

House Bill 1306

By: Representatives Lunsford of the 85th, Post 2, Richardson of the 26th, Westmoreland of the 86th, Walker of the 115th, Keen of the 146th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
2 relating to county sales and use taxes, so as to change certain provisions regarding special
3 county sales and use tax; to provide definitions; to provide for the issuance of general
4 obligation debt for certain projects; to provide for use of the proceeds of such tax; to provide
5 an effective date; to provide for applicability; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to
10 county sales and use taxes, is amended by striking Code Section 48-8-111, relating to
11 procedures for implementing the special county sales and use tax, in its entirety and inserting
12 in lieu thereof the following:

13 "48-8-111.

14 (a) Prior to the vote of a county governing authority to impose the tax under this article,
15 such governing authority shall deliver or mail a written notice to the mayor or chief elected
16 official in each municipality located within the county. Such notice shall contain the date,
17 time, place, and purpose of a meeting at which the governing authorities of the county and
18 of each municipality are to meet to discuss the possible projects for inclusion in the
19 referendum, including municipally owned or operated projects. The notice shall be
20 delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be
21 held at least 30 days prior to the issuance of the call for the referendum. Following such
22 meeting, a county governing authority voting to impose the tax authorized by this article
23 shall notify the county election superintendent by forwarding to the superintendent a copy
24 of the resolution or ordinance of the governing authority calling for the imposition of the
25 tax. Such ordinance or resolution shall specify:

1 (1) The purpose or purposes for which the proceeds of the tax are to be used and may be
2 expended, which purpose or purposes may consist of projects located within or outside,
3 or both within and outside, any incorporated areas in the county or outside the county, as
4 authorized by subparagraph (B) of this paragraph for regional facilities, and which may
5 include any of the following purposes:

6 (A) Road, street, and bridge purposes, which purposes may include sidewalks and
7 bicycle paths;

8 (B) A capital outlay project or projects of the county for the use of or the benefit of the
9 citizens of the entire county and consisting of a county courthouse; county
10 administrative buildings; a civic center; a county or regional jail, correctional
11 institution, or other detention facility; a county library; a coliseum; local or regional
12 solid waste handling facilities as defined under paragraph (27.1) or (35) of Code
13 Section 12-8-22, as amended, excluding any solid waste thermal treatment technology
14 facility, including but not limited to, any facility for purposes of incineration or waste
15 to energy direct conversion; local or regional recovered materials processing facilities
16 as defined under paragraph (26) of Code Section 12-8-22, as amended; or any
17 combination of such projects;

18 (C) A capital outlay project or projects which will be operated by a joint authority or
19 authorities of the county and one or more municipalities within the county and which
20 will be for the use of or benefit of the citizens of the county and the citizens of one or
21 more municipalities within the county;

22 (D) A capital outlay project or projects, to be owned or operated or both either by the
23 county, one or more municipalities, or any combination thereof, with respect to which
24 the county has, prior to the call of the election, entered into a contract or agreement, as
25 authorized by Article IX, Section III of the Constitution, with one or more
26 municipalities in the county, which municipality or municipalities contain more than
27 one-half of the aggregate population of all municipalities within the county; and, for
28 purposes of determining the population of a municipality under this subparagraph, only
29 that portion of the population of each municipality which is within the county shall be
30 included;

31 (E) A capital outlay project consisting of a cultural facility, a recreational facility, or
32 a historic facility (or a facility for some combination of such purposes);

33 (F) A water capital outlay project, a sewer capital outlay project, a water and sewer
34 capital outlay project, or a combination of such projects, to be owned or operated or
35 both by a county water and sewer district and one or more municipalities in the county,
36 with respect to which the county has, prior to the call of the election, entered into a
37 contract or agreement, as authorized by Article IX, Section III of the Constitution; and

1 when the tax is imposed pursuant to this subparagraph the proceeds of the tax shall be
 2 allocated between the water and sewer district and the municipality or municipalities
 3 based upon the population of the municipality or municipalities, according to the United
 4 States decennial census of ~~1980~~ 2000 or any future such census, over the population of
 5 the county, according to the United States decennial census of ~~1980~~ 2000 or any future
 6 such census, with such allocation to be specified in the contract or agreement relating
 7 to the capital outlay facility or facilities;

8 (G) The retirement of previously incurred general obligation debt of the county, one
 9 or more municipalities, or any combination thereof ~~other than general obligation debt~~
 10 ~~incurred for road, street, or bridge purposes~~, if such previously incurred general
 11 obligation debt was incurred for a project or projects of a type for which new general
 12 obligation debt may be incurred under this article;

13 (H) A capital outlay project or projects of the county for the use of and benefit of the
 14 citizens of the entire county and consisting of public safety facilities, airport facilities,
 15 or related capital equipment used in the operation of public safety or airport facilities,
 16 or any combination of such purposes;

17 (I) A capital outlay project or projects, to be owned or operated or both, either by the
 18 county, one or more municipalities, or any combination thereof, consisting of capital
 19 equipment for use in voting in official elections or referendums with such county or
 20 municipality;

21 (J) A capital outlay project or projects of the county for the use and benefit of the
 22 citizens of the entire county and consisting of any transportation facility designed for
 23 the transportation of people or goods, including₂ but not limited to₂ railroads, port and
 24 harbor facilities, mass transportation facilities, or any combination thereof;

25 (K) A capital outlay project or projects for the use and benefit of the citizens of the
 26 entire county and consisting of a hospital or hospital facilities that are owned by a
 27 county or a hospital authority and operated by the county or hospital authority or by an
 28 organization which is tax exempt under Section 501(c)(3) of the Internal Revenue
 29 Code, which operates the hospital through a contract or lease with the county or
 30 hospital authority; or

31 (L) Any combination of two or more of the foregoing;

32 (2) The maximum period of time, to be stated in calendar years or calendar quarters and
 33 not to exceed five years;

34 (3) The maximum cost of the project or projects which will be funded from the proceeds
 35 of the tax, which maximum cost shall also be the maximum amount of net proceeds to
 36 be raised by the tax; and

1 (4) If general obligation debt is to be issued in conjunction with the imposition of the tax,
 2 ~~as authorized by this article in cases where the tax is imposed other than in whole for~~
 3 ~~road, street, and bridge purposes,~~ the principal amount of the debt to be issued, the
 4 purpose for which the debt is to be issued ~~other than for road, street, and bridge purposes,~~
 5 the interest rate or rates or the maximum interest rate or rates which such debt is to bear,
 6 and the amount of principal to be paid in each year during the life of the debt.

7 (a.1) For purposes of subsection (a) of this Code section, a 'capital outlay project' means
 8 major, permanent, or long-lived improvements or betterments, such as land and structures,
 9 such as would be properly chargeable to a capital asset account and as distinguished from
 10 current expenditures and ordinary maintenance expenses. Such term shall include, but not
 11 be limited to, roads, streets, bridges, police cars, fire trucks, ambulances, garbage trucks,
 12 and other major equipment.

13 (b) Upon receipt of the resolution or ordinance, the election superintendent shall issue the
 14 call for an election for the purpose of submitting the question of the imposition of the tax
 15 to the voters of the county. The election superintendent shall issue the call and shall
 16 conduct the election on a date and in the manner authorized under Code Section 21-2-540.
 17 The election superintendent shall cause the date and purpose of the election to be published
 18 once a week for four weeks immediately preceding the date of the election in the official
 19 organ of the county. If general obligation debt is to be issued in conjunction with the
 20 imposition of the tax, the notice published by the election superintendent shall also include,
 21 in such form as may be specified by the county governing authority, the principal amount
 22 of the debt, the purpose for which the debt is to be issued, the rate or rates of interest or the
 23 maximum rate or rates of interest the debt will bear, and the amount of principal to be paid
 24 in each year during the life of the debt; and such publication of notice by the election
 25 superintendent shall take the place of the notice otherwise required by Code Section
 26 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

27 ~~(c) If the tax is to be imposed solely for road, street, and bridge purposes, the ballot shall~~
 28 ~~have written or printed thereon the following:~~

29 ~~() YES~~ Shall a special 1 percent sales and use tax be imposed for road, street,
 30 and bridge purposes in _____ County for a period of time not
 31 ~~() NO~~ to exceed _____ and for the raising of not more than
 32 \$_____?

33 ~~(d)(c)(1) If the tax is to be imposed solely for purposes other than for road, street, and~~
 34 ~~bridge purposes and if no debt is to be issued, the ballot~~ The ballot submitting the
 35 question of the imposition of the tax authorized by this article to the voters of the county
 36 shall have written or printed thereon the following:

1 ' YES Shall a special 1 percent sales and use tax be imposed in _____
 2 County for a period of time not to exceed _____ and for the
 3 ' NO raising of not more than \$_____ for the purpose of _____?'

4 (2) If debt is to be issued, the ballot shall also have written or printed thereon, following
 5 the language specified by paragraph (1) of this subsection, the following:

6 'If imposition of the tax is approved by the voters, such vote shall also constitute
 7 approval of the issuance of general obligation debt of _____ County in the
 8 principal amount of \$_____ for the above purpose.'

9 ~~(3) If the tax is to be imposed in part for road, street, and bridge purposes and in part for~~
 10 ~~other purposes, the ballot shall have written or printed thereon the following:~~

11 ~~' YES Shall a special 1 percent sales and use tax be imposed in _____~~
 12 ~~County for a period of time not to exceed _____ and for the raising~~
 13 ~~' NO of not more than \$_____ for the purpose of _____ and for~~
 14 ~~road, street, and bridge purposes for a period of time not to exceed~~
 15 ~~_____ and for the raising of not more than \$_____?'~~

16 ~~(4) If debt is to be issued for purposes other than road, street, and bridge purposes, the~~
 17 ~~ballot shall also have written or printed thereon, following the language specified by~~
 18 ~~paragraph (3) of this subsection, the following:~~

19 ~~'If imposition of the tax is approved by the voters, such vote shall also constitute~~
 20 ~~approval of the issuance of general obligation debt of _____ County in the~~
 21 ~~principal amount of \$_____ for the above purpose other than road, street, and~~
 22 ~~bridge purposes.'~~

23 ~~(e)~~(d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes' and all
 24 persons opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast
 25 are in favor of imposing the tax then the tax shall be imposed as provided in this article;
 26 otherwise the tax shall not be imposed and the question of imposing the tax shall not again
 27 be submitted to the voters of the county until after 12 months immediately following the
 28 month in which the election was held; provided, however, that if an election date
 29 authorized under Code Section 21-2-540 occurs during the twelfth month immediately
 30 following the month in which such election was held, the question of imposing the tax may
 31 be submitted to the voters of the county on such date. The election superintendent shall
 32 hold and conduct the election under the same rules and regulations as govern special
 33 elections. The superintendent shall canvass the returns, declare the result of the election,
 34 and certify the result to the Secretary of State and to the commissioner. The expense of the
 35 election shall be paid from county funds.

1 (f)(e)(1) If the proposal includes the authority to issue general obligation debt and if
 2 more than one-half of the votes cast are in favor of the proposal, then the authority to
 3 issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution
 4 is given to the proper officers of the county; otherwise such debt shall not be issued. If
 5 the authority to issue such debt is so approved by the voters, then such debt may be issued
 6 without further approval by the voters.

7 (2) If the issuance of general obligation debt is included and approved as provided in this
 8 Code section, then the governing authority of the county may incur such debt either
 9 through the issuance and validation of general obligation bonds or through the execution
 10 of a promissory note or notes or other instrument or instruments. If such debt is incurred
 11 through the issuance of general obligation bonds, such bonds and their issuance and
 12 validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as
 13 specifically provided otherwise in this article. If such debt is incurred through the
 14 execution of a promissory note or notes or other instrument or instruments, no validation
 15 proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10
 16 through 36-80-14 except as specifically provided otherwise in this article. In either event,
 17 such general obligation debt shall be payable first from the separate account in which are
 18 placed the proceeds received by the county from the tax authorized by this article. Such
 19 general obligation debt shall, however, constitute a pledge of the full faith, credit, and
 20 taxing power of the county; and any liability on such debt which is not satisfied from the
 21 proceeds of the tax authorized by this article shall be satisfied from the general funds of
 22 the county. ~~In no event shall any proceeds of a tax which is imposed pursuant to this~~
 23 ~~article in whole or in part for road, street, or bridge purposes be used for payment of~~
 24 ~~general obligation debt with respect to such road, street, and bridge purposes."~~

25 SECTION 2.

26 Said article is further amended by striking Code Section 48-8-121, relating to use of proceeds
 27 and issuance of general obligation debt, in its entirety and inserting in lieu thereof the
 28 following:

29 "48-8-121.

30 (a)(1) The proceeds received from the tax authorized by this article shall be used by the
 31 county exclusively for the purpose or purposes specified in the resolution or ordinance
 32 calling for imposition of the tax. Such proceeds shall be kept in a separate account from
 33 other funds of the county and shall not in any manner be commingled with other funds
 34 of the county prior to the expenditure.

35 (2) The governing authority of the county and the governing authority of each
 36 municipality receiving any proceeds from the tax pursuant to a contract with the county

1 shall maintain a record of each and every project for which the proceeds of the tax are
 2 used. A schedule shall be included in each annual audit which shows for each project in
 3 the resolution or ordinance calling for imposition of the tax the original estimated cost,
 4 the current estimated cost if it is not the original estimated cost, amounts expended in
 5 prior years, and amounts expended in the current year. The auditor shall verify and test
 6 expenditures sufficient to provide assurances that the schedule is fairly presented in
 7 relation to the financial statements. The auditor's report on the financial statements shall
 8 include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly
 9 in all material respects in relation to the financial statements taken as a whole.

10 ~~(3) Where the tax authorized by this article has been imposed prior to April 19, 1994, for~~
 11 ~~a period of four years for road, street, and bridge purposes and five years for other~~
 12 ~~purposes, this paragraph shall apply. When this paragraph applies, proceeds from any or~~
 13 ~~all years of the five-year imposition period may be used for road, street, and bridge~~
 14 ~~purposes and proceeds from any or all years of the five-year imposition period may be~~
 15 ~~used for the other authorized purposes, so long as the total expenditures of the tax~~
 16 ~~proceeds are consistent with the total expenditures provided for in the original resolution~~
 17 ~~or ordinance calling for the imposition of the tax.~~

18 ~~(b) If the resolution or ordinance calling for the imposition of the tax specified that the~~
 19 ~~proceeds of the tax are to be used in whole or in part for road, street, and bridge purposes,~~
 20 ~~then authorized uses of the tax proceeds shall include acquisition of right of way for,~~
 21 ~~construction of, and renovation and improvement of, including relocation of utilities for~~
 22 ~~and improvement of surface water drainage from, roads, streets, bridges, sidewalks, and~~
 23 ~~bicycle paths both within the unincorporated area of the county and within the incorporated~~
 24 ~~areas of municipalities within the county. If the resolution or ordinance calling for the~~
 25 ~~imposition of the tax specified that the proceeds of the tax are to be used in whole or in part~~
 26 ~~for road, street, and bridge purposes, then no part of the proceeds of the tax shall be used~~
 27 ~~to retire general obligation debt with respect to such road, street, and bridge purposes.~~

28 (b)(1) If the resolution or ordinance calling for the imposition of the tax specified that
 29 the proceeds of the tax are to be used in whole or in part for road, street, and bridge
 30 purposes, then authorized uses of the tax proceeds shall include:

31 (A) Acquisition of right of way for roads, streets, bridges, sidewalks, and bicycle paths;

32 (B) Construction of roads, streets, bridges, sidewalks, and bicycle paths;

33 (C) Renovation and improvement of roads, streets, bridges, sidewalks, and bicycle
 34 paths, including resurfacing;

35 (D) Relocation of utilities for roads, streets, bridges, sidewalks, and bicycle paths; and

1 (E) Improvement of surface water drainage from roads, streets, bridges, sidewalks, and
 2 bicycle paths within both the unincorporated area of the county and within the
 3 incorporated areas of municipalities within the county.

4 (2) Where the proceeds are to be used in whole or part for road, street, and bridge
 5 purposes and a county has entered into an intergovernmental agreement with one or more
 6 municipalities pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111, then
 7 authorized uses of the tax proceeds shall, in addition to the activities specified in
 8 paragraph (1) of this subsection, include patching, leveling, milling, widening, shoulder
 9 preparation, culvert repair, and other repairs necessary for the preservation of roads,
 10 streets, bridges, sidewalks, and bicycle paths. Storm water capital outlay projects and
 11 drainage capital outlay projects may be funded pursuant to subparagraph (a)(1)(D) of
 12 Code Section 48-8-111 or in conjunction with road, street, and bridge projects.

13 ~~(c) No general obligation debt shall be issued in conjunction with the imposition of the tax~~
 14 ~~authorized by this article when the tax is imposed in whole or in part for road, street, and~~
 15 ~~bridge purposes with respect to such road, street, and bridge purposes. If the tax is imposed~~
 16 ~~solely for purposes other than road, street, and bridge purposes or in part for road, street,~~
 17 ~~and bridge purposes and in part for other purposes, then no~~ No general obligation debt
 18 shall be issued in conjunction with the imposition of the tax unless the county governing
 19 authority determines that, and if the debt is to be validated it is demonstrated in the
 20 validation proceedings that, during each year in which any payment of principal or interest
 21 on the debt comes due the county will receive from the tax authorized by this article net
 22 proceeds sufficient to fully satisfy such liability. General obligation debt issued under this
 23 article shall be payable first from the separate account in which are placed the proceeds
 24 received by the county from the tax authorized by this article. Such debt, however, shall
 25 constitute a pledge of the full faith, credit, and taxing power of the county; and any liability
 26 on said debt which is not satisfied from the proceeds of the tax authorized by this article
 27 shall be satisfied from the general funds of the county.

28 (d) The resolution or ordinance calling for imposition of the tax authorized by this article
 29 ~~solely for purposes other than for road, street, and bridge purposes or in part for road,~~
 30 ~~street, and bridge purposes and in part for other purposes~~ may specify that all of the
 31 proceeds of the tax will be used for payment of general obligation debt issued in
 32 conjunction with the imposition of the tax ~~with respect to purposes other than road, street,~~
 33 ~~and bridge purposes~~. If the resolution or ordinance so provides, then such proceeds shall
 34 be used solely for such purpose except as provided in subsection (g) of this Code section.

35 ~~(e)(1)~~ (e) The resolution or ordinance calling for the imposition of the tax authorized by this
 36 article ~~solely for purposes other than for road, street, and bridge purposes or in part for~~
 37 ~~road, street, and bridge purposes and in part for other purposes~~ may specify that a part of

1 the proceeds of the tax will be used for payment of general obligation debt issued in
 2 conjunction with the imposition of the tax ~~with respect to purposes other than road, street,~~
 3 ~~and bridge purposes.~~ If the ordinance or resolution so provides, it shall specifically state
 4 the other purposes for which such proceeds will be used; and such other purposes shall
 5 be a part of the capital outlay project or projects for which the tax is to be imposed. In
 6 such a case no part of the net proceeds from the tax received in any year shall be used for
 7 such other purposes until all debt service requirements of the general obligation debt for
 8 that year have first been satisfied from the account in which the proceeds of the tax are
 9 placed.

10 ~~(2) In no event shall any proceeds of general obligation debt issued pursuant to this~~
 11 ~~article be used for road, street, or bridge purposes.~~

12 (f) The resolution or ordinance calling for the imposition of the tax may specify that no
 13 general obligation debt is to be issued in conjunction with the imposition of the tax. If the
 14 ordinance or resolution so provides, it shall specifically state the purpose or purposes for
 15 which the proceeds will be used.

16 (g)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of
 17 payment of general obligation debt issued in conjunction with the imposition of the tax,
 18 then any net proceeds of the tax in excess of the amount required for final payment of
 19 such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

20 (B) If the county receives from the tax net proceeds in excess of the maximum cost of
 21 the project or projects stated in the resolution or ordinance calling for the imposition of
 22 the tax or in excess of the actual cost of such project or projects, then such excess
 23 proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

24 (C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section
 25 48-8-112 by reason of denial of validation of debt, then all net proceeds received by the
 26 county from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

27 (2) Excess proceeds subject to this subsection shall be used solely for the purpose of
 28 reducing any indebtedness of the county other than indebtedness incurred pursuant to this
 29 article. If there is no such other indebtedness or, if the excess proceeds exceed the amount
 30 of any such other indebtedness, then the excess proceeds shall next be paid into the
 31 general fund of the county, it being the intent that any funds so paid into the general fund
 32 of the county be used for the purpose of reducing ad valorem taxes."

33 SECTION 3.

34 This Act shall become effective upon its approval by the Governor or upon its becoming law
 35 without such approval and shall apply with respect to taxes imposed or to be imposed under
 36 any resolution or ordinance adopted by a county governing authority on or after said effective

1 date; and this Act shall not apply with respect to taxes imposed or to be imposed under
2 resolutions and ordinances adopted prior to said effective date.

3 **SECTION 4.**

4 All laws and parts of laws in conflict with this Act are repealed.