

House Bill 410 (COMMITTEE SUBSTITUTE)

By: Representatives Hanner of the 148th, Royal of the 171st, and Greene of the 149th

**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 option sales and use tax by certain municipalities; to provide for
4 a short title; to provide for definitions; to provide for the rate and manner of imposition of
5 such tax; to provide for applicability to certain sales; to provide for powers, duties, and
6 authority of municipal governing authorities with respect to such tax; to provide for powers,
7 duties, and authorities of the state revenue commissioner with respect to such tax; to provide
8 for collection and administration of such tax; to provide for returns; to provide for
9 distribution and expenditure of proceeds; to provide for a method for discontinuation of such
10 tax; to provide for automatic repeal; to change certain provisions regarding limitations on
11 imposition of certain local taxes; to provide for other matters relative to the foregoing; to
12 repeal conflicting laws; and for other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

15 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
16 taxes, is amended by adding a new article at the end thereof, to be designated Article 5, to
17 read as follows:

18 **"ARTICLE 5**

19 48-8-230.

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

21 48-8-231.

22 As used in this article, the term:

1 (1) 'Building and construction materials' means all building and construction materials,
2 supplies, fixtures, or equipment, any combination of such items, and any other leased or
3 purchased articles when the materials, supplies, fixtures, equipment, or articles are to be
4 utilized or consumed during construction or are to be incorporated into construction work
5 pursuant to a bona fide written construction contract.

6 (2) 'Capital outlay project' means:

7 (A) Acquisition, construction, installation, replacement, maintenance, or repair of
8 water facilities for asbestos remediation; and

9 (B) Acquisition, construction, installation, replacement, maintenance, or repair of
10 natural gas facilities.

11 (3) 'Municipality' means a municipality that provides water and natural gas service,
12 among other municipal services, and which has received correspondence from the state
13 Department of Natural Resources on or after January 1, 2007, urging the municipality to
14 'make distribution pipe replacement its highest priority as soon as possible' to correct and
15 eliminate the 'asbestos fiber health risk to its citizens.'

16 48-8-232.

17 The governing authority of any municipality in this state may, subject to the requirement
18 of referendum approval and other requirements of this article, impose within the
19 municipality a sales and use tax for a limited period of time. Such tax shall only be
20 imposed for all of the purposes specified in paragraph (2) of Code Section 48-8-231. Any
21 tax imposed under this article shall be at the rate of 1 percent. Except as to rate, a tax
22 imposed under this article shall correspond to the tax imposed by Article 1 of this chapter
23 except that a tax imposed under this article shall not apply to the sale of motor vehicles.
24 No item or transaction which is not subject to taxation under Article 1 of this chapter shall
25 be subject to a tax imposed under this article, except that a tax imposed under this article
26 shall apply to sales of motor fuels as that term is defined by Code Section 48-9-2 and shall
27 be applicable to the sale of food and beverages as provided for in division (57)(D)(i) of
28 Code Section 48-8-3.

29 48-8-233.

30 (a) A municipal governing authority voting to impose the tax authorized by this article
31 shall notify the municipal election superintendent by forwarding to the superintendent a
32 copy of the resolution or ordinance of the municipal governing authority calling for the
33 imposition of the tax. Such ordinance or resolution shall specify the following:

34 (1) The capital outlay projects for which the proceeds of the tax are to be used;

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

3 (3) The maximum amount of net proceeds to be raised by the tax which shall not exceed
4 \$1.8 million; and

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

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

27 (c)(1) If the tax is to be imposed solely for capital outlay and if no debt is to be issued,
28 the ballot shall have written or printed thereon the following:

29 '() YES Shall a 1 percent sales and use tax be imposed in the municipality of
30 _____ for a period of time not to exceed _____ and for
31 () NO the raising of not more than \$____ for the purpose of funding
32 _____?'

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

35 'If imposition of the tax is approved by the voters, such vote shall also constitute
36 approval of the issuance of general obligation debt of the municipality of _____
37 in the principal amount of \$_____ for the above purpose.'

1 (d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes' and all persons
2 opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in
3 favor of imposing the tax then the tax shall be imposed as provided in this article;
4 otherwise the tax shall not be imposed and the question of imposing the tax shall not again
5 be submitted to the voters of the municipality until after 12 months immediately following
6 the month in which the election was held; provided, however, that if an election date
7 authorized under Code Section 21-2-540 occurs during the twelfth month immediately
8 following the month in which such election was held, the question of imposing the tax may
9 be submitted to the voters of the municipality on such date. The election superintendent
10 shall hold and conduct the election under the same rules and regulations as govern special
11 elections. The superintendent shall canvass the returns, declare the result of the election,
12 and certify the result to the Secretary of State and to the commissioner. The expense of the
13 election shall be paid from municipal funds.

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

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

1 48-8-234.

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

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

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

19 (3) As of the end of the calendar quarter during which the commissioner determines that
20 the tax will have raised revenues sufficient to provide to the municipality net proceeds
21 equal to or greater than the amount specified as the maximum amount of net proceeds to
22 be raised by the tax.

23 (c) No municipality shall impose at any time more than a single 1 percent tax under this
24 article.

25 48-8-235.

26 A tax levied pursuant to this article shall be exclusively administered and collected by the
27 commissioner for the use and benefit of the municipality imposing the tax. Such
28 administration and collection shall be accomplished in the same manner and subject to the
29 same applicable provisions, procedures, and penalties provided in Article 1 of this chapter;
30 provided, however, that all moneys collected from each taxpayer by the commissioner shall
31 be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be
32 allowed a percentage of the amount of the tax due and accounted for and shall be
33 reimbursed in the form of a deduction in submitting, reporting, and paying the amount due
34 if such amount is not delinquent at the time of payment. The deduction shall be at the rate
35 and subject to the requirements specified under subsections (b) through (f) of Code Section
36 48-8-50.

1 48-8-236.

2 Each sales and use tax return remitting sales and use taxes collected under this article shall
3 separately identify the location of each retail establishment at which any of the sales and
4 use taxes remitted were collected and shall specify the amount of sales and the amount of
5 taxes collected at each establishment for the period covered by the return in order to
6 facilitate the determination by the commissioner that all sales and use taxes imposed by this
7 article are collected and distributed according to situs of sale.

8 48-8-237.

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

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

13 (2) Except for the percentage provided in paragraph (1) of this Code section, the
14 remaining proceeds of the tax shall be distributed to the governing authority of the
15 municipality imposing the tax and shall be expended for all purposes specified under
16 paragraph (2) of Code Section 48-8-231.

17 48-8-238.

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

32 48-8-239.

33 No tax provided for in this article shall be imposed upon the sale of tangible personal
34 property which is ordered by and delivered to the purchaser at a point outside the

1 geographical area of the municipality in which the tax is imposed regardless of the point
2 at which title passes, if the delivery is made by the seller's vehicle, United States mail, or
3 common carrier or by private or contract carrier licensed by the Federal Highway
4 Administration or the Georgia Public Service Commission.

5 48-8-240.

6 No tax provided for in this article shall be imposed upon the sale or use of building and
7 construction materials when the contract pursuant to which the materials are purchased or
8 used was advertised for bid prior to the voters' approval of the levy of the tax and the
9 contract was entered into as a result of a bid actually submitted in response to the
10 advertisement prior to approval of the levy of the tax.

11 48-8-241.

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

15 48-8-242.

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

22 48-8-243.

23 (a) The proceeds received from the tax authorized by this article shall be used by the
24 municipality exclusively for capital outlay projects. Such proceeds shall be kept in a
25 separate account from other funds of the municipality and shall not in any manner be
26 commingled with other funds of the municipality prior to expenditure.

27 (b) The governing authority of the municipality shall maintain a record of each and every
28 capital outlay project for which the proceeds of the tax are used. In each annual audit a
29 schedule shall be included which shows for each ongoing capital outlay project the original
30 estimated cost, the current estimated cost if it is not the original estimated cost, amounts
31 expended in prior years, and amounts expended in the current year. The auditor shall
32 verify and test expenditures sufficient to provide assurances that the schedule is fairly
33 presented in relation to the financial statements. The auditor's report on the financial

1 statements shall include an opinion, or disclaimer of opinion, as to whether the schedule
2 is presented fairly in all material respects in relation to the financial statements taken as a
3 whole.

4 48-8-244.

5 This article shall be repealed effective at 12:00 Midnight, December 31, 2016, and no tax
6 shall thereafter be levied or collected under this article."

7 **SECTION 2.**

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

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

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

20 (2) Any tax levied for purposes of a metropolitan area system of public transportation,
21 as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page
22 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)
23 of the Constitution; and the laws enacted pursuant to such constitutional amendment;
24 provided, however, that the exception provided for under this paragraph shall only apply
25 in a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code
26 Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay
27 project or projects, a sewer capital outlay project or projects, a water and sewer capital
28 outlay project or projects, water and sewer projects and costs as defined under
29 paragraph (3) of Code Section 48-8-200, or any combination thereof and with respect to
30 which the county has entered into an intergovernmental contract with a municipality, in
31 which the average waste-water system flow of such municipality is not less than 85
32 million gallons per day, allocating proceeds to such municipality to be used solely for
33 water and sewer projects and costs as defined under paragraph (3) of Code Section
34 48-8-200. The exception provided for under this paragraph shall apply only during the
35 period the tax under said subparagraph (a)(1)(D) is in effect. The exception provided for

1 under this paragraph shall not apply in any county in which a tax is being imposed under
2 Article 2A of this chapter;

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

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

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

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

12 **SECTION 3.**

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