

House Bill 56

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 and change
3 procedures and requirements regarding the renegotiation of distribution certificates; to
4 change certain provisions regarding failure to file a new certificate; to change certain
5 provisions regarding discontinuation of the tax; to provide an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

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

27 article and make rational the allocation of such resources to meet such service delivery
 28 responsibilities. Political subdivisions in their renegotiation of such distributions shall at
 29 a minimum consider the criteria specified in subsection (b) of this Code section.

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

38 (3) Following the commencement of ~~such~~ renegotiation, if the parties necessary to an
 39 agreement fail to reach an agreement within 60 days, such parties shall ~~agree to~~ submit
 40 the dispute to nonbinding arbitration, mediation, or such other means of resolving
 41 conflicts in a manner which, ~~in the judgment of the commissioner,~~ reflects a good faith
 42 effort to resolve the dispute. Any renegotiation agreement reached pursuant to this
 43 paragraph shall be in accordance with the requirements specified in paragraph (1) of this
 44 subsection. If the parties fail to reach an agreement within 60 days of submitting the
 45 dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts,
 46 any party necessary to an agreement may file a petition in superior court of the county
 47 seeking resolution of the items remaining in dispute. Such petition shall be assigned to
 48 a judge pursuant to Code Section 15-1-9.1 or 15-6-13 who is not a judge in the circuit in
 49 which the county is located. The judge selected may also be a senior judge pursuant to
 50 Code Section 15-1-9.2 who resides in another circuit. The county and qualified
 51 municipalities representing at least one-half of the aggregate municipal population of all
 52 qualified municipalities located wholly or partially within the special district shall
 53 separately submit to the judge and the other parties a written best and final offer as to the
 54 distribution of the tax proceeds. There shall be one such offer from the county and one
 55 from qualified municipalities representing at least one-half of the aggregate municipal
 56 population of all qualified municipalities located wholly or partially within the special
 57 district. The offer from the county may be an offer representing the county and any
 58 municipalities that are not represented in the offer from the qualified municipalities
 59 representing at least one-half of the aggregate municipal population of all qualified
 60 municipalities located wholly or partially within the special district. Each offer shall take
 61 into account the allocation required for any absent municipalities in accordance with
 62 subsection (b) of this Code section. The visiting or senior judge shall conduct such
 63 hearings as the judge deems necessary and shall render a decision based on, but not

64 limited to, the criteria in subsection (b) of this Code section and in paragraph (1) of this
 65 subsection. The judge's decision as to the allocation of the tax proceeds shall adopt the
 66 best and final offer of one of the parties but shall also include findings of fact. The judge
 67 shall enter a final order containing a new distribution certificate and transmit a copy of
 68 it to the commissioner. Appeal shall be by application and the decision of the judge shall
 69 be disturbed only for the judge's disregard of the law, for partiality of the judge, or for
 70 corruption, fraud, or misconduct by the judge or a party.

71 (4) If the renegotiated certificate provided for in paragraph (1) of this subsection is not
 72 received by the commissioner by the required date, ~~the authority to impose the tax~~
 73 ~~authorized by Code Section 48-8-82 shall cease on December 31 of the second year~~
 74 ~~following the year in which the decennial census is conducted and the tax shall not be~~
 75 ~~levied in the special district after such date unless the reimposition of the tax is~~
 76 ~~subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the~~
 77 ~~tax is so terminated, the commissioner shall retain the proceeds of the tax which were to~~
 78 ~~be distributed to the governing authorities of the county and qualified municipalities~~
 79 ~~within the special district until the commissioner receives a certificate in behalf of each~~
 80 ~~such governing authority specifying the percentage of the proceeds which each such~~
 81 ~~governing authority shall receive. If no such certificate is received by the commissioner~~
 82 ~~within 120 days of the date on which the authority to levy the tax was terminated, the~~
 83 ~~proceeds shall escheat to the state and the commissioner shall transfer the proceeds to the~~
 84 ~~state's general fund~~ the commissioner shall continue to distribute the sales tax proceeds
 85 according to the percentages specified in the existing certificate or in accordance with
 86 subsection (f) of Code Section 48-8-89.1, as applicable, until a new certificate is properly
 87 filed.

88 (5) If the commissioner receives ~~the~~ a renegotiated certificate by the required date, the
 89 commissioner shall distribute the proceeds of the tax in accordance with the directions
 90 of the renegotiated certificate commencing on January 1 of the year immediately
 91 following the year in which such certificate was renegotiated or the first day of the
 92 second calendar month following the month such certificate was renegotiated, whichever
 93 is sooner.

94 (6) Costs of any conflict resolution under paragraph (3) of this subsection shall be borne
 95 proportionately by the affected political subdivisions in accordance with the final
 96 percentage distributions of the proceeds of the tax as reflected by the renegotiated
 97 certificate or as otherwise ordered by the court.

98 ~~(7) All distribution certificates on file with the commissioner on July 1, 1994, which~~
 99 ~~were not renegotiated in accordance with the 1990 decennial census figures or~~
 100 ~~renegotiated on or after January 1, 1992, shall expire on December 31, 1995.~~

101 ~~Renegotiations with respect to such certificates shall be commenced in accordance with~~
 102 ~~the requirements of this subsection on or before July 1, 1994. If a renegotiated certificate~~
 103 ~~is not received by the commissioner by July 1, 1995, the authority to impose the tax~~
 104 ~~authorized by Code Section 48-8-82 shall cease on December 31, 1995, and the tax shall~~
 105 ~~not be levied in the special district after that date unless reimposition of the tax is~~
 106 ~~subsequently authorized pursuant to Code Section 48-8-85. The commissioner shall retain~~
 107 ~~and distribute the proceeds of such terminated tax in accordance with paragraph (4) of~~
 108 ~~this subsection.~~

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

116 ~~(9)(7)~~ Political subdivisions shall be authorized, at their option, to renegotiate
 117 distribution certificates on a more frequent basis than is otherwise required under this
 118 subsection.

119 (8) Notwithstanding any other provision of this article to the contrary, the imposition of
 120 this tax shall not terminate based on a failure to file a new or renegotiated certificate.

121 ~~(10)(9)~~ No provision of this subsection shall apply to any county which is authorized to
 122 levy or which levies a local sales tax, local use tax, or local sales and use tax for
 123 educational purposes pursuant to a local constitutional amendment or to any county
 124 which is authorized to expend all or any portion of the proceeds of any sales tax, use tax,
 125 or sales and use tax for educational purposes pursuant to a local constitutional
 126 amendment."

127 SECTION 2.

128 Said article is further amended by revising subsection (d) of Code Section 48-8-89.1, relating
 129 to lapsing of the tax due to failure to file a new certificate, as follows:

130 ~~"(d) If a new certificate is not filed for any special district as required by this Code section,~~
 131 ~~the authority to impose the tax authorized by Code Section 48-8-82 within that special~~
 132 ~~district shall cease on the first day of January of the year following the year in which the~~
 133 ~~required distribution certificate could last have been timely filed. In any special district in~~
 134 ~~which the authority to impose the tax is terminated pursuant to this subsection, the tax may~~
 135 ~~thereafter be reimposed only pursuant to the procedures specified in Code Sections 48-8-84~~
 136 ~~through 48-8-86 Reserved."~~

SECTION 3.

137
138 Said article is further amended by revising Code Section 48-8-92, relating to the referendum
139 election on discontinuing imposition of the tax, as follows:

140 "48-8-92.

141 (a) Whenever the governing authority of any county ~~or~~ and the governing authorities of
142 qualified municipality municipalities containing more than one-half of the aggregate
143 population of all qualified municipalities located wholly or partially within a special district
144 in which the tax authorized by this article is being levied ~~wishes~~ wish to submit to the
145 electors of the special district the question of whether the tax authorized by Code Section
146 48-8-82 shall be discontinued, ~~the~~ such governing ~~authority~~ authorities shall notify the
147 election superintendent of the county whose geographical boundary is conterminous with
148 that of the special district by forwarding to the superintendent a copy of a joint resolution
149 of the governing ~~authority~~ authorities calling for the referendum election. Upon receipt of
150 the resolution, it shall be the duty of the election superintendent to issue the call for an
151 election for the purpose of submitting the question of discontinuing the levy of the tax to
152 the voters of the special district for approval or rejection. The election superintendent shall
153 ~~set the date of the election for a day not less than 30 nor more than 45 days after the date~~
154 ~~of the issuance of the call~~ issue the call and shall conduct the election on a date and in the
155 manner authorized under Code Section 21-2-540. The election superintendent shall cause
156 the date and purpose of the election to be published once a week for two weeks
157 immediately preceding the date of the election in the official organ of the county. The
158 ballot shall have written or printed thereon the following:

159 '() YES Shall the 1 percent retail sales and use tax being levied within the special
160 () NO district within _____ County be terminated?'

161 (b) All persons desiring to vote in favor of discontinuing the tax shall vote 'Yes,' and those
162 persons opposed to discontinuing the tax shall vote 'No.' If more than one-half of the votes
163 cast are in favor of discontinuing the tax, then the tax shall cease to be levied on the first
164 day of the second calendar quarter following the month in which the commissioner receives
165 the certification of the result of the election; otherwise, the tax shall continue to be levied,
166 and the question of the discontinuing of the tax may not again be submitted to the voters
167 of the special district until after 24 months immediately following the month in which the
168 election was held. It shall be the duty of the election superintendent to hold and conduct
169 such elections under the same rules and regulations as govern special elections. It shall be
170 ~~his~~ such superintendent's further duty to canvass the returns, declare and certify the result
171 of the election, and certify the result to the Secretary of State and to the commissioner. The
172 expense of the election shall be borne by the county whose geographical boundary is
173 conterminous with that of the special district holding the election."

174 **SECTION 4.**

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

177 **SECTION 5.**

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