

House Bill 991 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 49<sup>th</sup>, Geisinger of the 48<sup>th</sup>, Powell of the 171<sup>st</sup>, and Thompson of the 104<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to the joint county and municipal sales and use tax, so as to revise comprehensively  
3 provisions regarding distribution of proceeds and renegotiation of distribution certificates;  
4 to provide for procedures, conditions, and limitations; to provide for applicability regarding  
5 certain new qualified municipalities or newly expanded qualified municipalities; to change  
6 provisions relating to the procedure for call of a referendum election on discontinuing  
7 imposition of the tax; to provide for related matters; to provide an effective date; to repeal  
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the  
12 joint county and municipal sales and use tax, is amended by revising subsection (d) of Code  
13 Section 48-8-89, relating to the distribution of proceeds and the renegotiation of distribution  
14 certificates, as follows:

15 "(d)(1) ~~Except as otherwise provided in paragraph (7) of this subsection, a~~ A certificate  
16 providing for the distribution of the proceeds of the tax authorized by this article shall  
17 expire on December 31 of the second year following the year in which the decennial  
18 census is conducted. No later than December 30 of the second year following the year  
19 in which the census is conducted, a ~~renegotiated~~ new distribution certificate meeting the  
20 requirements for certificates specified by subsection (b) of this Code section shall be filed  
21 with and received by the commissioner. The General Assembly recognizes that the  
22 requirement for government services is not always in direct correlation with population.  
23 Although a ~~renegotiated~~ new distribution certificate is required within a time certain of  
24 the decennial census, this requirement is not meant to convey an intent by the General  
25 Assembly that population as a criterion should be more heavily weighted than other  
26 criteria. It is the express intent of the General Assembly in requiring such renegotiation

27 that eligible political subdivisions shall analyze local service delivery responsibilities and  
 28 the existing allocation of proceeds made available to such governments under the  
 29 provisions of this article and make rational the allocation of such resources to meet such  
 30 service delivery responsibilities. Political subdivisions in their renegotiation of such  
 31 distributions shall at a minimum consider the criteria specified in subsection (b) of this  
 32 Code section.

33 (2) The commissioner shall be notified in writing of the commencement of renegotiation  
 34 proceedings by the county governing authority ~~in~~ on behalf of all eligible political  
 35 subdivisions within the special district. The eligible political subdivisions shall  
 36 commence renegotiations at the call of the county governing authority ~~but no later than~~  
 37 before July 1 of the second year following the year in which the census is conducted. If  
 38 the county governing authority does not issue the call by that date, any eligible  
 39 municipality may issue the call and so notify the commissioner and all eligible political  
 40 subdivisions within the special district.

41 (3) Following the commencement of such renegotiation, if the parties necessary to an  
 42 agreement fail to reach an agreement within 60 days, such parties shall ~~agree to~~ submit  
 43 the dispute to nonbinding arbitration, mediation, or such other means of resolving  
 44 conflicts in a manner which, ~~in the judgment of the commissioner, reflects a good faith~~  
 45 ~~effort to resolve~~ attempts to reach a resolution of the dispute. Any renegotiation  
 46 agreement reached pursuant to this paragraph shall be in accordance with the  
 47 requirements specified in paragraph (1) of this subsection.

48 (4)(A) If the parties necessary to an agreement fail to reach an agreement within 60  
 49 days of submitting the dispute to nonbinding arbitration, mediation, or such other  
 50 means of resolving conflicts, as required by paragraph (3) of this subsection, any of  
 51 such parties may file a petition in superior court of the county seeking resolution of the  
 52 items remaining in dispute. Such petition shall be filed no later than 30 days after the  
 53 last day of the 60 day alternative dispute resolution period required by paragraph (3) of  
 54 this subsection. Such petition shall be assigned to a judge pursuant to Code Section  
 55 15-1-9.1 or 15-6-13 who is not a judge in the circuit in which the county is located.  
 56 The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who  
 57 resides in another circuit.

58 (B) Following the filing of the petition as specified under subparagraph (A) of this  
 59 paragraph, the county and qualified municipalities representing at least one-half of the  
 60 aggregate municipal population of all qualified municipalities located wholly or  
 61 partially within the special district shall separately submit to the judge and the other  
 62 parties a written best and final offer specifying the distribution of the tax proceeds.  
 63 There shall be one such offer from the county and one such offer from qualified

64 municipalities representing at least one-half of the aggregate municipal population of  
 65 all qualified municipalities located wholly or partially within the special district. The  
 66 offer from the county may be an offer representing the county and any qualified  
 67 municipalities that are not represented in the offer from the qualified municipalities  
 68 representing at least one-half of the aggregate municipal population of all qualified  
 69 municipalities located wholly or partially within the special district.

70 (C) Any qualified municipality or municipalities located wholly or partially within the  
 71 special district who are not a party to an offer under subparagraph (B) of this paragraph,  
 72 and who represent at least one-half of the aggregate municipal population of all  
 73 qualified municipalities who are not a party to an offer under subparagraph (B) of this  
 74 paragraph, shall be authorized to separately submit to the judge and the other parties a  
 75 written best and final offer specifying the distribution of the tax proceeds. There shall  
 76 be one such offer from such qualified municipality or municipalities.

77 (D) Each offer under subparagraphs (B) and (C) of this paragraph shall take into  
 78 account the allocation required for any absent municipalities in accordance with  
 79 subsection (b) of this Code section. The judge shall conduct such hearings as the judge  
 80 deems necessary and shall render a decision based on the requirements and intent of  
 81 paragraph (1) of this subsection and the criteria in subsection (b) of this Code section.  
 82 The judge's decision shall adopt the best and final offer of one of the parties submitted  
 83 under subparagraphs (B) and (C) of this paragraph specifying the allocation of the tax  
 84 proceeds and shall also include findings of fact. The judge shall enter a final order  
 85 containing a new distribution certificate and transmit a copy of it to the commissioner.

86 (E) A final order entered under subparagraph (D) of this paragraph shall be subject to  
 87 appeal by application upon one or more of the following grounds:

- 88 (i) The judge's disregard of the law;
- 89 (ii) Partiality of the judge; or
- 90 (iii) Corruption, fraud, or misconduct by the judge or a party.

91 (F) During the process set forth in this paragraph, the commissioner shall continue to  
 92 distribute the sales tax proceeds according to the percentages specified in the most  
 93 recently filed distribution certificate or in accordance with subsection (f) of Code  
 94 Section 48-8-89.1, as applicable, until a new distribution certificate is properly filed.

95 ~~(4)(5) If the renegotiated a new distribution certificate as provided for in paragraph (1)~~  
 96 ~~of this subsection Code section is not received by the commissioner by the required date,~~  
 97 ~~the authority to impose the tax authorized by Code Section 48-8-82 shall cease, on~~  
 98 ~~December 31 of the second year following the year in which the decennial census is~~  
 99 ~~conducted and the tax shall not be levied in the special district after such date unless the~~  
 100 ~~reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85.~~

101 When the imposition of the tax is so terminated, the commissioner shall retain the  
 102 proceeds of the tax which were to be distributed to the governing authorities of the county  
 103 and qualified municipalities within the special district until the commissioner receives a  
 104 certificate ~~in~~ on behalf of each such governing authority specifying the percentage of the  
 105 proceeds which each such governing authority shall receive. If no such certificate is  
 106 received by the commissioner within 120 days of the date on which the authority to levy  
 107 the tax was terminated, the proceeds shall escheat to the state, and the commissioner shall  
 108 transfer the proceeds to the state's general fund.

109 ~~(5)~~(6) If the commissioner receives ~~the renegotiated~~ a new distribution certificate by the  
 110 required date, the commissioner shall distribute the proceeds of the tax in accordance  
 111 with the directions of the ~~renegotiated~~ new distribution certificate commencing on  
 112 January 1 of the year immediately following the year in which such certificate was  
 113 ~~renegotiated~~ executed by the parties or the judge or the first day of the second calendar  
 114 month following the month such certificate was ~~renegotiated~~ executed by the parties or  
 115 the judge, whichever is sooner.

116 ~~(6)~~(7) Costs of any conflict resolution under paragraph (3) or ~~(4)~~ of this subsection shall  
 117 be borne proportionately by the affected political subdivisions in accordance with the  
 118 final percentage distributions of the proceeds of the tax as reflected by the ~~renegotiated~~  
 119 new distribution certificate.

120 ~~(7) All distribution certificates on file with the commissioner on July 1, 1994, which~~  
 121 ~~were not renegotiated in accordance with the 1990 decennial census figures or~~  
 122 ~~renegotiated on or after January 1, 1992, shall expire on December 31, 1995.~~  
 123 ~~Renegotiations with respect to such certificates shall be commenced in accordance with~~  
 124 ~~the requirements of this subsection on or before July 1, 1994. If a renegotiated certificate~~  
 125 ~~is not received by the commissioner by July 1, 1995, the authority to impose the tax~~  
 126 ~~authorized by Code Section 48-8-82 shall cease on December 31, 1995, and the tax shall~~  
 127 ~~not be levied in the special district after that date unless reimposition of the tax is~~  
 128 ~~subsequently authorized pursuant to Code Section 48-8-85. The commissioner shall~~  
 129 ~~retain and distribute the proceeds of such terminated tax in accordance with paragraph~~  
 130 ~~(4) of this subsection.~~

131 ~~(8) No qualified municipality within the special district whose population is less than 5~~  
 132 ~~percent of the population in the special district according to the United States decennial~~  
 133 ~~census of 1990 shall receive a reduced percentage of distribution than presently being~~  
 134 ~~received under the existing certificate prior to renegotiations required in paragraph (7) of~~  
 135 ~~this subsection unless the new agreement is executed by the qualified municipality. This~~  
 136 ~~paragraph shall apply only to the negotiations required by paragraph (7) of this subsection~~  
 137 ~~and shall not apply to any subsequent renegotiations required by this subsection.~~

138 ~~(9)~~(8) Political subdivisions shall be authorized, at their option, to renegotiate  
 139 distribution certificates on a more frequent basis than is otherwise required under this  
 140 subsection.

141 ~~(10)~~(9) No provision of this subsection shall apply to any county which is authorized to  
 142 levy or which levies a local sales tax, local use tax, or local sales and use tax for  
 143 educational purposes pursuant to a local constitutional amendment or to any county  
 144 which is authorized to expend all or any portion of the proceeds of any sales tax, use tax,  
 145 or sales and use tax for educational purposes pursuant to a local constitutional  
 146 amendment."

## 147 SECTION 2.

148 Said article is further amended by revising subsection (b) of Code Section 48-8-89.1, relating  
 149 to certification of additional qualified municipalities and lapsing of the tax due to failure to  
 150 file a new certificate, as follows:

151 "(b) Within 60 days after the effective date of the notice referred to in subsection (a) of this  
 152 Code section, a new distribution certificate shall be filed with the commissioner for the  
 153 special district or, within 30 days after the last day of the 60 day alternative dispute  
 154 resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the  
 155 county, any qualified municipality located wholly or partially within the special district,  
 156 or any new qualified municipality as specified under subsection (a) of this Code section  
 157 located wholly or partially within the special district may file a petition in superior court  
 158 seeking resolution of the items remaining in dispute pursuant to the procedure set forth in  
 159 paragraph (4) of subsection (d) of Code Section 48-8-89. In the event such a petition is  
 160 filed, a new qualified municipality as specified under subsection (a) of this Code section  
 161 located wholly or partially within the special district shall be subject to the same  
 162 requirements applicable to qualified municipalities located wholly or partially within the  
 163 special district under paragraph (4) of subsection (d) of Code Section 48-8-89. This The  
 164 new distribution certificate shall specify by percentage what portion of the proceeds of the  
 165 tax available for distribution within the special district shall be received by the county in  
 166 which the special district is located and by each qualified municipality located wholly or  
 167 partially within the special district, including the new qualified municipality. No  
 168 distribution certificate ~~may~~ shall contain a total of specified percentages in excess of 100  
 169 percent."

170 **SECTION 3.**

171 Said article is further amended by revising paragraph (3) of subsection (f) of Code Section  
 172 48-8-89.1, relating to certification of additional qualified municipalities and lapsing of the  
 173 tax due to failure to file a new certificate, as follows:

174 "(3) Within 60 days after the effective date of the notice referred to in paragraph (2) of  
 175 this subsection, a new distribution certificate shall be filed with the commissioner for the  
 176 special district or, within 30 days after the last day of the 60 day alternative dispute  
 177 resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89,  
 178 the county, any qualified municipality located wholly or partially within the special  
 179 district, or any new qualified municipality or newly expanded qualified municipality  
 180 located wholly or partially within the special district may file a petition in superior court  
 181 seeking resolution of the items remaining in dispute pursuant to the procedure set forth  
 182 in paragraph (4) of subsection (d) of Code Section 48-8-89. This The new distribution  
 183 certificate shall address only the proceeds of the tax available for distribution from the  
 184 percentage allocated to the county in the current distribution certificate and shall specify  
 185 as a percentage of the total proceeds of the tax what portion of the proceeds shall be  
 186 received by the county in which the special district is located and by the new qualified  
 187 municipality and newly expanded qualified municipality located wholly or partially  
 188 within the special district, if any."

189 **SECTION 4.**

190 Said article is further amended by revising Code Section 48-8-92, relating to the referendum  
 191 election on discontinuing imposition of the tax, as follows:

192 "48-8-92.

193 (a) Whenever the governing authority of any county ~~or~~ and the governing authorities of  
 194 at least one-half of qualified municipality municipalities located wholly or partially within  
 195 a special district in which the tax authorized by this article is being levied ~~wishes~~ wish to  
 196 submit to the electors of the special district the question of whether the tax authorized by  
 197 Code Section 48-8-82 shall be discontinued, ~~the~~ such governing ~~authority~~ authorities shall  
 198 notify the election superintendent of the county whose geographical boundary is  
 199 conterminous with that of the special district by forwarding to the superintendent a copy  
 200 of a joint resolution of the governing ~~authority~~ authorities calling for the referendum  
 201 election. Upon receipt of the resolution, it shall be the duty of the election superintendent  
 202 to issue the call for an election for the purpose of submitting the question of discontinuing  
 203 the levy of the tax to the voters of the special district for approval or rejection. The election  
 204 superintendent shall ~~set the date of the election for a day not less than 30 nor more than 45~~  
 205 ~~days after the date of the issuance of the call~~ issue the call and shall conduct the election

206 on a date and in the manner authorized under Code Section 21-2-540. The election  
 207 superintendent shall cause the date and purpose of the election to be published once a week  
 208 for two weeks immediately preceding the date of the election in the official organ of the  
 209 county. The ballot shall have written or printed thereon the following:

210 '( ) YES Shall the 1 percent retail sales and use tax being levied within the special  
 211 ( ) NO district within \_\_\_\_\_ County be terminated?'

212 (b) All persons desiring to vote in favor of discontinuing the tax shall vote 'Yes,' and all  
 213 persons opposed to discontinuing the tax shall vote 'No.' If more than one-half of the votes  
 214 cast are in favor of discontinuing the tax, then the tax shall cease to be levied on the first  
 215 day of the second calendar quarter following the month in which the commissioner receives  
 216 the certification of the result of the election; otherwise, the tax shall continue to be levied,  
 217 and the question of the discontinuing of the tax ~~may~~ shall not again be submitted to the  
 218 voters of the special district until after 24 months immediately following the month in  
 219 which the election was held. It shall be the duty of the election superintendent to hold and  
 220 conduct such elections under the same rules and regulations as govern special elections.  
 221 It shall be ~~his~~ such superintendent's further duty to canvass the returns, declare and certify  
 222 the result of the election, and certify the result to the Secretary of State and to the  
 223 commissioner. The expense of the election shall be borne by the county whose  
 224 geographical boundary is conterminous with that of the special district holding the  
 225 election."

226 **SECTION 5.**

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

229 **SECTION 6.**

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