

House Bill 1382

By: Representatives Holmes of the 61st, Bruce of the 64th, Hill of the 21st, Barnes of the 78th, Scheid of the 22nd, and others

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 authorize the imposition of a local option sales and use tax for
3 transportation within special districts; to provide for applicability with respect to the ceiling
4 on local sales and use taxes; to establish special districts; to provide for procedures,
5 conditions, and limitations for the imposition, collection, disbursement, and removal of the
6 tax; to provide for powers, duties, and authority of the state revenue commissioner; to
7 provide for related matters; to provide an effective date; to repeal conflicting laws; and for
8 other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
12 taxes, is amended by striking subsection (b) of Code Section 48-8-6, relating to prohibitions
13 regarding the imposition of certain local taxes, and inserting in its place a new subsection (b)
14 to read as follows:

15 "(b) There shall not be imposed in any jurisdiction in this state or on any transaction in this
16 state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent.
17 For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and
18 use tax which is levied in an area consisting of less than the entire state, however
19 authorized, including such taxes authorized by or pursuant to constitutional amendment,
20 except that the following taxes shall not count toward or be subject to such 2 percent
21 limitation:

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

24 (2) Any tax levied for purposes of a metropolitan area system of public transportation,
25 as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page
26 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)

1 of the Constitution; and the laws enacted pursuant to such constitutional amendment;
 2 provided, however, that the exception provided for under this paragraph shall only apply
 3 in a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code
 4 Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay
 5 project or projects, a sewer capital outlay project or projects, a water and sewer capital
 6 outlay project or projects, water and sewer projects and costs as defined under
 7 paragraph (3) of Code Section 48-8-200, or any combination thereof and with respect to
 8 which the county has entered into an intergovernmental contract with a municipality, in
 9 which the average waste-water system flow of such municipality is not less than 85
 10 million gallons per day, allocating proceeds to such municipality to be used solely for
 11 water and sewer projects and costs as defined under paragraph (3) of Code Section
 12 48-8-200. The exception provided for under this paragraph shall apply only during the
 13 period the tax under said subparagraph (a)(1)(D) is in effect. The exception provided for
 14 under this paragraph shall not apply in any county in which a tax is being imposed under
 15 Article 2A of this chapter;

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

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

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

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

25 SECTION 2.

26 Said chapter is further amended by adding a new article at the end thereof to be designated
 27 Article 5, to read as follows:

28 "ARTICLE 5

29 48-8-230.

30 (a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the
 31 Constitution of this state, there are created within this state 159 special districts. The
 32 geographical boundary of each county shall correspond with and shall be conterminous
 33 with the geographical boundary of the 159 special districts.

1 (b) When the imposition of a special district sales and use tax is authorized according to
2 the procedures provided in this article within a special district, the governing authority of
3 any county in this state may, subject to the requirement of referendum approval and the
4 other requirements of this article, impose within the special district a special sales and use
5 tax for a limited period of time which tax shall be known as the county transportation local
6 option sales tax.

7 (c) Any tax imposed under this article shall be at the rate of 1 percent. Except as to rate,
8 a tax imposed under this article shall correspond to the tax imposed by Article 1 of this
9 chapter. No item or transaction which is not subject to taxation under Article 1 of this
10 chapter shall be subject to a tax imposed under this article, except that a tax imposed under
11 this article shall apply to sales of motor fuels as that term is defined by Code Section
12 48-9-2 and shall be applicable to the sale of food and beverages as provided for in division
13 (57)(D)(i) of Code Section 48-8-3.

14 48-8-231.

15 (a) Prior to the vote of a county governing authority to impose the tax under this article,
16 such governing authority shall deliver or mail a written notice to the mayor or chief elected
17 official in each municipality located within the county. Such notice shall contain the date,
18 time, place, and purpose of a meeting at which the governing authorities of the county and
19 of each municipality are to meet to discuss the proposed tax levy. 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:

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

31 (A) Local transportation projects, including sidewalks and bicycle paths;

32 (B) Regional transportation projects, including buses, trains, and other regional
33 projects;

34 (C) Matching funds for contributing to local or regional projects; or

35 (D) Any combination of the foregoing;

1 (2) The maximum period of time, to be stated in calendar years or calendar quarters and
2 not to exceed 20 years;

3 (3) The maximum cost of the purpose or purposes which will be funded from the
4 proceeds of the tax, which maximum cost shall also be the maximum amount of net
5 proceeds to be raised by the tax; and

6 (4) If general obligation debt is to be issued in conjunction with the imposition of the tax,
7 the principal amount of the debt to be issued, the purpose for which the debt is to be
8 issued, the interest rate or rates or the maximum interest rate or rates which such debt is
9 to bear, and the amount of principal to be paid in each year during the life of the debt.

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

24 (c)(1) If the tax is to be imposed and if no debt is to be issued, the ballot shall have
25 written or printed thereon the following:

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

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

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

34 (d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes' and all persons
35 opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in
36 favor of imposing the tax then the tax shall be imposed as provided in this article;
37 otherwise the tax shall not be imposed and the question of imposing the tax shall not again

1 be submitted to the voters of the county until after 12 months immediately following the
 2 month in which the election was held. The election superintendent shall hold and conduct
 3 the election under the same rules and regulations as govern special elections. The
 4 superintendent shall canvass the returns, declare the result of the election, and certify the
 5 result to the Secretary of State and to the commissioner. The expense of the election shall
 6 be paid from county funds.

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

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

29 48-8-232.

30 With respect to any consolidated government created by the consolidation of a county and
 31 one or more municipalities, the levy of a tax under this article by a consolidated
 32 government shall be in the same manner as the levy of the tax by any other county.

33 48-8-233.

34 (a) If the imposition of the tax is approved at the special election, the tax shall be imposed
 35 on the first day of the next succeeding calendar quarter which begins more than 80 days

1 after the date of the election at which the tax was approved by the voters. With respect to
 2 services which are regularly billed on a monthly basis, however, the resolution shall
 3 become effective with respect to and the tax shall apply to services billed on or after the
 4 effective date specified in the previous sentence.

5 (b) The tax shall cease to be imposed on the earliest of the following dates:

6 (1) If the resolution or ordinance calling for the imposition of the tax provided for the
 7 issuance of general obligation debt and such debt is the subject of validation proceedings,
 8 as of the end of the first calendar quarter ending more than 80 days after the date on
 9 which a court of competent jurisdiction enters a final order denying validation of such
 10 debt;

11 (2) On the final day of the maximum period of time specified for the imposition of the
 12 tax; or

13 (3) As of the end of the calendar quarter during which the commissioner determines that
 14 the tax will have raised revenues sufficient to provide to the county net proceeds equal
 15 to or greater than the amount specified as the maximum amount of net proceeds to be
 16 raised by the tax.

17 (c)(1) No county shall impose at any time more than a single 1 percent tax under this
 18 article.

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

31 (3) Following the expiration of a tax under this article, a county may initiate proceedings
 32 for the reimposition of a tax under this article in the same manner as provided in this
 33 article for initial imposition of such tax.

34 48-8-234.

35 A tax levied pursuant to this article shall be exclusively administered and collected by the
 36 commissioner for the use and benefit of the county imposing the tax. Such administration

1 and collection shall be accomplished in the same manner and subject to the same applicable
2 provisions, procedures, and penalties provided in Article 1 of this chapter; provided,
3 however, that all moneys collected from each taxpayer by the commissioner shall be
4 applied first to such taxpayer's liability for taxes owed the state; and provided, further, that
5 the commissioner may rely upon a representation by or in behalf of the county or the
6 Secretary of State that such a tax has been validly imposed, and the commissioner and the
7 commissioner's agents shall not be liable to any person for collecting any such tax which
8 was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax
9 due and accounted for and shall be reimbursed in the form of a deduction in submitting,
10 reporting, and paying the amount due if such amount is not delinquent at the time of
11 payment. The deduction shall be at the rate and subject to the requirements specified under
12 subsections (b) through (f) of Code Section 48-8-50.

13 48-8-235.

14 Each sales tax return remitting taxes collected under this article shall separately identify
15 the location of each retail establishment at which any of the taxes remitted were collected
16 and shall specify the amount of sales and the amount of taxes collected at each
17 establishment for the period covered by the return in order to facilitate the determination
18 by the commissioner that all taxes imposed by this article are collected and distributed
19 according to situs of sale.

20 48-8-236.

21 The proceeds of the tax collected by the commissioner in each county under this article
22 shall be disbursed as soon as practicable after collection as follows:

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

25 (2) Except for the percentage provided in paragraph (1) of this Code section, the
26 remaining proceeds of the tax shall be distributed to the governing authority of the county
27 imposing the tax.

28 48-8-237.

29 Where a local sales or use tax has been paid with respect to tangible personal property by
30 the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction
31 outside the state, the tax may be credited against the tax authorized to be imposed by this
32 article upon the same property. If the amount of sales or use tax so paid is less than the
33 amount of the use tax due under this article, the purchaser shall pay an amount equal to the
34 difference between the amount paid in the other tax jurisdiction and the amount due under

1 this article. The commissioner may require such proof of payment in another local tax
2 jurisdiction as he or she deems necessary and proper. No credit shall be granted, however,
3 against the tax imposed under this article for tax paid in another jurisdiction if the tax paid
4 in such other jurisdiction is used to obtain a credit against any other local sales and use tax
5 levied in the county or in a special district which includes the county; and taxes so paid in
6 another jurisdiction shall be credited first against the tax levied under Article 2 of this
7 chapter, if applicable, and then against the tax levied under this article.

8 48-8-238.

9 No tax provided for in this article shall be imposed upon the sale of tangible personal
10 property which is ordered by and delivered to the purchaser at a point outside the
11 geographical area of the county in which the tax is imposed regardless of the point at which
12 title passes, if the delivery is made by the seller's vehicle, United States mail, or common
13 carrier or by private or contract carrier licensed by the Interstate Commerce Commission
14 or the Georgia Public Service Commission.

15 48-8-239.

16 (a) As used in this Code section, the term 'building and construction materials' means all
17 building and construction materials, supplies, fixtures, or equipment, any combination of
18 such items, and any other leased or purchased articles when the materials, supplies,
19 fixtures, equipment, or articles are to be utilized or consumed during construction or are
20 to be incorporated into construction work pursuant to a bona fide written construction
21 contract.

22 (b) No tax provided for in this article shall be imposed upon the sale or use of building and
23 construction materials when the contract pursuant to which the materials are purchased or
24 used was advertised for bid prior to the voters' approval of the levy of the tax and the
25 contract was entered into as a result of a bid actually submitted in response to the
26 advertisement prior to approval of the levy of the tax.

27 48-8-240.

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

31 48-8-241.

32 Except as provided in Code Section 48-8-6, the tax authorized by this article shall be in
33 addition to any other local sales and use tax. Except as provided in Code Section 48-8-6,

1 the imposition of any other local sales and use tax within a county shall not affect the
2 authority of a county to impose the tax authorized by this article and the imposition of the
3 tax authorized by this article shall not affect the imposition of any otherwise authorized
4 local sales and use tax within the county.

5 48-8-242.

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

11 (2) The governing authority of the county and the governing authority of each
12 municipality receiving any proceeds from the tax pursuant to a contract with the county
13 shall maintain a record of each and every purpose for which the proceeds of the tax are
14 used. A schedule shall be included in each annual audit which shows for each purpose
15 in the resolution or ordinance calling for imposition of the tax the original estimated cost,
16 the current estimated cost if it is not the original estimated cost, amounts expended in
17 prior years, and amounts expended in the current year. The auditor shall verify and test
18 expenditures sufficient to provide assurances that the schedule is fairly presented in
19 relation to the financial statements. The auditor's report on the financial statements shall
20 include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly
21 in all material respects in relation to the financial statements taken as a whole.

22 (b) No general obligation debt shall be issued in conjunction with the imposition of the tax
23 authorized by this article unless the county governing authority determines that, and if the
24 debt is to be validated it is demonstrated in the validation proceedings that, during each
25 year in which any payment of principal or interest on the debt comes due the county will
26 receive from the tax authorized by this article net proceeds sufficient to fully satisfy such
27 liability. General obligation debt issued under this article shall be payable first from the
28 separate account in which are placed the proceeds received by the county from the tax
29 authorized by this article. Such debt, however, shall constitute a pledge of the full faith,
30 credit, and taxing power of the county; and any liability on said debt which is not satisfied
31 from the proceeds of the tax authorized by this article shall be satisfied from the general
32 funds of the county.

33 (c) The resolution or ordinance calling for imposition of the tax authorized by this article
34 may specify that all of the proceeds of the tax will be used for payment of general
35 obligation debt issued in conjunction with the imposition of the tax. If the resolution or

1 ordinance so provides, then such proceeds shall be used solely for such purpose except as
2 provided in subsection (f) of this Code section.

3 (d) The resolution or ordinance calling for the imposition of the tax authorized by this
4 article may specify that a part of the proceeds of the tax will be used for payment of general
5 obligation debt issued in conjunction with the imposition of the tax. If the ordinance or
6 resolution so provides, it shall specifically state the other purposes for which such proceeds
7 will be used. In such a case no part of the net proceeds from the tax received in any year
8 shall be used for such other purposes until all debt service requirements of the general
9 obligation debt for that year have first been satisfied from the account in which the
10 proceeds of the tax are placed.

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

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

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

23 (C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section
24 48-8-233 by reason of denial of validation of debt, then all net proceeds received by the
25 county from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

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

32 48-8-243.

33 The governing authority of the county and the governing authority of each municipality
34 receiving any proceeds from the tax under this article shall maintain a record of each and
35 every purpose for which the proceeds of the tax are used. Not later than December 31 of
36 each year, the governing authority of each local government receiving any proceeds from

1 the tax under this article shall publish annually, in a newspaper of general circulation in the
2 boundaries of such local government, a simple, nontechnical report which shows for each
3 purpose in the resolution or ordinance calling for imposition of the tax the original
4 estimated cost, the current estimated cost if it is not the original estimated cost, amounts
5 expended in prior years, and amounts expended in the current year. The report shall also
6 include a statement of what corrective action the local government intends to implement
7 with respect to each purpose which is underfunded or behind schedule and a statement of
8 any surplus funds which have not been expended for a purpose."

9 **SECTION 3.**

10 This Act shall become effective on July 1, 2006.

11 **SECTION 4.**

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