

House Bill 1030 (COMMITTEE SUBSTITUTE)

By: Representative Smith of the 129th

A BILL TO BE ENTITLED

AN ACT

To amend Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to the excise tax on the furnishing for value to the public of any rooms, lodgings, or accommodations, so as to change certain provisions regarding the levy and collection of such tax; to provide authorization with certain conditions for certain counties and municipalities to levy such tax; to change certain provisions authorizing certain counties and municipalities to levy such tax under certain conditions; to provide for requirements and limitations with respect thereto; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to the excise tax on the furnishing for value to the public of any rooms, lodgings, or accommodations, is amended by striking paragraphs (1) and (2) of subsection (a) of Code Section 48-13-51, relating to the levy and collection of certain excise taxes, and inserting in their place new paragraphs (1) and (2) to read as follows:

"(a)(1)(A) The governing authority of each municipality in this state may levy and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value. Within the territorial limits of the special district located within the county, each county in this state may levy and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the county for operating within the special district a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations

1 are regularly furnished for value. The provisions of this Code section shall control over
2 the provisions of any local ordinance or resolution to the contrary enacted pursuant to
3 Code Section 48-13-53 and in effect prior to July 1, 1998. Any such ordinance shall not
4 be deemed repealed by this Code section but shall be administered in conformity with
5 this Code section.

6 (B)(i) The excise tax shall be imposed on any person or legal entity licensed by or
7 required to pay a business or occupation tax to the governing authority imposing the
8 tax for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground,
9 or any other place in which rooms, lodgings, or accommodations are regularly
10 furnished for value and shall apply to the furnishing for value of any room, lodging,
11 or accommodation. Every person or entity subject to a tax levied as provided in this
12 Code section shall, except as provided in this Code section, be liable for the tax at the
13 applicable rate on the lodging charges actually collected or, if the amount of taxes
14 collected from the hotel or motel guest is in excess of the total amount that should
15 have been collected, the total amount actually collected must be remitted.

16 (ii) Any tax levied as provided in this Code section is also imposed upon every
17 person or entity who is a hotel or motel guest and who receives a room, lodging, or
18 accommodation that is subject to the tax levied under this Code section. Every such
19 guest subject to the tax levied under this Code section shall pay the tax to the person
20 or entity providing the room, lodging, or accommodation. The tax shall be a debt of
21 the person obtaining the room, lodging, or accommodation to the person or entity
22 providing such room, lodging, or accommodation until it is paid and shall be
23 recoverable at law by the person or entity providing such room, lodging, or
24 accommodation in the same manner as authorized for the recovery of other debts. The
25 person or entity collecting the tax from the hotel or motel guest shall remit the tax to
26 the governing authority imposing the tax, and the tax remitted shall be a credit against
27 the tax imposed by division (i) of this subparagraph on the person or entity providing
28 the room, lodging, or accommodation.

29 (C)(i) The tax authorized by this Code section shall not apply to charges made for
30 any rooms, lodgings, or accommodations provided to any persons who certify that
31 they are staying in such room, lodging, or accommodation as a result of the
32 destruction of their home or residence by fire or other casualty. The tax authorized by
33 this Code section shall apply to the fees or charges for any rooms, lodgings, or
34 accommodations during the first ten days of continuous occupancy and shall not apply
35 to charges imposed for any continuous occupancy thereafter. The tax authorized by
36 this Code section shall not apply to charges made for the use of meeting rooms and

1 other such facilities or to any rooms, lodgings, or accommodations provided without
2 charge.

3 (ii) The tax authorized by this Code section shall not apply to the charges for any
4 rooms, lodgings, or accommodations furnished for a period of one or more days for
5 use by Georgia state or local governmental officials or employees when traveling on
6 official business. Notwithstanding the availability of any other means of identifying
7 the person as a state or local government official or employee, whenever a person
8 pays for any rooms, lodgings, or accommodations with a state or local government
9 credit or debit card, such rooms, lodgings, or accommodations shall be deemed to
10 have been furnished for use by a Georgia state or local government official or
11 employee traveling on official business for purposes of the exemption provided by
12 this division.

13 (D) Except as provided in paragraphs (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5),
14 (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), and (5.3) of this
15 subsection, no tax levied pursuant to this Code section shall be levied or collected at a
16 rate exceeding 3 percent of the charge to the public for the furnishings.

17 (2) A county or municipality levying a tax as provided in paragraph (1) of this subsection
18 shall in each fiscal year beginning on or after July 1, 1987, expend for the purpose of
19 promoting tourism, conventions, and trade shows a percentage of the total taxes collected
20 under this Code section which is not less than the percentage of such tax collections
21 expended for such purposes during the immediately preceding fiscal year. In addition,
22 if during such immediately preceding fiscal year any portion of such tax receipts was
23 expended for such purposes through a grant to or a contract or contracts with the state,
24 a department of state government, a state authority, or a private sector nonprofit
25 organization, then in each fiscal year beginning on or after July 1, 1987, at least the same
26 percentage shall be expended through a contract or contracts with one or more such
27 entities for the purpose of promoting tourism, conventions, and trade shows. The
28 expenditure requirements of this paragraph shall cease to apply to a county or
29 municipality which levies a tax at a rate in excess of 3 percent, as authorized under
30 paragraphs (2.1), (3), (2.2), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3),
31 (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), and (5.3) of this subsection; and in such case the
32 expenditure requirements of such paragraph of this subsection pursuant to which such tax
33 is levied shall apply instead."

SECTION 2.

Said article is further amended in subsection (a) of Code Section 48-13-51, relating to the levy and collection of certain excise taxes, by adding a new paragraph immediately following paragraph (2.1), to be designated paragraph (2.2), to read as follows:

"(2.2)(A) Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the term:

(i) 'Charitable trust' shall have the meaning given such term in subsection (d) of Code Section 48-13-55.

(ii) 'Development authority' shall mean a development authority created pursuant to Chapter 62 of Title 36, the 'Development Authorities Law.'

(iii) 'Facility' or 'facilities' shall mean any of the buildings, structures, and facilities described in division (ii) of subparagraph (D) of this paragraph.

(iv) 'Functionally related business' shall have the meaning given such term in subsection (d) of Code Section 48-13-55.

(v) 'Fund' or 'funding' shall include the cost and expense of all things necessary for the construction and operation of a facility or facilities, including, but not limited to, the study, operation, marketing, acquisition, construction, financing (including the payment of principal of and interest on any obligation of a development authority to finance such facility or facilities or refund any obligation of a development authority previously issued to finance such facility or facilities), development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities and the repayment of any obligation incurred in connection therewith.

(vi) 'Obligation' shall mean bonds, notes, or any instrument creating an obligation to pay or reserve moneys, having an initial term of not more than 35 years.

(vii) 'Related entity' shall mean, with respect to a charitable trust, a functionally related business of such charitable trust, or any for profit or not for profit entity owned by or under common ownership with such charitable trust or owned by or under common ownership with a functionally related business of such charitable trust or otherwise affiliated with such charitable trust in a manner approved by the development authority.

(B) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or any municipality within such county in which is located, in either case, a convention and conference center which is at least 50,000 square feet in size and is owned in fee simple by a development authority and leased by such development authority to a charitable trust or a related entity thereof, and in which county or municipality there exists a

private sector nonprofit organization which, on or before December 31, 2005, entered into a contract or a memorandum of understanding with the county or municipality and the aforementioned charitable trust pursuant to Code Section 48-13-55 relating to the expenditure of the proceeds of the tax collected under this Code section, may levy a tax under this Code section at a rate of 5 percent.

(C) The proceeds of the taxes collected under this paragraph shall be expended pursuant to a contract or a memorandum of understanding between the county or municipality, the private sector nonprofit organization, and the charitable trust, and such proceeds may be expended by or for the benefit of the county or municipality, the private sector nonprofit organization, or the charitable trust and related entities thereof for the purposes described in subparagraph (D) of this paragraph, provided that the expenditure of the proceeds of the tax levied on a charitable trust or a functionally related business thereof shall meet the requirements of Code Section 48-13-55.

(D) The proceeds of the taxes collected under this paragraph may be expended for any or all of the following purposes:

(i) Promoting tourism, conventions, and trade shows;

(ii) Promoting, attracting, stimulating, and developing conventions and tourism pursuant to Code Section 48-13-55; or

(iii) Funding, supporting, acquiring, constructing, renovating, improving, and equipping buildings, structures, infrastructure, and facilities which have the effect of promoting, attracting, stimulating, and developing conventions and tourism, including, but not limited to, a hotel facility and infrastructure and utility projects, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph, secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the county or municipality to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holder of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a development authority, shall constitute a contract with the holder of such obligation."

SECTION 3.

Said article is further amended by striking paragraph (6) of subsection (a) of Code Section 48-13-51, relating to the levy and collection of certain excise taxes, and inserting in its place a new paragraph (6) to read as follows:

"(6) At no time shall a county or municipality levy a tax under more than one paragraph of this subsection. Following the termination of a tax under paragraph (2.1), (2.2), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection, any county or municipality which has levied a tax pursuant to paragraph (2.1), (2.2), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall be authorized to levy a tax in the manner and at the rate authorized by either paragraph (1), paragraph (3), or paragraph (4) of this subsection but shall not thereafter be authorized to again levy a tax under paragraph (2.1), (2.2), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection."

SECTION 4.

Said article is further amended by striking paragraphs (9) and (10) of subsection (a) of Code Section 48-13-51, relating to the levy and collection of certain excise taxes, and inserting in their places new paragraphs (9) and (10) to read as follows:

"(9)(A) A county or municipality imposing a tax under paragraph (1), (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall prior to the imposition of the tax (if the tax is imposed on or after July 1, 1990) and prior to each fiscal year thereafter in which the tax is imposed adopt a budget plan specifying how the expenditure requirements of this Code section will be met. Prior to the adoption of such budget plan, the county or municipality shall obtain from the authorized entity with which it proposes to contract to meet the expenditure requirements of this Code section a budget for expenditures to be made by such organization; and such budget shall be made a part of the county or municipal budget plan.

(B)(i) The determination as to whether a county or municipality has complied with the expenditure requirements of paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall be made for each fiscal year beginning on or after July 1, 1987, as of the end of each fiscal year, shall be prominently reflected in the audit required under Code Section 36-81-7, and shall disclose:

(I) The amount of funds expended or contractually committed for expenditure as provided in paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection, whichever is applicable, during the fiscal year;

(II) The amount of tax receipts under this Code section during such fiscal year; and

(III) Expenditures as a percentage of tax receipts.

(ii) A county or municipality contractually expending funds to meet the expenditure requirements of paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall require the contracting party to provide audit verification that the contracting party makes use of such funds in conformity with the requirements of this subsection. If the audit required by Code Section 36-81-7 identifies noncompliance with the applicable expenditure requirements of this Code section, such noncompliance shall be reported in accordance with paragraph (2) of subsection (c) of Code Section 36-81-7. The state auditor shall report all instances of noncompliance with this subparagraph noted in the audit report to the Department of Community Affairs upon completion of the report review required by paragraph (2) of subsection (d) of Code Section 36-81-7. The state auditor shall furnish a copy of all documents submitted by the local government or the local government's auditor pertaining to noncompliance with this subparagraph to the Department of Revenue. The Department of Community Affairs shall submit a copy of such documents to the performance review board.

(10) Nothing in this article shall be construed to limit the power of a county or municipality to expend more than the required amounts, or all, of the total taxes collected under this Code section for the purposes described in paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection."

SECTION 5.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 6.

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