

The Senate Finance Committee offered the following substitute to HB 1168:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to provide for the comprehensive revision of the excise tax on rooms,
3 lodgings, and accommodations; to provide for definitions; to provide for procedures,
4 conditions, and limitations for the imposition, collection, and expenditure of proceeds of the
5 tax; to provide for powers, duties, and authority of county and municipal governing
6 authorities; to provide for powers, duties, and authority of the state revenue commissioner;
7 to change the membership of the Hotel Motel Tax Performance Review Board; to change
8 certain provisions regarding the levy, collection, and expenditure of certain proceeds of such
9 tax; to provide for related matters; to amend Title 44 of the Official Code of Georgia
10 Annotated, relating to property, so as to modify certain provisions relating to the creation of
11 a landlord and tenant relationship; to provide for limitations on the creation of a landlord and
12 tenant relationship where property is occupied by persons who are guests in a hotel, inn,
13 boarding house, or similar establishment; to provide effective dates; to repeal conflicting
14 laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

16 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
17 amended by revising Code Section 48-13-50.2, relating to definitions regarding the excise
18 tax on rooms, lodgings, and accommodations, as follows:

19 "48-13-50.2.

20 As used in this article, the term:

21 (1) 'Destination marketing organization' means a private sector nonprofit organization or
22 other private entity which is exempt from federal income tax under section 501(c)(6) of
23 the Internal Revenue Code of 1986 that is supported by the tax under this article,
24 government budget allocations, private membership, or any combination thereof and the
25 primary responsibilities of which are to encourage travelers to visit their destinations,
26

1 encourage meetings and expositions in the area, and provide visitor assistance and
 2 support as needed.

3 ~~(1)~~(2) 'Innkeeper' means any person who is subject to taxation under this article for the
 4 furnishing for value to the public any rooms, lodgings, or accommodations.

5 (3) 'Private sector nonprofit organization' means a chamber of commerce, a convention
 6 and visitors bureau, a regional travel association, or any other private group organized for
 7 similar purposes which is exempt from federal income tax under Section 501(c)(6) of the
 8 Internal Revenue Code of 1986; provided, however, that a county or municipality which
 9 has prior to April 1, 1990, contracted for a required expenditure under this Code section
 10 with a private group which is exempt from federal income tax under provisions of Section
 11 501(c) of the Internal Revenue Code other than Section 501(c)(6) may continue to
 12 contract for required expenditures with such a private group.

13 ~~(2)~~(4) 'Promoting tourism, conventions, and trade shows' means planning, conducting,
 14 or participating in programs of information and publicity designed to attract or advertise
 15 tourism, conventions, or trade shows.

16 (5) 'State authority' means an authority created by state law which serves a state-wide
 17 function, including, but not limited to, the Geo. L. Smith II Georgia World Congress
 18 Center Authority, but shall not mean an authority created for support of a local
 19 government or a local purpose or function and shall not include authorities such as area
 20 planning and development commissions and any organizational entities they may create,
 21 regional development centers and any organizational entities they may create, or local
 22 water and sewer authorities.

23 (6) 'Tourism product development' means the expenditure of funds for the creation or
 24 expansion of physical attractions which are available and open to the public and which
 25 improve destination appeal to visitors, support visitors' experience, and are used by
 26 visitors. Such expenditures may include capital costs and operating expenses. Tourism
 27 product development may include:

28 (A) Lodging for the public for no longer than 30 consecutive days to the same
 29 customer;

30 (B) Overnight or short-term sites for recreational vehicles, trailers, campers, or tents;

31 (C) Meeting, convention, exhibit, and public assembly facilities;

32 (D) Sports stadiums, arenas, and complexes;

33 (E) Golf courses associated with a resort development that are open to the general
 34 public on a contract or fee basis;

35 (F) Racing facilities, including dragstrips, motorcycle racetracks, and auto or stock car
 36 racetracks or speedways;

37 (G) Amusement centers, amusement parks, theme parks, or amusement piers;

1 (H) Hunting preserves, trapping preserves, or fishing preserves or lakes;

2 (I) Visitor information and welcome centers;

3 (J) Wayfinding signage;

4 (K) Permanent, nonmigrating carnivals or fairs;

5 (L) Airplanes, helicopters, buses, vans, or boats for excursions or sightseeing;

6 (M) Boat rentals, boat party fishing services, rowboat or canoe rentals, horse shows,
7 natural wonder attractions, picnic grounds, river-rafting services, scenic railroads for
8 amusement, aerial tramways, rodeos, water slides, or wave pools;

9 (N) Museums, planetariums, art galleries, botanical gardens, aquariums, or zoological
10 gardens;

11 (O) Parks, trails, and other recreational facilities; or

12 (P) Performing arts facilities."

13 SECTION 2.

14 Said title is further amended in Code Section 48-13-51, relating to county and municipal
15 levies on public accommodations charges for the promotion of tourism, conventions, and
16 trade shows, by revising subparagraph (a)(1)(C) as follows:

17 ~~"(C)(i) The tax authorized by this Code section shall not apply to charges made for~~
18 ~~any rooms, lodgings, or accommodations provided to any persons who certify that~~
19 ~~they are staying in such room, lodging, or accommodation as a result of the~~
20 ~~destruction of their home or residence by fire or other casualty. The tax authorized~~
21 ~~by this Code section shall apply to the fees or charges for any rooms, lodgings, or~~
22 ~~accommodations during the first ten days of continuous occupancy and shall not apply~~
23 ~~to charges imposed for any continuous occupancy thereafter. The tax authorized by~~
24 ~~this Code section shall not apply to charges made for the use of meeting rooms and~~
25 ~~other such facilities or to any rooms, lodgings, or accommodations provided without~~
26 ~~charge.~~

27 ~~(ii) The tax authorized by this Code section shall not apply to the charges for any~~
28 ~~rooms, lodgings, or accommodations furnished for a period of one or more days for~~
29 ~~use by Georgia state or local governmental officials or employees when traveling on~~
30 ~~official business. Notwithstanding the availability of any other means of identifying~~
31 ~~the person as a state or local government official or employee, whenever a person~~
32 ~~pays for any rooms, lodgings, or accommodations with a state or local government~~
33 ~~credit or debit card, such rooms, lodgings, or accommodations shall be deemed to~~
34 ~~have been furnished for use by a Georgia state or local government official or~~
35 ~~employee traveling on official business for purposes of the exemption provided by~~
36 ~~this division Reserved."~~

1 other place in which rooms, lodgings, or accommodations are regularly or periodically
2 furnished for value.

3 (4) The levy of an excise tax pursuant to this subsection shall be conditioned upon the
4 county or municipality adopting a resolution which specifies the subsequent tax rate,
5 identifies the projects or tourism product development purposes, and specifies the
6 allocation of proceeds and, subsequent to such resolution, the enactment of a local Act
7 by the General Assembly.

8 (5) In accordance with the terms of the resolution adopted by the county or municipality,
9 the local Act of the General Assembly shall provide that:

10 (A) In each fiscal year during which a tax is collected under paragraph (2) or (3) of this
11 subsection, an amount equal to not less than 50 percent of the total amount of taxes
12 collected that exceed the amount of taxes that would be collected at the rate of 5 percent
13 shall be expended for promoting tourism, conventions, and trade shows by the
14 destination marketing organization designated by the county or municipality levying
15 tax; and

16 (B) The remaining amount of taxes collected that exceed the amount of taxes that
17 would be collected at the rate of 5 percent which are not otherwise expended under
18 subparagraph (A) of this paragraph shall be expended for tourism product development.

19 (6) A county or municipality levying a tax pursuant to this subsection shall expend an
20 amount equal to the amount of total taxes collected under this subsection which would
21 have been collected at a rate of 5 percent in accordance with the provisions of paragraph
22 (3) of subsection (a) of this Code section.

23 (c) Nothing in this article shall be construed to impair, or authorize or require the
24 impairment of, any existing contract or contractual rights.

25 (d) At no time shall a county or municipality levy simultaneously more than one tax under
26 this article.

27 (e)(1) Except as otherwise provided in paragraph (2) of this subsection, for any excise
28 tax levied pursuant to subsection (b) of this Code section, a county or municipality
29 imposing a tax under this article shall, prior to the imposition of the tax or changing the
30 rate of the levy of the tax and prior to each fiscal year thereafter in which the tax is
31 imposed, adopt a budget plan specifying how the proceeds of such tax are to be
32 expended. Prior to the adoption of such budget plan, the county or municipality shall
33 obtain from the destination marketing organization or state authority with which it
34 proposes to contract to meet the expenditure requirements of this paragraph a budget plan
35 for expenditures to be made by such organization. Such destination marketing
36 organization or state authority expenditure budget plan shall be made a part of the county
37 or municipal budget plan.

1 (2) This paragraph shall apply to a county or municipality which is levying the tax under
2 subsection (a) of this Code section on January 1, 2008, and is expending the proceeds of
3 the tax through a contract or contracts with an authorized entity or entities other than a
4 destination marketing organization. In the event such county or municipality ceases such
5 levy in order to levy an excise tax under subsection (b) of this Code section, it may
6 continue to expend the proceeds of the tax through a contract or contracts with the same
7 entity or entities other than a destination marketing organization if, prior to each fiscal
8 year in which the tax is imposed, the county or municipality adopts a budget plan
9 specifying how the proceeds of such tax are to be expended. Prior to the adoption of such
10 budget plan, such county or municipality shall obtain from such entity or entities with
11 which it proposes to contract to meet the expenditure requirements of this paragraph a
12 budget plan for expenditures to be made by such entity or entities. The budget plan of
13 such entity or entities shall be made a part of the county or municipal budget plan.

14 (f) A county or municipality expending funds of the tax levied under subsection (b) of this
15 Code section pursuant to a contract shall require the destination marketing organization or
16 state authority to provide audit verification that such destination marketing organization
17 or state authority makes use of such funds in conformity with the requirements of this
18 subsection. If the audit required by Code Section 36-81-7 identifies noncompliance with
19 the applicable expenditure requirements of this Code section, such noncompliance shall be
20 reported in accordance with paragraph (2) of subsection (c) of Code Section 36-81-7. The
21 state auditor shall report all instances of noncompliance with this subsection noted in the
22 audit report to the Department of Community Affairs upon completion of the report review
23 required by paragraph (2) of subsection (d) of Code Section 36-81-7. The state auditor
24 shall furnish a copy of all documents submitted by the local government or the local
25 government's auditor pertaining to noncompliance with this subsection to the Department
26 of Community Affairs. The Department of Community Affairs shall submit a copy of such
27 documents to the performance review board.

28 (g)(1) Any action by a local governing authority to impose or change the rate of the tax
29 authorized under this article shall become effective no sooner than the first day of the
30 second month following its action by the local governing authority.

31 (2) In the case of a county or municipality which has adopted an ordinance ceasing the
32 levy under the applicable paragraph of subsection (a) of this Code section in order to levy
33 an excise tax under subsection (b) of this Code section, such levy under subsection (b)
34 of this Code section shall become effective no sooner than the first day of the second
35 month following its action by the local governing authority.

36 (h) The tax authorized by this article shall not apply to:

1 (1) Charges made for any rooms, lodgings, or accommodations provided to any persons
 2 who certify that they are staying in such room, lodging, or accommodation as a result of
 3 the destruction of their home or residence by fire or other casualty;

4 (2) The use of meeting rooms and other such facilities or any rooms, lodgings, or
 5 accommodations provided without charge;

6 (3) Any rooms, lodgings, or accommodations furnished for a period of one or more days
 7 for use by Georgia state or local governmental officials or employees when traveling on
 8 official business. Notwithstanding the availability of any other means of identifying the
 9 person as a state or local government official or employee, whenever a person pays for
 10 any rooms, lodgings, or accommodations with a state or local government credit or debit
 11 card, such rooms, lodgings, or accommodations shall be deemed to have been furnished
 12 for use by a Georgia state or local government official or employee traveling on official
 13 business for purposes of the exemption provided by this paragraph. For purpose of the
 14 exemption provided under this paragraph, a local government official or employee shall
 15 include officials or employees of counties, municipalities, consolidated governments, or
 16 county or independent school districts; or

17 (4) Charges made for continuous use of any rooms, lodgings, or accommodations after
 18 the first 30 days of continuous occupancy.

19 ~~(b)~~(i) No tax under this article may be levied or collected by a county outside the territorial
 20 limits of the special district located within the county.

21 (j) Any requirement that a tax under this article be expended in the fiscal year in which it
 22 is collected shall be satisfied so long as fiscal year expenditures conform with the budget
 23 plan required in either paragraph (9) of subsection (a) or subsection (e) of this Code
 24 section."

25 SECTION 10.

26 Said title is further amended by revising Code Section 48-13-54, relating to collection,
 27 remittance, and use of certain funds regarding certain rooms, facilities, or cabins operated
 28 under jurisdiction of Department of Natural Resources, as follows:

29 "48-13-54.

30 Any state park operated under the jurisdiction of the Department of Natural Resources, or
 31 a state authority that is administratively attached to the Department of Natural Resources,
 32 which state park or authority regularly furnishes for value lodge rooms as well as meals and
 33 conference or meeting facilities or has a minimum of 20 cabins and which is rooms,
 34 facilities, or cabins located in a county or municipality levying a tax under this article shall,
 35 as provided in this Code section, agree to collect and remit to the county or municipality
 36 within whose taxing jurisdiction the facility is located amounts which are equal to, or

1 partially equal to, the amounts which would be collected and remitted to the county or
 2 municipality under the tax levied by the county or municipality under Code Section
 3 48-13-51 if ~~the lodges~~ such rooms, facilities, or cabins were privately operated. The sums
 4 so collected and remitted shall only be expended for development, promotion, and
 5 advertising of ~~the lodges~~ such rooms, facilities, or cabins from which the money was
 6 collected and remitted or for similar purposes of promoting, advertising, stimulating, and
 7 developing conventions and tourism in the county or municipality in which ~~the~~ such rooms,
 8 facilities, or cabins of the state park ~~is operated as~~ or state authority are located so long as
 9 said promotion or advertising prominently features the state park ~~facilities or similar~~
 10 ~~facilities operated under the jurisdiction of the Department of Natural Resources~~ or state
 11 authority rooms, facilities, or cabins."

12 SECTION 11.

13 Said title is further amended by revising subsections (a) and (b) of Code Section 48-13-56.1,
 14 relating to the Hotel Motel Tax Performance Review Board, as follows:

15 "(a)(1) There is created the Hotel Motel Tax Performance Review Board which shall
 16 consist of 11 members.

17 (2) The commissioner of community affairs shall appoint five persons to serve as
 18 members of the performance review board as follows:

19 (A) A designee of the commissioner;

20 (B) A representative of the private sector tourism industry who shall be an innkeeper;

21 (C) A representative of municipal government;

22 (D) A representative of county government; and

23 (E) A representative of a ~~tourism~~ destination marketing organization.

24 (3) The Governor shall appoint one member of the board.

25 (4) The Speaker of the House of Representatives shall appoint one member of the board.

26 (5) ~~The President Pro Tempore of the Senate~~ Lieutenant Governor shall appoint one
 27 member of the board.

28 (6) The state auditor shall appoint one member of the board.

29 (7) The commissioner of economic development shall appoint one member of the board.

30 (8) The state revenue commissioner shall appoint one member of the board.

31 (b)(1) ~~The initial members of the board shall be appointed not later than August 1, 2004.~~

32 The member of the board who is appointed under subparagraph (a)(2)(A) of this Code
 33 section shall serve for a term of office of five years. Members of the board who are
 34 appointed under subparagraphs (a)(2)(B), (a)(2)(C), (a)(2)(D), and (a)(2)(E) of this Code
 35 section shall serve for terms of office of three years each. Members of the board who are
 36 appointed under paragraphs (3), (4), and (5) of subsection (a) of this Code section shall

1 serve for terms of office of three years each. Members of the board who are appointed
 2 under paragraphs (6), (7), and (8) of subsection (a) of this Code section shall serve for
 3 terms of office of five years each. Members of the board shall serve for the terms of
 4 office specified in this subsection and until their respective successors are appointed and
 5 qualified. Members of the board may be reappointed to the board upon the expiration of
 6 their terms of office if they otherwise continue to meet the qualifications for such office.
 7 (2) If a vacancy occurs in the membership of the board, the appropriate appointing entity
 8 shall appoint a successor for the remainder of the unexpired term and until a successor
 9 is appointed and qualified."

10 SECTION 12.

11 Said title is further amended in Code Section 48-13-51, relating to the excise tax on the
 12 furnishing for value to the public of any rooms, lodgings, or accommodations, by revising
 13 paragraph (4) of subsection (a) as follows:

14 "(4) Notwithstanding any other provision of this subsection, a county (within the
 15 territorial limits of the special district located within the county) or municipality may levy
 16 a tax under this Code section at a rate of 6 percent. A county or municipality levying a
 17 tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is
 18 collected under this paragraph (4)) an amount equal to at least 43 1/3 percent of the total
 19 taxes collected at the rate of 6 percent for the purpose of: (A) promoting tourism,
 20 conventions, and trade shows; (B) supporting a facility owned or operated by a state
 21 authority for convention and trade show purposes or any other similar or related
 22 purposes; (C) supporting a facility owned or operated by a local authority or local
 23 government for convention and trade show purposes or any other similar or related
 24 purposes, if a written agreement to provide such support was in effect on January 1, 1987,
 25 and if such facility is substantially completed and in operation prior to July 1, 1987; (D)
 26 supporting a facility owned or operated by a local government or local authority for
 27 convention and trade show purposes or any other similar or related purposes if
 28 construction of such facility is funded or was funded prior to July 1, 1990, in whole or
 29 in part by a grant of state funds or is funded on or after July 1, 1990, in whole or
 30 substantially by an appropriation of state funds; (E) supporting a facility owned by a local
 31 government or local authority for convention and trade show purposes and any other
 32 similar or related purposes if construction of such facility is substantially funded or was
 33 substantially funded on or after February 28, 1985, by a special county 1 percent sales
 34 and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and such
 35 facility was substantially completed and in operation prior to December 31, 1993; or (F)
 36 for some combination of such purposes. Amounts so expended shall be expended only

1 through a contract or contracts with the state, a department of state government, a state
 2 authority, a convention and visitors bureau authority created by local Act of the General
 3 Assembly for a municipality, or a private sector nonprofit organization, or through a
 4 contract or contracts with some combination of such entities, except that amounts
 5 expended for purposes (C) and (D) may be so expended in any otherwise lawful manner.
 6 In addition to the amounts required to be expended above, a county or municipality
 7 levying a tax pursuant to this paragraph (4) shall further expend (in each fiscal year
 8 during which the tax is collected under this paragraph (4)) an amount equal to at least 1
 9 percent of the total taxes collected at the rate of 6 percent for the purpose of supporting
 10 a museum of aviation and aviation hall of fame or an amount equal to at least 16 2/3
 11 percent of the total taxes collected at the rate of 6 percent for the purpose of: (A)
 12 construction or expansion of either: ~~(A)~~ (i) a facility owned or operated by a state
 13 authority for convention and trade show purposes or any other similar or related
 14 purposes; ~~(B)~~ (ii) a facility owned or operated by a local authority or local government
 15 for convention and trade show purposes or any other similar or related purposes, if such
 16 support is provided to a governmental entity with which the county or municipality
 17 levying the tax had in effect on January 1, 1987, a contractual agreement concerning
 18 governmental support of a convention and trade show facility; ~~(C)~~ (iii) a facility owned
 19 or operated for convention and trade show purposes, visitor welcome center purposes, or
 20 any other similar or related purposes by a convention and visitors bureau authority
 21 created by local Act of the General Assembly for a municipality; ~~(D)~~ (iv) a facility owned
 22 or operated for convention and trade show purposes or any other similar or related
 23 purposes by a coliseum and exhibit hall authority created by local Act of the General
 24 Assembly for a county and one or more municipalities therein; ~~(E)~~ (v) a facility owned
 25 by a local government or local authority for convention and trade show purposes and any
 26 other similar or related purposes if construction of such facility is substantially funded
 27 or was substantially funded on or after February 28, 1985, by a special county 1 percent
 28 sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and such
 29 facility was substantially completed and in operation prior to December 31, 1993; ~~(F)~~ (vi)
 30 a system of bicycle or pedestrian trails or walkways or both connecting a historic district
 31 within the levying county or municipality and surrounding areas (and with respect to this
 32 purpose ~~(F)~~ (vi) construction and expansion shall include acquisition and development),
 33 if not later than December 1, 1993, the county or municipality has adopted ordinances,
 34 resolutions, or contracts which: ~~(i)~~ (I) designate such historic district; ~~(ii)~~ (II) obligate the
 35 county or municipality to provide funds to promote tourism to a historic district owners
 36 and business association which qualifies as a private sector nonprofit organization under
 37 subparagraph (a)(8)(A) of this Code section and Section 501(c)(6) of the Internal

1 Revenue Code; ~~(iii)~~ (III) provide a 'comprehensive plan' as provided for in Chapters 70
 2 and 71 of Title 36; ~~(iv)~~ (IV) provide a transportation plan as a component of such
 3 comprehensive plan; and ~~(v)~~ (V) provide a recreation plan which is designed to identify
 4 recreation needs through the year 2000 and which includes provisions for such system
 5 of trails or walkways or both; provided that the authority to expend funds for such system
 6 of trails or walkways or both shall expire when all capital costs of the initial acquisition,
 7 construction, and development of such system as identified in the relevant plan have been
 8 paid and in no event later than July 1, 2002. Amounts so expended to meet such 16 2/3
 9 percent expenditure requirement shall not be subject to the foregoing provisions of this
 10 paragraph requiring expenditure through a contract or contracts with certain entities; or
 11 ~~(G)~~ (vii) a system of bicycle or pedestrian greenways, trails, walkways, or any
 12 combination thereof connecting a downtown historic or business district within the
 13 levying county or municipality and surrounding areas (and with respect to this purpose
 14 ~~(G)~~ (vii) construction and expansion shall include acquisition and development), if not
 15 later than December 1, 2000, the county or municipality has adopted ordinances,
 16 resolutions, or contracts which: ~~(i)~~ (I) designate such historic or downtown business
 17 district; ~~(ii)~~ (II) obligate the county or municipality to provide funds to promote tourism
 18 to a downtown business district owners and business association or chamber of commerce
 19 which ~~qualify as private~~ qualifies as a private sector nonprofit ~~organizations~~ organization
 20 under subparagraph (a)(8)(A) of this Code section and Section 501(c)(6) of the Internal
 21 Revenue Code; ~~(iii)~~ III provide a 'comprehensive plan' as provided for in Chapters 70 and
 22 71 of Title 36; ~~(iv)~~ IV provide a transportation plan as a component of such
 23 comprehensive plan; and ~~(v)~~ (V) provide a recreation plan as a component of such
 24 comprehensive plan which includes provisions for such system of trails or walkways or
 25 both; provided that the authority to expend funds for such system of trails or walkways
 26 or both shall expire when all capital costs of the initial acquisition, construction, and
 27 development of such system as identified in the relevant plan have been paid and in no
 28 event later than July 1, 2025; or (B) promoting tourism, conventions, and trade shows.
 29 Amounts so expended to meet such 16 2/3 percent expenditure requirement shall not be
 30 subject to the foregoing provisions of this paragraph requiring expenditure through a
 31 contract or contracts with certain entities."

32 SECTION 13.

33 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in Code
 34 Section 44-7-1, relating to creation of landlord and tenant relationships, by inserting a new
 35 subsection to read as follows:

