ala. Code §§ 45-7-20*, *45-17-21*, *45-32-243*, *45-43-242.20*, and *45-45-243* direct specific distribution of particular counties' shares of the state beer tax. The general state beer tax law, *Ala. Code § 28-3-190(c)(3)*, permits local laws providing for different disposition of the tax, thereby avoiding the strictures of Section 105. *Ala. Code § 45-28-243.02* directs the distribution of the Etowah County share of the state transient occupancy tax for the mountain lakes area. Again, the general law distributing this state tax, *Ala. Code § 40-26-20*, expressly authorizes local laws to provide for a different distribution. *Ala. Code § 45-2-60* provides an additional expense allowance to the Baldwin County coroner. But *Amendment No. 229 to the Ala. Constitution* (now in Local Amendments - Baldwin County, § 2), states that the Legislature may by general or local law fix and alter allowances and compensation for Baldwin County officers.

The trial court's judgment in this case points out that "the general SSUT law [does not] bar the Legislature from

using local acts to direct how the SSUT proceeds should be distributed" to support its conclusion that the Local Law does not violate Section 105. But this statement reverses the actual import of the absence of any mention of local laws in the SSUT General Law. While general law provisions such as the ones cited in the previous paragraph clearly show an intention of the Legislature that the subject not be subsumed within the general law, the absence of such a provision shows that the Legislature "intended that general law to be *primary* and the subject subsumed entirely by the general law." *Baldwin County*, *supra*, 494 So. 2d at 587. The general laws in the present case have no such provision and therefore subsume the subject.

4. The SSUT, as amended, clearly expresses the Legislature's intent as to the uses of SSUT funds by county commissions.

Appellees also asserted in the trial court that tax laws have four parts: levy, collection, distribution, and expenditure. Because *§ 40-23-197* does not direct counties specifically how to expend their portion of the SSUT revenues, the subject, they say, is not subsumed by general law and the Local Law may therefore be enacted without violating Section 105. This is an artificial distinction. Appellees have

pointed to no authority requiring tax laws to specifically direct how to expend the revenues once they are distributed. In addition, many other state tax statutes similarly contain no specific county expenditure provisions, allowing counties to fund their operations guided by the requirements of Chapter 8, e.g., *Ala. Code §§ 28-7-16(c)* (tax on sale of table wine); *40-13-32(2)* (1977 coal & lignite severance tax); *40-16-6* (financial institution excise tax); *40-22-1(g)* (recordation tax); and others.

Moreover, the General Law does provide for the expenditure of SSUT revenues once they are placed in a county's General Fund. The Legislature amended *§ 40-23-197* in 2018, expressly requiring a county's share of SSUT revenues to be paid into its General Fund. *Title 11, Chapter 8 of the Ala. Code* then provides direction to counties as to permissible expenditures from their General Funds. The fact that the Legislature took the trouble to amend *§ 40-23-197*, and expressly required SSUT proceeds be deposited into county commissions' General Funds, has meaning in itself. *Arthur v. Bolen*, 41 So. 3d 745,749 (Ala. 2010) ("The substantial amendment to *§ 34-11-1*, coming, as it did, on the heels of this Court's decision in *Hunter*, reveals much regarding

legislative intent.”). Before the amendment, county commissions could put their SSUT funds into any account – in other words, their use of this money was substantially unfettered. But after the amendment, SSUT revenues have to be deposited by the Commissioner of Revenue into each county’s General Fund and can be used only for the purposes allowed by the Allocation General Law. General speaking, those purposes are funding essential services the commissions are required to provide – which do not include public education. So the amendment to *§ 40-23-197* is a clear expression of legislative intent, in general law, about how county commissions can use their SSUT funds. Having thus stated its intent in general law, the Legislature is barred by Section 105 from expressing a different and unique intent for the Morgan County Commission.

5. Section 105 specifically forbids the Legislature from doing indirectly what it cannot do directly.

Appellees argued below that the specific expenditure provisions of the Local Law are additional or supplemental provisions not in direct conflict with general law and therefore not contrary to the *Peddycoart* rule. As made clear above, the *Peddycoart* rule is not limited to a direct conflict between local and general law; rather, the general law is

primary and a local law cannot be passed upon the subject of the general law, whether additional, supplementary, or duplicative. The subject of *§ 40-23-197* is the distribution of SSUT revenues, and local laws on that subject, such as the Local Law in the present case, are forbidden. Furthermore, the indirect method used in the Local Law to redirect SSUT revenues from Morgan County to others (SSUT revenues are still distributed to Morgan County but are immediately diverted to others) does not save it. The last phrase of Section 105 states "nor shall the legislature enact any such special, private, or local law by the partial repeal of a general law." In other words, the Legislature cannot do indirectly what it is forbidden to do directly. *Ex parte State ex rel. Patterson*, 108 So. 2d 448 (Ala. 1958). Nor may a general law be amended by a local law. *Hunt v. Decatur City Board of Education*, 628 So. 2d 393, 395 n.2 (Ala. 1993). It necessarily follows that if a local law would be in violation of Section 105 because of what it tries to do directly, one that attempts to accomplish the same result by indirect means also is void.

D. Sustaining the Local Law will Open the Floodgates.

The Court often hears predictions of the dire and widespread consequences that will result from ruling in a

certain way. Experience shows that these arguments usually are at best overstated, at worst empty rhetoric. But not this time. This time it is not a prediction; it is history. The drafters of the 1875 Constitution knew the consequences of "often illegitimate and sometimes demoralizing and corrupt" local laws and did their best to curtail this abuse. Their efforts were disregarded by the 1877 *Clarke v. Jack* Court, which gave a pass to local laws, notwithstanding the 1875 Constitution's provision that forbade local laws "in cases which are or can be provided by a general law." The result was that from 1878 to 1901 the Legislature passed 20 times more local laws than general laws. In the session before the 1901 constitutional convention, the Legislature adopted 949 local laws and only 48 general laws. This history tells us that if the Court interprets Section 105 as permitting Act 2019-272, such local laws will become the order of the day. Local governments will be immured in internecine battles, fought via local laws, for their funds and the funds of other local governments, and the sort of careful and orderly financial planning that are the hallmarks of good governance will become much harder to achieve.

CONCLUSION

Because Act 2019-272 violates Section 105, the Court should declare it unconstitutional and reverse and render judgment in favor of Appellants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, which was electronically filed today, will be served on the following either electronically under Ala. R. App. P. Rules 25(c)(1)(D) and 57(h)(5), or by regular U.S. Mail, properly addressed and postage prepaid, under Ala. R. App. P. 25(c)(1)(B) and 57(h)(2):

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APPENDIX A

THE SIMPLIFIED SELLER USE TAX REMITTANCE ACT

***§ 40-23-191* Short title; definitions.**

(a) This part shall be titled The Simplified Seller Use Tax Remittance Act.

(b) For the purpose of this part, the following terms shall have the respective meanings ascribed to them in this section:

(1) DEPARTMENT. The Alabama Department of Revenue.

(2) ELIGIBLE SELLER. A seller that sells tangible personal property or a service, but does not have a physical presence in this state or is not otherwise required to collect and remit state and local sales or use tax for sales delivered into the state. The seller shall remain eligible for participation in the Simplified Use Tax Remittance Program unless the seller establishes a presence through a physical business address for the purpose of making instate retail sales within the State of Alabama or becomes otherwise required to collect and remit sales or use tax pursuant to Section 40-23-190 through an affiliate making retail sales at a physical business address in Alabama. The term also includes a marketplace facilitator as defined in Section 3(a)(2) of this act for all sales made through the marketplace facilitator’s marketplace by or on behalf of a marketplace seller.

(3) LOCALITY. A county, municipality, or other local governmental taxing authority which levies a local sales and/or use tax.

(4) SELLER. An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or other legal entity.

(5) SIMPLIFIED SELLERS USE TAX. The tax to be collected, reported, and remitted by eligible sellers who are participating in the program pursuant to requirements and procedures established pursuant to this part.

(6) SIMPLIFIED USE TAX REMITTANCE PROGRAM or PROGRAM. The program established in this part to provide a mechanism for eligible sellers to collect, report, and remit the simplified sellers use tax established pursuant to this part.

(7) STATE. The State of Alabama.

(Act 2015-448, p. 1443, § 1; Act 2016-110, § 1; Act 2017-82, § 2; Act 2018-539, § 1.)

***§ 40-23-192* Simplified Sellers Use Tax Remittance Program.**

(a) There is hereby established The Simplified Sellers Use Tax Remittance Program designed to allow an eligible seller who participates in the program to collect, report, and remit the simplified sellers use tax authorized herein in lieu of the sales or use taxes otherwise due by or on behalf of Alabama customers who have purchased items from the eligible seller that were shipped or otherwise delivered into Alabama by the eligible seller. Participation in the program shall be by election of the eligible seller and only those eligible sellers accepted into the program as set out herein shall collect and remit the simplified sellers use tax. Participation in the program shall not be construed as subjecting an eligible seller to franchise, income, occupation, or any other type of taxes or licensing requirements levied or imposed by the state of Alabama or any locality.

(b) The program shall be administered by the department, which pursuant to this part, shall develop and make available to the eligible seller an easily accessible, online system in which to collect, report, and remit the simplified sellers use tax. Participants in the program shall be required to collect, report, and remit the simplified sellers use tax for all sales delivered into the state as long as remaining a participant in the program. Eligible sellers may continue in the program as long as they comply with all provisions of this part and procedures adopted by the department for participation in the program.

(c) In order to participate in the program, an eligible seller shall make application with the department on a form designed by the department for that purpose. The application shall

require, at a minimum, that the eligible seller:

(1) Certifies that he or she is an eligible seller as defined herein.

(2) Agrees to collect, report, and remit the simplified sellers use tax for all sales delivered into the state as long as he or she remains a participant in the program.

(3) Agrees to provide the department with information related to sales to Alabama customers as required by this part or requested by the department.

(4) Agrees to comply with all program reporting requirements established under program procedures.

Any applicant who falsely certifies on his or her application that he or she is an eligible seller with the State of Alabama shall be subject to the negligence and/or fraud penalties under procedures found in Section 40-2A-11.

(d) The department shall review all applications for participation, and where an applicant is determined to satisfy requirements to participate in the program, shall establish a simplified sellers use tax account for the eligible seller which will allow the eligible seller to report and remit all simplified sellers use tax collected pursuant to this part.

(e) A participating eligible seller shall be removed from the program if:

(1) He or she substantially fails to collect, report, and remit simplified sellers use taxes.

(2) He or she fails to submit required reports on a timely basis.

(3) Upon a determination that the seller is no longer an eligible seller, as defined by this part.

(4) There is any other finding by the department that the participant is not in compliance with the terms authorizing participation in the program.

Any participant who fails to report that he or she is no longer eligible for participation in the program or falsely certifies on any report that he or she is eligible shall be subject to the negligence and/or fraud penalties under procedures found in Section 40-2A-11. Removal from the program or assessment of the fraud or negligence penalty shall be subject to appeal rights and procedures established in this title.

(Act 2015-448, § 1.)

***§ 40-23-193* Collection and remittance of simplified sellers use tax; reporting; statement.**

(a) The simplified sellers use tax due under the program is eight percent of the sales price on any tangible personal property sold or delivered into Alabama by an eligible seller participating in the program. The collection and remittance of simplified sellers use tax relieves the eligible seller and the purchaser from any additional state or local sales and use taxes on the transaction.

(b) The simplified sellers use tax collected by the eligible seller, at the rate of eight percent, shall be electronically reported in the manner prescribed by the department on or before the 20th day of the month next succeeding the month in which the tax accrues. The eligible seller shall remit the tax at the required rate or the amount of the tax collected, whichever is greater. The required monthly reporting from the eligible seller shall only include statewide totals of the simplified sellers use taxes collected and remitted, and shall not require information related to the location of purchasers or amount of sales into a specific locality. The department may not require an eligible seller to report and remit the simplified sellers use tax more frequently than is required for other sellers.

(c) No eligible seller shall be required to collect the tax at a rate greater than eight percent, regardless of the combined actual tax rates that may otherwise be applicable. Additionally, no sales for which the simplified sellers use tax is collected shall be subject to any additional sales or use tax from any locality levying a sales or use tax with respect to the purchase or use of the property, regardless of

the actual tax rate that might have otherwise been applicable.

(d) The participating eligible seller shall collect the tax on all purchases delivered into Alabama unless the purchaser furnishes the eligible seller with a valid exemption certificate, sales tax license, or direct pay permit issued by the department. The eligible seller shall retain all exemption certificates, sales tax licenses, or direct pay permits in its files, or in such other manner as directed by the department.

(e) The eligible seller shall provide the purchaser with a statement or invoice showing that the simplified sellers use tax was collected and is to be remitted on the purchaser's behalf. The statement shall be in a manner prescribed by the department.

(f) The simplified sellers use tax levied under this section shall not be collected and remitted in lieu of the sales and use tax collected by a licensing official pursuant to Section 40-23-104.

(Act 2015-448, p. 1443, § 1; Act 2017-82, § 2; Act 2019-382, § 2.)

§ 40-23-194 **Discount.**

Eligible sellers may deduct and retain a discount equal to two percent of the simplified sellers use tax properly collected and then remitted to the department in a timely manner, provided that for tax periods beginning on or after January 1, 2019, the allowance for discount shall not apply to any taxes collected and then remitted which are in excess of four hundred thousand dollars ($400,000). The department is authorized to prescribe rules for administering the discount. No discount shall be allowed for any taxes which are not timely reported and remitted to the department pursuant to program procedures.

(Act 2015-448, p. 1443, § 1; Act 2018-539, § 1.)

§ 40-23-195 **Rulemaking authority; recordkeeping.**

(a) The department may adopt, promulgate, and enforce

reasonable rules and regulations related to the implementation, administration, and participation in the program. The department shall have exclusive responsibility for reviewing and accepting applications for participation and for the administration, return processing, and review of the eligibility of sellers participating in the program. Eligible sellers participating in the program shall not be subject to audit or review by any Alabama locality. Eligible sellers shall maintain records of all sales delivered into Alabama, including copies of invoices showing the purchaser, address, purchase amount, and simplified sellers use tax collected. Such records shall be made available for review and inspection upon request by the department.

(b) The department may disclose the name of eligible sellers, the effective date the eligible seller began participating in the program and, if applicable, the cease date the eligible seller ceased to participate in the program.

(Act 2015-448, p. 1443, § 1; Act 2017-82, § 2.)

§ 40-23-196 **Refund or credit of excess taxes paid.**

(a) Any taxpayer who pays a simplified sellers use tax through this program that is higher than the actual state and local sales or use tax levied in the locality where the sale was delivered may file for a refund or credit of the excess amount paid to the eligible seller participating in the program. A business taxpayer who has a registered consumer use tax account with the department may claim credit for the overpayment of simplified use tax on their consumer use tax return in a manner prescribed by the department. All other taxpayers may file a petition for refund in the manner prescribed by the department. The petition for refund may only be filed once per year. In the event the amount due to be refunded in a year is less than twenty-five ($25.00) dollars, payment of the refund may be deferred by the department and combined with amounts due to be paid pursuant to subsequent annual refund petitions for a period of up to three years.

(b) Any taxpayer seeking a refund or credit of excess taxes paid to an eligible seller participating in the program shall maintain records documenting the amount of simplified sellers

use tax paid. Refund or credit requests shall require proper documentation of amounts paid by the taxpayer and shall be submitted to the department with the petition for refund.

(c) Notwithstanding any other provision of law, interest due on any refund of taxes paid directly to the department under this division shall be paid beginning 90 days after the receipt date of the properly documented refund petition with interest accruing beginning on the 91st day.

(Act 2015-448, § 1.)

***§ 40-23-197* Disposition of funds.**

(a) The proceeds of simplified sellers use tax paid pursuant to this part shall be appropriated to the department, which shall retain the amount necessary to fund the administrative costs of implementing and operating the program and to cover the amounts paid for refunds authorized in Section 40-23-196. The balance of the amounts collected shall be distributed as follows:

(1) Fifty percent to the State Treasury and allocated 75 percent to the General Fund and 25 percent to the Education Trust Fund.

(2) Twenty-five percent to each county in the state on a prorated basis according to population as determined in the most recent federal census prior to the distribution.

(3) Twenty-five percent of funds to be distributed to each municipality in the state on a prorated basis according to population as determined in the most recent federal census prior to the distribution.

(b) Effective for tax periods beginning on or after January 1, 2019, the net proceeds after the distribution provided in subdivision (1) of subsection (a) shall be distributed 60 percent to each municipality in the state on a basis of the ratio of the population of each municipality to the total population of all municipalities in the state as determined in the most recent federal census prior to distribution and 40 percent to each county in the state, and deposited into the general fund of the respective county commission, on a

basis of the ratio of the population of each county to the total population of all counties in the state as determined in the most recent federal census prior to the distribution.

(c) The distribution of the proceeds from the simplified sellers use tax paid to counties and municipalities shall occur quarterly in a manner prescribed by the department.

(Act 2015-448, p. 1443, § 1; Act 2018-539, § 1.)

***§ 40-23-197.1* Distributions of simplified sellers use tax proceeds.**

Notwithstanding the provisions of Section 40-23-197, the department may initiate monthly distributions of the proceeds from the simplified sellers use tax paid to counties and municipalities.

(Act 2017-82, § 1.)

***§ 40-23-198* Applicability of Part 2.**

In the event that the enactment of federal legislation removes current federal limitations on states' ability to enforce their sales and use tax jurisdiction against businesses that lack an instate physical presence, the provisions of this part shall be inapplicable as to any eligible seller who is not registered with the department as a participant in the program at least six months prior to the date of such change in law. In such event, the provisions of this part will continue to apply to any eligible seller who has been approved by the department as a participant in the program at least six months prior to the change in law and to any taxpayer who has paid or pays the simplified sellers use tax authorized under this part provided the eligible seller continues to collect, report, and remit the simplified sellers use tax and otherwise complies with all procedures and requirements of the program. Eligible sellers participating in the program pursuant to this subsection may continue to receive a discount of two percent (2%) on all simplified sellers use taxes properly remitted under the provisions of this part and shall continue to report sales under the conditions set out in Section 40-23-193.

(Act 2015-448, § 1; Act 2016-110, § 1.)

***§ 40-23-199* Amnesty for certain uncollected remote use tax.**

(a) Subject to the limitations set out in this section, an eligible seller participating in the program shall be granted amnesty for any uncollected remote use tax that may have been due on sales made to purchasers in the state for all periods preceding October 1, 2019.

(1) The amnesty precludes assessment for uncollected simplified sellers use tax together with any penalty or interest for sales made during a period prior to October 1, 2019.

(2) The amnesty provided in this section shall be granted to any eligible seller who applies to participate in the program following acceptance into the program by the department.

(3) Amnesty is not available to an eligible seller with respect to any matter or matters for which the eligible seller has received notice of the commencement of an audit and the audit is not yet finally resolved, including any related administrative and judicial processes.

(4) Amnesty is not available for any simplified sellers use tax already paid or remitted to the state or for taxes collected by the eligible seller.

(5) Amnesty is fully effective, absent the eligible seller's fraud or intentional misrepresentation of a material fact, as long as the eligible seller continues his or her participation in the program and continues to collect, report, and remit applicable simplified sellers use tax for a period of at least 36 months.

(6) Amnesty is applicable only to simplified sellers use tax due from an eligible seller in his or her capacity as an eligible seller and not to remote use taxes due from a seller in his or her capacity as a buyer.

(b) No class action may be brought against an eligible seller in any court of this state on behalf of customers for an overpayment of simplified sellers use tax collected and

remitted on sales made by the eligible seller.

(Act 2015-448, p. 1443, § 1; Act 2019-382, § 1.)

§ 40-23-199.1 **Amnesty for certain uncollected remote use tax.**

The Simplified Sellers Use Tax Remittance Program may not be used to report sales tax obligations subject to the sales tax imposed by Chapter 23 of this title or any local law or municipal ordinance or any county ordinance enacted pursuant to Section 40-12-4 imposing a sales tax for those sales of tangible personal property which are sold at a retail location in this state.

(Act 2018-539, § 2.)

§ 40-23-199.2 **Marketplace facilitators.**

(a) For the purpose of this Act 2018-539, the following terms shall have the respective meanings ascribed to them:

(1) DEPARTMENT. The Alabama Department of Revenue.

(2) MARKETPLACE FACILITATOR. A person that contracts with marketplace sellers to facilitate for a consideration, regardless of whether deducted as fees from the transaction, the sale of the marketplace seller's products through a physical or electronic marketplace operated by a person, and engages:

a. Either directly or indirectly, through one or more affiliated persons in any of the following:

1. Transmitting or otherwise communicating the offer or acceptance between the purchaser and marketplace seller;

2. Owning or operating the infrastructure, electronic or physical, or technology that brings purchasers and marketplace sellers together;

3. Providing a virtual currency that purchasers are allowed or required to use to purchase products from the marketplace seller; or

4. Software development or research and development activities related to any of the activities described in paragraph b. if such activities are directly related to a physical or electronic marketplace operated by a person or an affiliated person, and

b. In any of the following activities with respect to the marketplace seller's products:

1. Payment processing services;

2. Fulfillment or storage services;

3. Listing products for sale;

4. Setting prices;

5. Branding sales as those of the marketplace facilitator;

6. Order taking;

7. Advertising or promotion; or

8. Providing customer service or accepting or assisting with returns or exchanges.

(3) MARKETPLACE SELLER. A seller that is not a related party, as prescribed in Section 40-23-190(c), to a marketplace facilitator and that makes sales through any physical or electronic marketplaces operated by a marketplace facilitator.

(4) PERSON. As defined in Section 40-23-1 (a)(1).

(5) PURCHASER. A person who purchases or contracts to purchase tangible personal property as defined in Section 40-12-220.

(6) QUALIFYING AMOUNT. Two hundred and fifty thousand dollars ($250,000) or an amount as otherwise prescribed by the department.

(7) RETAIL SALE. As defined in Section 40-23-1(a)(10), other than sales of motor vehicles as defined in Section 40-12-240.

(8) SELLER. An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or other legal entity.

(9) SIMPLIFIED SELLERS USE TAX. The tax as levied under Section 40-23-193.

(10) STATE. The State of Alabama.

(b) By no later than January 1, 2019, marketplace facilitators must either register with the department to collect and remit simplified sellers use tax on retail sales made through the marketplace facilitator's marketplace by or on behalf of a marketplace seller that are delivered in Alabama, whether by the marketplace facilitator or another person, or report such retail sales and provide customer notifications pursuant to subsection (m). This subsection shall apply to any marketplace facilitator that has more than the qualifying amount in retail sales in Alabama for the preceding 12 months. Such retail sales shall include those made directly by the marketplace facilitator and shall also include those retail sales made by marketplace sellers through the marketplace facilitator's marketplace. The collection and reporting requirements of this subsection shall not apply to retail sales other than those made through a marketplace facilitator's marketplace.

(c) Marketplace facilitators that collect simplified sellers use tax under this section shall report and remit the tax in accordance with the provisions of Section 40-23-193 and shall maintain records of all sales delivered to a location in Alabama, including copies of invoices showing the purchaser, address, purchase amount, and simplified sellers use tax collected. Such records shall be made available for review and inspection upon request by the department.

(d) Marketplace facilitators who properly collect and then remit to the department in a timely manner simplified sellers use tax on sales in accordance with the provisions of this section by or on behalf of marketplace sellers shall be eligible for the discount provided under Section 40-23-194.

(e) The collection and remittance of simplified sellers use tax relieves the marketplace facilitator, the marketplace

seller, and the purchaser from any additional state or local sales and use taxes on the transactions for which simplified sellers use tax was collected and remitted.

(f) Marketplace facilitators that collect simplified sellers use tax shall not be subject to audit or review by any Alabama locality for simplified sellers use tax. Sales by marketplace sellers for which simplified sellers use tax has been collected shall not be subject to audit or review by an Alabama locality for simplified sellers use tax. This exclusion shall not preclude an Alabama locality from auditing or reviewing any other sales by a marketplace seller for which sales or use tax would be due.

(g) Marketplace sellers for whom marketplace facilitators collect and remit simplified sellers use tax in accordance with the provisions of this section on all sales made by or on behalf of the marketplace seller that are delivered in Alabama shall be granted the continued participation and amnesty protections provided for eligible sellers under Sections 40-23-198 and 40-23-199.

(h) The marketplace facilitator shall provide the purchaser with a statement or invoice showing that the simplified sellers use tax was collected and shall be remitted on the purchaser's behalf. The statement shall be in a manner prescribed by the department.

(i) No class action may be brought against a marketplace facilitator in any court of this state on behalf of customers for an overpayment of simplified sellers use tax collected and remitted on sales facilitated by the marketplace facilitator.

(j) Any taxpayer who remits simplified sellers use tax pursuant to this section shall be entitled to refunds or credits to the same extent and in the same manner provided for in Section 40-23-196 for taxes collected and remitted through the Simplified Sellers Use Tax Remittance Program.

(k) Marketplace facilitators shall be subject to the penalty provisions and procedures of Section 40-2A-11 and reporting requirements of Section 40-2-11(7)(b).

(l) The distribution of simplified sellers use tax remitted by marketplace facilitators shall be made in accordance with Sections 40-23-197 and 40-23-197.1.

(m) Effective January 1, 2019, any marketplace facilitator who does not collect and remit sales, use, or simplified sellers use tax on Alabama retail sale transactions of qualifying amounts shall be required to report such retail sales and provide customer notifications, within constitutional limitations, pursuant to Section 40-2-11(7)(b) and rules promulgated thereunder.

(n) The department may adopt, promulgate, and enforce reasonable rules and regulations for the administration and enforcement of this Act 2018-539.

(Act 2018-539, § 3.)

***§ 40-23-199.3* Online application process.**

By no later than January 1, 2019, the department shall initiate an online application process to simplify refunds requested pursuant to Section 40-23-196.

(Act 2018-539, § 4.)

APPENDIX B

THE ALLOCATION GENERAL LAW

§ 11-8-1 **Fiscal year defined.**

For the purposes of this chapter the fiscal year shall begin October 1 and shall end September 30 following.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 91.)

§ 11-8-2 **Purpose of chapter.**

It is the purpose of this chapter to vest in the county commission more efficient power and control over all public funds that may now or hereafter be under its management and control, to limit its power and authority to incur obligations and to approve and pay claims for current operating expenses in any fiscal year to the income of such year available for such purposes and to authorize the refunding of outstanding general obligations, other than bonded indebtedness, so that the provisions of this chapter may be put into effective operation.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 73.)

§ 11-8-3 **Annual budget.**

(a) It shall be the duty of the county commission, at some meeting in September of each calendar year, but not later than October 1, to prepare and adopt a budget for the fiscal year beginning on October 1 of the current calendar year which shall include all of the following:

(1) An estimate of the anticipated revenue of the county for all public funds under its supervision and control including all unexpended balances as provided in Section 11-8-6.

(2) An estimate of expenditures for county operations.

(3) Appropriations for the respective amounts that are to be used for each of such purposes.

(b) The appropriations made in the budget shall not exceed the estimated total revenue of the county available for appropriations.

(c) The budget adopted, at a minimum, shall include any revenue required to be included in the budget under the provisions of Alabama law and reasonable expenditures for the operation of the offices of the judge of probate, tax officials, sheriff, county treasurer, the county jail, the county courthouse, and other offices as required by law.

(d) In order that the budget adopted is based upon an estimate of revenue and operating expenditures as nearly correct as possible, at least 60 days before the meeting of the county commission at which the county budget is adopted:

(1) Any public official who receives public funds, including any official entitled to ex officio fees, or who issues any kind of order payable out of the county treasury without approval of such county commission shall furnish to the county commission in writing an estimate of the revenue and of the anticipated expenditures the official will be called upon to make during the next fiscal year.

(2) The judge of probate, tax officials, sheriff, county treasurer, and any other county official or employee named by the county commission shall prepare and submit to the county commission an itemized estimate of the amount the official or employee believes to be necessary for personnel, office supplies, and other expenditures during the following fiscal year. Any official entitled to ex officio fees shall include in his or her estimate the estimated amount of any ex officio fees the official will receive during the following fiscal year.

(e) Based upon the estimated revenue and expenditures set out in subsection (d), together with any other financial information available to the county commission regarding the anticipated revenue and expenditures for the next fiscal year, the county commission shall approve a budget which includes the expenditures it deems proper for the next fiscal year.

(f) Following the adoption of the budget, no obligation

incurred by any county official or office over and above the amount or amounts approved and appropriated by the county commission shall be an obligation of the county unless the obligation is approved by an affirmative vote of a majority of the members of the county commission.

(g) The budget may be amended during the fiscal year as determined necessary by affirmative vote of a majority of the members of the county commission. No amendment may authorize an expenditure which exceeds anticipated revenue of the county except as otherwise specifically authorized by general law.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 74; Act 2007-488, p. 1037, § 1.)

§ 11-8-4 **Principal and interest on refunding warrants to constitute part of annual county operating budget; payment of same.**

Where counties issue or have heretofore issued refunding warrants in lieu of obligations outstanding, the interest of such outstanding warrants together with the principal thereof maturing in any fiscal year, shall constitute a part of the current operating budget of such county for that fiscal year and shall be paid out of funds available in such year for operating purposes, unless funds are provided otherwise for such payment.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 75.)

§ 11-8-5 **Temporary loans to constitute part of annual county operating revenue and expenses in budget; payment of same.**

In making up the budget provided for under this chapter the amount borrowed on temporary loans in anticipation of the collection of taxes to be made during each fiscal year shall be included as a part of the operating revenue of the county for such year and the amount of such temporary loan, principal, and interest payable in each fiscal year, shall constitute a part of the current operating expenses to be included in the budget of the county for the fiscal year in which such loans are payable and shall be paid out of the funds pledged therefor.

***§ 11-8-6* Disposition of unexpended balances at end of fiscal year.**

At the end of every fiscal year any unexpended balances remaining in the several funds set up under the provisions of this chapter shall go forward into the respective several funds for the succeeding year, and such balance or balances shall constitute a part of the income available for such fiscal year and shall be handled, appropriated, and disbursed as any other income for that year.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 77.)
Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 85.)

***§ 11-8-7* Record of financial status - Required; contents; public examination.**

Repealed by Act 2007-488, p. 1037, § 2, effective September 1, 2007.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 79.)

***§ 11-8-8* Record of financial status - Maintenance, etc.**

Repealed by Act 2007-488, p. 1037, § 2, effective September 1, 2007.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 80.)

***§ 11-8-9* Authority to issue orders for warrants or checks.**

No warrant shall be issued or check drawn on the county treasury or county depository by any person except as authorized by the chair of the county commission or such other officer as may be designated by such county commission, unless otherwise provided by law, and officers who are authorized to pay claims which have not been first approved by the county commission shall issue orders for warrants or checks pursuant to procedures established by the county commission.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 76; Act 2007-488, p. 1037, § 1.)

***§ 11-8-10* Warrants or orders for payment of money not to be**

issued until funds available.

No warrant or order for the payment of money shall be issued under authority of the county commission until funds are available for its payment upon presentation to the treasurer or depository pursuant to procedures established by the county commission.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 78; Act 2007-488, p. 1037, § 1.)

***§ 11-8-11* Investment of surplus funds in United States securities.**

The county commission is hereby authorized to invest the remaining surplus in any fund, after the adoption of the budget or after provision has been made for anticipated indebtedness, in interest-bearing securities issued by the United States government which are guaranteed as to principal and which are redeemable upon application. This section shall be retroactive and investments heretofore made are hereby ratified and approved.

(Acts 1943, No. 505, p. 480.)

***§ 11-8-12* Appropriations by counties to Lurleen B. Wallace Memorial Cancer Hospital Fund.**

Any county commission is hereby authorized to make appropriations to the Lurleen B. Wallace Memorial Cancer Hospital Fund, Inc., incorporated May 28, 1968.

(Acts 1969, No. 838, p. 1543.)

***§ 11-8-13* Office supplies and ex officio fees of county officials.**

Repealed by Act 2007-488, p. 1037, § 2, effective September 1, 2007.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 88.)

***§ 11-8-14* Appointment of officers and employees.**

Repealed by Act 2007-488, p. 1037, § 2, effective September 1, 2007.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 89.)

***§ 11-8-15* Emergencies.**

In the event any situation resulting from an act of God or the public enemy over which the county commission has no control results in an appreciable obligation against the county over and above what said county commission has reason to anticipate and for which no moneys from the current year's income are available to pay, such county commission may issue its interest-bearing warrants as now authorized by law in an amount sufficient to pay such emergency obligation and the interest and maturities of principal of such warrants shall constitute a part of the budget for the year in which they mature. But before such warrants shall be authorized or sold under this section, such county commission shall inquire into and find that such emergency obligation has arisen, and such finding shall be spread upon the minutes of its proceedings.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 90.)

***§ 11-8-16* Applicability of provisions of chapter - County bonds.**

The provisions of this chapter shall not apply to county bonds now outstanding or that may be hereafter issued under authority of law.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 86.)

***§ 11-8-17* Applicability of provisions of chapter - County bonds.**

The provisions of this chapter shall not apply to county bonds now outstanding or that may be hereafter issued under authority of law.

(Acts 1935, No. 379, p. 803; Code 1940, T. 12, § 86.)

APPENDIX C

ACT 2019-272

1 SB344

2 197664-5

3 By Senator Orr (N & P)

4 RFD: Local Legislation

5 First Read: 30-APR-19

1 SB344
2
3
4 With Notice and Proof
5
6 ENROLLED, An Act,
7 Relating to Morgan County; to provide for the
8 distribution of the county's share of the proceeds of the
9 simplified seller use tax to the local boards of education in
10 the county and to volunteer fire departments in the county.
11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
12 Section 1. This act shall relate only to Morgan
13 County.
14 Section 2. Beginning October 1, 2019, after Morgan
15 County retains five percent of the gross proceeds for
16 administrative purposes, the remaining proceeds of the
17 simplified seller use tax distributed to Morgan County
18 pursuant to Section 40-23-197 of the Code of Alabama 1975,
19 shall be allocated by the county commission each fiscal year
20 and distributed on a monthly basis, as follows:
21 (1) Eighty-five percent of the remaining proceeds
22 shall be allocated to the county and city boards of education
23 in the county for public school purposes based on the
24 proportion that the average daily membership of each school
25 system in the county during the first 20 scholastic days after

1 Labor Day of the preceding school year bears to the total
2 average daily membership of all school systems in Morgan
3 County for the preceding school year.
4 (2) Thirteen and one-half percent of the remaining
5 proceeds shall be allocated to the Morgan County Board of
6 Education for public school purposes.
7 (3) One and one-half percent of the remaining
8 proceeds shall be distributed to the certified volunteer fire
9 departments in the county for fire protection purposes with
10 each volunteer fire department receiving an equal share.
11 Section 3. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.

APPENDIX D

THE 2018 AMENDMENT TO §40-23-197

2018 Alabama Laws Act 2018-539 (H.B. 470)

ALABAMA 2018 SESSION LAW SERVICE

2018 REGULAR SESSION

Additions are indicated by **Text**; deletions by ~~Text~~.
Vetoes are indicated by ~~Text~~;
stricken material by **~~Text~~**.

Act 2018-539
H.B. No. 470
REVENUE AND TAXATION—SALES AND USE TAXES—SIMPLIFIED SELLERS USE TAX REMITTANCE PROGRAM

By: Representative Scott

Enrolled, An Act, To amend Sections 40-23-190, 40-23-191, 40-23-194, and 40-23-197, Code of Alabama 1975, relating to remote entity nexus and simplified sellers use tax; to allow an out-of-state vendor with physical presence established only through acquisition of an in-state company the ability to participate in the Simplified Sellers Use Tax Program; and to require marketplace facilitators to collect and remit simplified sellers use tax or be required to report such sales.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections ~~40-23-190 and 40-23-191~~ **40-23-190, 40-23-191, 40-23-194 and 40-23-197**, Code of Alabama 1975, are amended to read as follows:

<< AL ST § 40-23-190 >>

"§ 40-23-190.

"(a) An out-of-state vendor has substantial nexus with this state for the collection of both state and local use tax if:

"(1) The out-of-state vendor and an in-state business maintaining one or more locations within this state are related parties; and

"(2) The out-of-state vendor and the in-state business use an identical or substantially similar name, tradename, trademark, or goodwill, to develop, promote, or maintain sales, or the in-state business and the out-of-state vendor pay for each other's services in whole or in part contingent upon the volume or value of sales, or the in-state business and the out-of-state vendor share a common business plan or substantially coordinate their business plans, or the in-state business provides services to, or that inure to the benefit of, the out-of-state business related to developing, promoting, or maintaining the in-state market.

"**(b) An out-of-state vendor that is an eligible seller participating in the Simplified Sellers Use Tax Remittance Program, as these terms are defined in Section 40-23-191, that establishes a** ~~physical presence~~ **substantial nexus in this state only through the acquisition of an in-state business and thereafter meets the provisions of subsection (a) may elect to satisfy the requirements to collect and remit tax for the out-of-state vendor's Alabama sales by continued participation in the Simplified Sellers Use Tax Remittance Program.**

"~~(b)~~**(c)** Two entities are related parties under this section if one of the entities meets at least one of the following tests with respect to the other entity:

"(1) One or both entities is a corporation, and one entity and any party related to that entity in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50 percent of the value of the corporation's outstanding stock;

"(2) One or both entities is a limited liability company,

partnership, estate, or trust and any member, partner, or beneficiary, and the limited liability company, partnership, estate, or trust and its members, partners, or beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the profits, or capital, or stock, or value of the other entity or both entities; or

"(3) An individual stockholder and the members of the stockholder's family, as defined in Section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of both entities' outstanding stock.

<< AL ST § 40-23-191 >>

"§ 40-23-191.

"(a) This part shall be titled The Simplified Seller Use Tax Remittance Act.

"(b) For the purpose of this part, the following terms shall have the respective meanings ascribed to them in this section:

"(1) DEPARTMENT. The Alabama Department of Revenue.

"(2) ELIGIBLE SELLER. ~~An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or other legal entity~~ **A seller** that sells tangible personal property or a service, but does not have a physical presence in this state or is not otherwise required to collect and remit state and local sales or use tax for sales delivered into the state. The seller shall remain eligible for participation in the Simplified Use Tax Remittance Program unless the seller establishes a presence through a physical business address for the purpose of making instate retail sales within the State of Alabama or becomes otherwise required to collect and remit sales or use tax pursuant to Section 40-23-190 through an affiliate making retail sales at a physical business address in Alabama. **The term also includes a marketplace facilitator as defined in Section 3(a)(2) of this act for all sales made through the marketplace facilitator's marketplace by or on behalf of a marketplace seller.**

"(3) LOCALITY. A county, municipality, or other local governmental taxing authority which levies a local sales and/or use tax.

"**(4) SELLER. An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or other legal entity.**

"~~(4)~~ **(5)** SIMPLIFIED SELLERS USE TAX. The ~~eight percent~~ tax to be collected, reported, and remitted by eligible sellers who are participating in the program pursuant to requirements and procedures established pursuant to this part.

"~~(5)~~ **(6)** SIMPLIFIED USE TAX REMITTANCE PROGRAM or PROGRAM. The program established in this part to provide a mechanism for eligible sellers to collect, report, and remit the simplified sellers use tax established pursuant to this part.

"~~(6)~~ **(7)** STATE. The State of Alabama."

<< AL ST § 40-23-194 >>

"§ 40-23-194.

Eligible sellers may deduct and retain a discount equal to two percent of the simplified sellers use tax properly collected and then remitted to the department in a timely manner, provided that for tax periods beginning on or after January 1, 2019, the allowance for discount shall not apply to any taxes collected and then remitted which are in excess of four-hundred thousand dollars ($400,000). The department is authorized to prescribe rules for administering the discount. No discount shall be allowed for any taxes which are not timely reported and remitted to the department pursuant to program procedures.

<< AL ST § 40-23-197 >>

"§ 40-23-197.

(a) The proceeds of simplified sellers use tax paid pursuant to this part shall be appropriated to the department, which shall retain the amount necessary to fund the administrative costs of implementing and operating the program and to cover

the amounts paid for refunds authorized in Section 40-23-196. The balance of the amounts collected shall be distributed as follows:

(1) Fifty percent (50%) to the State Treasury and allocated seventy-five percent (75%) to the General Fund and twenty-five percent (25%) to the Education Trust Fund.

(2) Twenty-five percent (25%) to each county in the state on a prorated basis according to population as determined in the most recent federal census prior to the distribution.

(3) Twenty-five percent (25%) of funds to be distributed to each municipality in the state on a prorated basis according to population as determined in the most recent federal census prior to the distribution.

(b) Effective for tax periods beginning on or after January 1, 2019, the net proceeds after the distribution provided in subsection (a)(1) shall be distributed sixty percent (60%) to each municipality in the state on a basis of the ratio of the population of each municipality to the total population of all municipalities in the state as determined in the most recent federal census prior to distribution and forty percent (40%) to each county in the state, and deposited into the general fund of the respective county commission, on a basis of the ratio of the population of each county to the total population of all counties in the state as determined in the most recent federal census prior to the distribution.

~~(b)~~(c) The distribution of the proceeds from the simplified sellers use tax paid to counties and municipalities shall occur quarterly in a manner prescribed by the department."

Section 2. The Simplified Sellers Use Tax Remittance Program may not be used to report sales tax obligations subject to the sales tax imposed by Chapter 23 of Title 40 or any local law or municipal ordinance or any county ordinance enacted pursuant to Section 40-12-4 imposing a sales tax for those sales of tangible personal property which are sold at a retail location in this state.

Section 3. (a) For the purpose of this act, the following terms shall have the respective meanings ascribed to them:

(1) DEPARTMENT. The Alabama Department of Revenue.

(2) MARKETPLACE FACILITATOR. A person that contracts with marketplace sellers to facilitate for a consideration, regardless of whether deducted as fees from the transaction, the sale of the marketplace seller's products through a physical or electronic marketplace operated by a person, and engages:

a. Either directly or indirectly, through one or more affiliated persons in any of the following:

1. Transmitting or otherwise communicating the offer or acceptance between the purchaser and marketplace seller;

2. Owning or operating the infrastructure, electronic or physical, or technology that brings purchasers and marketplace sellers together;

3. Providing a virtual currency that purchasers are allowed or required to use to purchase products from the marketplace seller; or

4. Software development or research and development activities related to any of the activities described in paragraph b, if such activities are directly related to a physical or electronic marketplace operated by a person or an affiliated person, and

b. In any of the following activities with respect to the marketplace seller's products:

1. Payment processing services;

2. Fulfillment or storage services;

3. Listing products for sale;

4. Setting prices;

5. Branding sales as those of the marketplace facilitator;

6. Order taking;

7. Advertising or promotion; or

8. Providing customer service or accepting or assisting with returns or exchanges.

(3) MARKETPLACE SELLER. A seller that is not a related party, as prescribed in Section 40-23-190(c), to a marketplace facilitator and that makes sales through any physical or electronic marketplaces operated by a marketplace facilitator.

(4) PERSON. As defined in Section 40-23-1(1).

(5) PURCHASER. A person who purchases or contracts to purchase tangible personal property as defined in Section 40-12-220.

(6) QUALIFYING AMOUNT. Two hundred and fifty thousand dollars ($250,000) or an amount as otherwise prescribed by the department.

(7) RETAIL SALE. As defined in Section 40-23-1(10), other than sales of motor vehicles as defined in Section 40-12-240.

(8) SELLER. An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or other legal entity.

(9) SIMPLIFIED SELLERS USE TAX. The tax as levied under Section 40-23-193 ~~and Section 4 of this act~~.

(10) STATE. The State of Alabama.

(b) By no later than January 1, 2019, marketplace facilitators, must either register with the department to collect and remit simplified sellers use tax on retail sales made through the marketplace facilitator's marketplace by or on behalf of a marketplace seller that are delivered in Alabama, whether by the marketplace facilitator or another person, or report such retail sales and provide customer notifications pursuant to subsection (m). This provision shall apply to any marketplace facilitator that has more than the qualifying amount in retail sales in Alabama for the preceding twelve (12) months. Such retail sales shall include

those made directly by the marketplace facilitator and shall also include those retail sales made by marketplace sellers **through the marketplace facilitator's marketplace. The collection and reporting requirements of this provision shall not apply to retail sales other than those made through a marketplace facilitator's marketplace**.

(c) Marketplace facilitators that collect simplified sellers use tax under this section shall report and remit the tax in accordance with the provisions of Section 40-23-193 and ~~Section 4 of this act, and~~ shall maintain records of all sales delivered to a location in Alabama, including copies of invoices showing the purchaser, address, purchase amount, and simplified sellers use tax collected. Such records shall be made available for review and inspection upon request by the department.

(d) Marketplace facilitators who properly collect and then remit to the department in a timely manner simplified sellers use tax on sales in accordance with the provisions of this section by or on behalf of marketplace sellers shall be eligible for the discount provided under Section 40-23-194.

(e) The collection and remittance of simplified sellers use tax relieves the marketplace facilitator, the marketplace seller, and the purchaser from any additional state or local sales and use taxes on the transactions for which simplified sellers use tax was collected and remitted.

(f) Marketplace facilitators that collect simplified sellers use tax shall not be subject to audit or review by any Alabama locality for simplified sellers use tax. Sales by marketplace sellers for which simplified sellers use tax has been collected shall not be subject to audit or review by an Alabama locality for simplified sellers use tax. This exclusion shall not preclude an Alabama locality from auditing or reviewing any other sales by a marketplace seller for which sales or use tax would be due.

(g) Marketplace sellers for whom marketplace facilitators collect and remit simplified sellers use tax in accordance with the provisions of this section on all sales made by or on behalf of the marketplace seller that are delivered in Alabama shall be granted the continued participation and

amnesty protections provided for eligible sellers under Sections 40-23-198 and 40-23-199.

(h) The marketplace facilitator shall provide the purchaser with a statement or invoice showing that the simplified sellers use tax was collected and shall be remitted on the purchaser's behalf. The statement shall be in a manner prescribed by the department.

~~(i) No class action may be brought against a marketplace facilitator in any court of this state on behalf of customers arising from or in any way related to an overpayment of simplified sellers use tax collected on sales facilitated by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim.~~

(i) No class action may be brought against a marketplace facilitator in any court of this state on behalf of customers for an overpayment of simplified sellers use tax collected and remitted on sales facilitated by the marketplace facilitator.

(j) Any taxpayer who remits simplified sellers use tax pursuant to this section shall be entitled to refunds or credits to the same extent and in the same manner provided for in Section 40-23-196 for taxes collected and remitted through the Simplified Sellers Use Tax Remittance Program.

(k) Marketplace facilitators shall be subject to the penalty provisions and procedures of Section 40-2A-11 and reporting requirements of Section 40-2-11(7)(b).

(l) The distribution of simplified sellers use tax remitted by marketplace facilitators shall be made in accordance with Sections ~~40-23-197, 40-23-197.1, and Section 4 of this act~~ **40-23-197 and 40-23-197.1**.

(m) Effective January 1, 2019, any marketplace facilitator who does not collect and remit sales, use, or simplified sellers use tax on Alabama retail sale transactions of qualifying amounts shall be required to report such retail sales and provide customer notifications, within constitutional limitations, pursuant to Section 40-2-11(7)(b) and rules promulgated thereunder.

(n) The department may adopt, promulgate, and enforce reasonable rules and regulations for the administration and enforcement of this act.

Section 4. **By no later than January 1, 2019, the department shall initiate an online application process to simplify refunds requested pursuant to Section 40-23-196.** ~~Notwithstanding any language to the contrary in Sections 40-23-193, 40-23-197, and 40-23-197.1, effective January 1, 2019, in addition to the simplified sellers use tax levied under 40-23-193, there is hereby levied a one percent (1%) tax on the sales price on any tangible personal property, the sale of which is facilitated by a marketplace facilitator or sold by an eligible seller participating in the simplified sellers use tax remittance program and is shipped or otherwise delivered in Alabama. All proceeds from the additional one percent (1%) simplified sellers use tax shall be distributed to each municipality on the basis of the ratio of the population of each municipality to the total population of all municipalities in the state as determined in the most recent federal census prior to the distribution. Any taxpayer who pays a combined simplified sellers use tax rate, as levied in 40-23-193 and this section, that is higher than the actual state and local sales or use tax levied in the locality where the sale was delivered may file for a refund or credit of the excess amount paid in accordance with Section 40-23-196. By no later than January 1, 2019, the department shall initiate an online application process to simplify refunds requested pursuant to this provision.~~

Section 5. This act shall become effective ~~immediately~~ **the first day of the second month** following its passage and approval by the Governor, or upon its otherwise becoming law.

Approved April 6, 2018.