

House Bill 1065

By: Representative Scheid of the 22<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales  
2 and use taxes, so as to provide for funding of projects and services through the levy and  
3 collection of a municipal sales and use tax; to provide for the rate and manner of imposition  
4 of such tax; to provide for applicability to certain sales; to provide for definitions; to provide  
5 for powers, duties, and authority of municipal governing authorities with respect to such tax;  
6 to provide for powers, duties, and authority of the state revenue commissioner with respect  
7 to such tax; to provide for collection and administration of such tax; to provide for returns;  
8 to provide for a method for discontinuation of such tax; to provide for local imposition of  
9 certain taxes; to provide for collection of data regarding point of retail sale; to provide for  
10 other matters relative to the foregoing; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use  
14 taxes, is amended by adding a new article immediately following Article 4, to be designated  
15 Article 5, to read as follows:

16 style="text-align:center">"ARTICLE 5

17 48-8-300.

18 This article shall be known and may be cited as the 'Municipal Operations Sales Tax Act.'

19 48-8-301.

20 The governing authority of any municipality in this state may, subject to the requirement  
21 of referendum approval and other requirements of this article, impose within the  
22 municipality a sales and use tax for a limited period of time. Any tax imposed under this  
23 article shall be at the rate of 1 percent. Except as to rate, a tax imposed under this article

1 shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction  
 2 which is not subject to taxation under Article 1 of this chapter shall be subject to a tax  
 3 imposed under this article, except that a tax imposed under this article shall apply to sales  
 4 of motor fuels as that term is defined by Code Section 48-9-2 and shall be applicable to the  
 5 sale of food and beverages as provided for in division (57)(D)(i) of Code Section 48-8-3.

6 48-8-302.

7 (a) A municipal governing authority voting to impose the tax authorized by this article  
 8 shall notify the municipal election superintendent by forwarding to the superintendent a  
 9 copy of the resolution or ordinance of the municipal governing authority calling for the  
 10 imposition of the tax. Upon receipt of the resolution or ordinance, the municipal election  
 11 superintendent shall issue the call for an election for the purpose of submitting the question  
 12 of the imposition of the tax to the voters of the municipality. The election superintendent  
 13 shall issue the call and shall conduct the election on a date and in the manner authorized  
 14 under Code Section 21-2-540. The election superintendent shall cause the date and  
 15 purpose of the election to be published once a week for four weeks immediately preceding  
 16 the date of the election in the legal organ of the county in which the majority of the  
 17 municipal population resides or in a newspaper having general circulation in the  
 18 municipality at least equal to that of the legal organ.

19 (b) The ballot shall have written or printed thereon the following:

20 '( ) YES Shall a 1 percent sales and use tax be imposed in the municipality of

21 ( ) NO \_\_\_\_\_?'

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

1 48-8-303.

2 (a)(1) If the imposition of the tax is approved by referendum, the tax shall be imposed  
3 on the first day of the next succeeding calendar quarter which begins more than 80 days  
4 after the date of the election at which the tax was approved by the voters.

5 (2) With respect to services which are regularly billed on a monthly basis, however, the  
6 resolution or ordinance imposing the tax shall become effective with respect to and the  
7 tax shall apply to the first regular billing period coinciding with or following the effective  
8 date specified in paragraph (1) of this subsection. A certified copy of the ordinance or  
9 resolution imposing the tax shall be forwarded to the commissioner so that it will be  
10 received within five business days after certification of the election results.

11 (b)(1) No municipality shall impose at any time more than a single 1 percent tax under  
12 this article.

13 (2) A municipality in which a tax authorized by this article is in effect may, while the tax  
14 is in effect, adopt a resolution or ordinance calling for the reimposition of a tax as  
15 authorized by this article upon the tax then in effect; and a referendum may be held for  
16 this purpose while the tax is in effect. Proceedings for reimposition of a tax shall be in  
17 the same manner as proceedings for the initial imposition of the tax, but the newly  
18 authorized tax shall not be imposed until the expiration of the tax then in effect; provided,  
19 however, that in the event of emergency conditions under which a municipality is unable  
20 to conduct a referendum so as to continue the tax then in effect without interruption, the  
21 commissioner may, if feasible administratively, waive the limitations of subsection (a)  
22 of this Code section to the minimum extent necessary so as to permit the reimposition of  
23 a tax, if otherwise approved as required under this Code section, without interruption,  
24 upon the expiration of the tax then in effect.

25 (3) Emergency conditions shall be limited to events in which the Governor declares that  
26 a state of emergency or disaster exists pursuant to Code Section 38-3-51 or a federal  
27 agency declares that a state of emergency or disaster exists.

28 (4) No sooner than 12 months after the referendum terminating a tax under this article,  
29 a municipality may initiate proceedings for the reimposition of a tax under this article in  
30 the same manner as provided in this article for the initial imposition of such tax.

31 (c)(1) Whenever the governing authority of any municipality in which the tax authorized  
32 by this article is being levied wishes to submit to the electors of the municipality the  
33 question of whether this tax shall be discontinued, the governing authority shall notify the  
34 municipal election superintendent by forwarding to the superintendent a copy of a  
35 resolution of the governing authority calling for the referendum election. Upon receipt  
36 of the resolution, it shall be the duty of the election superintendent to issue the call for the  
37 election for the purpose of submitting to the voters the question of discontinuing the levy

1 of the tax for approval or rejection. The election superintendent shall conduct the  
 2 election on a date and in the manner authorized under Code Section 21-2-540. The  
 3 election superintendent shall cause the date and purpose of the election to be published  
 4 once a week for four weeks immediately preceding the date of the election in the legal  
 5 organ of the county in which the majority of the municipal population resides or in a  
 6 newspaper having general circulation in the municipality at least equal to that of the legal  
 7 organ.

8 (2) The ballot shall have written or printed thereon the following:

9 '( ) YES Shall the 1 percent sales and use tax being levied in the municipality of  
 10 ( ) NO \_\_\_\_\_ be terminated?'

11 (3) All persons desiring to vote in favor of discontinuing the tax shall vote 'Yes' and all  
 12 persons opposed to discontinuing the tax shall vote 'No.' If more than one-half of the  
 13 votes cast are in favor of discontinuing the tax then the tax shall be discontinued as  
 14 provided in this article; otherwise the tax shall not be discontinued and the question of  
 15 discontinuing the tax shall not again be submitted to the voters of the municipality until  
 16 after 24 months immediately following the month in which the election was held. The  
 17 election superintendent shall hold and conduct the election under the same rules and  
 18 regulations as govern special elections. The superintendent shall canvass the returns,  
 19 declare the result of the election, and certify the result to the Secretary of State and to the  
 20 commissioner. The expense of the election shall be paid from municipal funds.

21 48-8-304.

22 A tax levied pursuant to this article shall be exclusively administered and collected by the  
 23 commissioner for the use and benefit of the municipality imposing the tax. Such  
 24 administration and collection shall be accomplished in the same manner and subject to the  
 25 same applicable provisions, procedures, and penalties provided in Article 1 of this chapter;  
 26 provided, however, that all moneys collected from each taxpayer by the commissioner shall  
 27 be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be  
 28 allowed a percentage of the amount of the tax due and accounted for and shall be  
 29 reimbursed in the form of a deduction in submitting, reporting, and paying the amount due  
 30 if such amount is not delinquent at the time of payment. The deduction shall be at the rate  
 31 and subject to the requirements specified under subsections (b) through (f) of Code Section  
 32 48-8-50.

33 48-8-305.

34 Each sales and use tax return remitting sales and use taxes collected under this article shall  
 35 separately identify the location of each retail establishment at which any of the sales and

1 use taxes remitted were collected and shall specify the amount of sales and the amount of  
2 taxes collected at each establishment for the period covered by the return in order to  
3 facilitate the determination by the commissioner that all sales and use taxes imposed by this  
4 article are collected and distributed according to situs of sale.

5 48-8-306.

6 The proceeds of the tax collected by the commissioner in each municipality under this  
7 article shall be disbursed as soon as practicable after collection as follows:

8 (1) One percent of the amount collected shall be paid into the general fund of the state  
9 treasury in order to defray the costs of administration; and

10 (2) Except for the percentage provided in paragraph (1) of this Code section, the  
11 remaining proceeds of the tax shall be distributed to the governing authority of the  
12 municipality imposing the tax.

13 48-8-307.

14 Where a local sales or use tax has been paid with respect to tangible personal property by  
15 the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction  
16 outside the state, the tax may be credited against the tax authorized to be imposed by this  
17 article upon the same property. If the amount of sales or use tax so paid is less than the  
18 amount of the use tax due under this article, the purchaser shall pay an amount equal to the  
19 difference between the amount paid in the other tax jurisdiction and the amount due under  
20 this article. The commissioner may require such proof of payment in another local tax  
21 jurisdiction as the commissioner deems necessary and proper. No credit shall be granted,  
22 however, against the tax imposed under this article for tax paid in another jurisdiction if the  
23 tax paid in such other jurisdiction is used to obtain a credit against any other local sales and  
24 use tax levied in the municipality or in a special district which includes the municipality;  
25 and taxes so paid in another jurisdiction shall be credited first against the tax levied under  
26 Article 3 of this chapter, if applicable, then against the sales and use tax levied under  
27 Article 2 of this chapter, if applicable, and then against the tax levied under this article.

28 48-8-308.

29 (a) No tax provided for in this article shall be imposed upon the sale of tangible personal  
30 property which is ordered by and delivered to the purchaser at a point outside the  
31 geographical area of the municipality in which the tax is imposed regardless of the point  
32 at which title passes, if the delivery is made by the seller's vehicle, United States mail, or  
33 common carrier or by private or contract carrier licensed by the Federal Highway  
34 Administration or the Georgia Public Service Commission.

1 (b) No tax provided for in this article shall apply to the furnishing for value to the public  
2 of any rooms, lodgings, or accommodations which are subject to taxation under Article 3  
3 of Chapter 13 of this title.

4 48-8-309.

5 No tax provided for in this article shall be imposed upon the sale or use of building and  
6 construction materials when the contract pursuant to which the materials are purchased or  
7 used was advertised for bid prior to the voters' approval of the levy of the tax and the  
8 contract was entered into as a result of a bid actually submitted in response to the  
9 advertisement prior to approval of the levy of the tax. As used in this Code section, the  
10 term 'building and construction materials' means all building and construction materials,  
11 supplies, fixtures, or equipment, any combination of such items, and any other leased or  
12 purchased articles when the materials, supplies, fixtures, equipment, or articles are to be  
13 utilized or consumed during construction or are to be incorporated into construction work  
14 pursuant to a bona fide written construction contract.

15 48-8-310.

16 The commissioner shall have the power and authority to promulgate such rules and  
17 regulations as shall be necessary for the effective and efficient administration and  
18 enforcement of the collection of the tax authorized to be imposed by this article.

19 48-8-311.

20 The tax authorized by this article shall be in addition to any other local sales and use tax.  
21 The imposition of any other local sales and use tax within a county, municipality, or special  
22 district shall not affect the authority of a municipality to impose the tax authorized by this  
23 article, and the imposition of the tax authorized by this article shall not affect the  
24 imposition of any otherwise authorized local sales and use tax within the county,  
25 municipality, or special district."

## 26 SECTION 2.

27 Said chapter is further amended by striking subsection (b) of Code Section 48-8-6, relating  
28 to limitations on imposition of certain local taxes, and inserting in its place a new subsection  
29 (b) to read as follows:

30 "(b) There shall not be imposed in any jurisdiction in this state or on any transaction in this  
31 state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent.  
32 For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and  
33 use tax which is levied in an area consisting of less than the entire state, however

1 authorized, including such taxes authorized by or pursuant to constitutional amendment,  
 2 except that the following taxes shall not count toward or be subject to such 2 percent  
 3 limitation:

4 (1) A sales and use tax for educational purposes exempted from such limitation under  
 5 Article VIII, Section VI, Paragraph IV of the Constitution;

6 (2) Any tax levied for purposes of a metropolitan area system of public transportation,  
 7 as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page  
 8 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)  
 9 of the Constitution; and the laws enacted pursuant to such constitutional amendment;  
 10 provided, however, that the exception provided for under this paragraph shall only apply  
 11 in a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code  
 12 Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay  
 13 project or projects, a sewer capital outlay project or projects, a water and sewer capital  
 14 outlay project or projects, water and sewer projects and costs as defined under paragraph  
 15 (3) of Code Section 48-8-200, or any combination thereof and with respect to which the  
 16 county has entered into an intergovernmental contract with a municipality, in which the  
 17 average waste-water system flow of such municipality is not less than 85 million gallons  
 18 per day, allocating proceeds to such municipality to be used solely for water and sewer  
 19 projects and costs as defined under paragraph (3) of Code Section 48-8-200. The  
 20 exception provided for under this paragraph shall apply only during the period the tax  
 21 under said subparagraph (a)(1)(D) is in effect. The exception provided for under this  
 22 paragraph shall not apply in any county in which a tax is being imposed under Article 2A  
 23 of this chapter;

24 (3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the  
 25 amount in excess of the initial 1 percent sales and use tax and in the event of a newly  
 26 imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent  
 27 sales and use tax; ~~and~~

28 (4) A sales and use tax levied under Article 4 of this chapter; and

29 (5) A sales and use tax levied under Article 5 of this chapter.

30 If the imposition of any otherwise authorized local sales tax, local use tax, or local sales  
 31 and use tax would result in a tax rate in excess of that authorized by this subsection, then  
 32 such otherwise authorized tax may not be imposed."

### 33 SECTION 3.

34 Said chapter is further amended by adding two new subsections at the end of Code Section  
 35 48-8-49, relating to dealers' return as to gross proceeds, to be designated subsections (e) and  
 36 (f) to read as follows:

1 "(e) Returns submitted pursuant to this chapter shall identify the location of each retail  
2 establishment at which any of the taxes remitted were collected including showing  
3 separately retail sales made within the limits of a municipality and retail sales made within  
4 the unincorporated area of a county. The commissioner shall collect, compile, and  
5 maintain retail sales tax data by point of sale showing separately retail sales made within  
6 the limits of a municipality and retail sales made within the unincorporated area of a  
7 county. Such data shall be made available under Article 4 of Chapter 18 of Title 50.

8 (f) Each municipality shall submit to the commissioner the report required under Code  
9 Section 36-36-3 as well as a list of retail establishments within the area annexed. Such  
10 report and list shall be filed, at a minimum, not more than 30 days following the last day  
11 of the quarter in which the annexation becomes effective but may be filed more frequently."

12 **SECTION 4.**

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