

House Bill 991 (AS PASSED HOUSE AND SENATE)

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

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.