

House Bill 66

By: Representative Sims of the 169th

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 water and sewer projects and costs through the
3 levy and collection of a municipal option sales and use tax; to provide for a short title; to
4 provide for definitions; to provide for the rate and manner of imposition of such tax; to
5 provide for applicability to certain sales; to provide for powers, duties, and authority of
6 municipal governing authorities with respect to such tax; to provide for powers, duties, and
7 authorities of the state revenue commissioner with respect to such tax; to provide for
8 collection and administration of such tax; to provide for returns; to provide for distribution
9 and expenditure of proceeds; to provide for a method for discontinuation of such tax; to
10 change certain provisions regarding limitations on imposition of certain local taxes; to
11 provide for other matters relative to the foregoing; to repeal conflicting laws; and for other
12 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 to read as follows:

17 "ARTICLE 5

18 48-8-230.

19 This article shall be known and may be cited as the 'Municipal Option Sales Tax for Water
20 and Sewer.'

21 48-8-231.

22 As used in this article, the term:

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

28 (2) 'Dealer' means a dealer as defined in paragraph (3) of Code Section 48-8-2.

29 (3) 'Municipality' means any municipality in this state.

30 (4) 'Water and sewer projects and costs' means:

31 (A) Any capital outlay project or projects for the development, storage, treatment,
 32 purification, or distribution of water;

33 (B) Any capital outlay project or projects for storm-water and sewage collection and
 34 disposal systems;

35 (C)(i) With respect to any project or projects provided for under subparagraph (A)
 36 or (B) of this paragraph:

37 (I) Any cost of project or cost of any project as defined under paragraph (3) of
 38 Code Section 50-23-4; and

39 (II) Any maintenance and operation costs.

40 (ii) In no event shall any expenditure of tax proceeds pursuant to this subparagraph
 41 exceed annually an amount equal to the annual debt service payments of such
 42 municipality with respect to revenue bond indebtedness incurred for drinking water
 43 projects and storm-water and sewage collection and disposal projects; or

44 (D) Any combination of any of the foregoing.

45 48-8-232.

46 The governing authority of any municipality in this state may, subject to the requirement
 47 of referendum approval and other requirements of this article, impose within the
 48 municipality a sales and use tax for a limited period of time. Such tax shall only be
 49 imposed for the purposes specified in paragraph (4) of Code Section 48-8-231. Any tax
 50 imposed under this article shall be at the rate of 1 percent. Except as to rate, a tax imposed
 51 under this article shall correspond to the tax imposed by Article 1 of this chapter. No item
 52 or transaction which is not subject to taxation under Article 1 of this chapter shall be
 53 subject to a tax imposed under this article, except that a tax imposed under this article shall
 54 apply to sales of motor fuels as that term is defined by Code Section 48-9-2 and shall be
 55 applicable to the sale of food and beverages as provided for in division (57)(D)(i) of Code
 56 Section 48-8-3.

57 48-8-233.

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

62 (1) The water and sewer projects and costs for which the proceeds of the tax are to be
63 used;

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

66 (3) The maximum cost of the project or projects which will be funded from the proceeds
67 of the tax, which maximum cost shall also be the maximum amount of net proceeds to
68 be raised by the tax; and

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

74 (b) Upon receipt of the resolution or ordinance, the municipal election superintendent shall
75 issue the call for an election for the purpose of submitting the question of the imposition
76 of the tax to the voters of the municipality. The municipal election superintendent shall
77 issue the call and shall conduct the election on a date and in the manner authorized under
78 Code Section 21-2-540. The municipal election superintendent shall cause the date and
79 purpose of the election to be published once a week for four weeks immediately preceding
80 the date of the election in the legal organ of the county in which the majority of the
81 municipal population resides or in a newspaper having general circulation in the
82 municipality at least equal to that of the legal organ. If general obligation debt is to be
83 issued in conjunction with the imposition of the tax, the notice published by the municipal
84 election superintendent shall also include, in such form as may be specified by the
85 municipal governing authority, the principal amount of the debt, the purpose or purposes
86 for which the debt is to be issued, the rate or rates of interest or the maximum rate or rates
87 of interest the debt will bear, and the amount of principal to be paid in each year during the
88 life of the debt; and such publication of notice by the municipal election superintendent
89 shall take the place of the notice otherwise required by Code Section 36-80-11 or by
90 subsection (b) of Code Section 36-82-1, which notice shall not be required.

91 (c)(1) If the tax is to be imposed solely for water and sewer projects and costs and
92 maintenance and operations purposes and if no debt is to be issued, the ballot shall have
93 written or printed thereon the following:

131 through 36-80-14 except as specifically provided otherwise in this article. In either event,
 132 such general obligation debt shall be payable first from the separate account in which are
 133 placed the proceeds received by the municipality from the tax authorized by this article.
 134 Such general obligation debt shall, however, constitute a pledge of the full faith, credit,
 135 and taxing power of the municipality; and any liability on such debt which is not satisfied
 136 from the proceeds of the tax authorized by this article shall be satisfied from the general
 137 funds of the municipality.

138 (3) The tax authorized by this article shall not be subject to any maximum period of time
 139 for which the tax may be levied if general obligation debt is to be issued in conjunction
 140 with the imposition of the tax. In such case the resolution or ordinance calling for the
 141 imposition of the tax shall not be required to state a maximum period of time for which
 142 the tax is to be levied; and the language relating to the maximum period of time for which
 143 the tax is to be levied shall be omitted from the ballot. The resolution or ordinance
 144 calling for the imposition of the tax shall state the maximum amount of revenue to be
 145 raised by the tax, and the tax shall terminate as provided in paragraph (1) or (3) of
 146 subsection (b) of Code Section 48-8-234.

147 48-8-234.

148 (a)(1) If the imposition of the tax is approved by referendum, the tax shall be imposed
 149 on the first day of the next succeeding calendar quarter which begins more than 80 days
 150 after the date of the election at which the tax was approved by the voters.

151 (2) With respect to services which are regularly billed on a monthly basis, however, the
 152 resolution or ordinance imposing the tax shall become effective with respect to and the
 153 tax shall apply to the first regular billing period coinciding with or following the effective
 154 date specified in paragraph (1) of this subsection. A certified copy of the ordinance or
 155 resolution imposing the tax shall be forwarded to the commissioner so that it will be
 156 received within five business days after certification of the election results.

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

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

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

165 (3) As of the end of the calendar quarter during which the commissioner determines that
 166 the tax will have raised revenues sufficient to provide to the municipality net proceeds

167 equal to or greater than the amount specified as the maximum amount of net proceeds to
168 be raised by the tax.

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

171 (2) A municipality in which a tax authorized by this article is in effect may, while the tax
172 is in effect, adopt a resolution or ordinance calling for the reimposition of a tax as
173 authorized by this article upon the tax then in effect; and a referendum may be held for
174 this purpose while the tax is in effect. Proceedings for reimposition of a tax shall be in
175 the same manner as proceedings for the initial imposition of the tax, but the newly
176 authorized tax shall not be imposed until the expiration of the tax then in effect; provided,
177 however, that in the event of emergency conditions under which a municipality is unable
178 to conduct a referendum so as to continue the tax then in effect without interruption, the
179 commissioner may, if feasible administratively, waive the limitations of subsection (a)
180 of this Code section to the minimum extent necessary so as to permit the reimposition of
181 a tax, if otherwise approved as required under this Code section, without interruption
182 upon the expiration of the tax then in effect.

183 (3) Following the expiration of a tax under this article, a municipality may initiate
184 proceedings for the reimposition of a tax under this article in the same manner as
185 provided in this article for the initial imposition of such tax.

186 48-8-235.

187 A tax levied pursuant to this article shall be exclusively administered and collected by the
188 commissioner for the use and benefit of the municipality imposing the tax. Such
189 administration and collection shall be accomplished in the same manner and subject to the
190 same applicable provisions, procedures, and penalties provided in Article 1 of this chapter;
191 provided, however, that all moneys collected from each taxpayer by the commissioner shall
192 be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be
193 allowed a percentage of the amount of the tax due and accounted for and shall be
194 reimbursed in the form of a deduction in submitting, reporting, and paying the amount due
195 if such amount is not delinquent at the time of payment. The deduction shall be at the rate
196 and subject to the requirements specified under subsections (b) through (f) of Code Section
197 48-8-50.

198 48-8-236.

199 Each sales and use tax return remitting sales and use taxes collected under this article shall
200 separately identify the location of each retail establishment at which any of the sales and
201 use taxes remitted were collected and shall specify the amount of sales and the amount of

202 taxes collected at each establishment for the period covered by the return in order to
203 facilitate the determination by the commissioner that all sales and use taxes imposed by this
204 article are collected and distributed according to situs of sale.

205 48-8-237.

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

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

210 (2) Except for the percentage provided in paragraph (1) of this Code section, the
211 remaining proceeds of the tax shall be distributed to the governing authority of the
212 municipality imposing the tax and shall be expended for purposes specified under
213 paragraph (4) of Code Section 48-8-231.

214 48-8-238.

215 Where a local sales or use tax has been paid with respect to tangible personal property by
216 the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction
217 outside this state, the tax may be credited against the tax authorized to be imposed by this
218 article upon the same property. If the amount of sales or use tax so paid is less than the
219 amount of the sales or use tax due under this article, the purchaser shall pay an amount
220 equal to the difference between the amount paid in the other tax jurisdiction and the amount
221 due under this article. The commissioner may require such proof of payment in another
222 local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be
223 granted, however, against the tax imposed under this article for tax paid in another
224 jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any
225 other local sales and use tax levied in the municipality or in a special district which
226 includes the municipality; and taxes so paid in another jurisdiction shall be credited first
227 against the tax levied under Article 3 of this chapter, if applicable, then against the tax
228 levied under Article 2 of this chapter, if applicable, and then against the tax levied under
229 this article.

230 48-8-239.

231 No tax provided for in this article shall be imposed upon the sale of tangible personal
232 property which is ordered by and delivered to the purchaser at a point outside the
233 geographical area of the municipality in which the tax is imposed regardless of the point
234 at which title passes, if the delivery is made by the seller's vehicle, United States mail, or

235 common carrier or by private or contract carrier licensed by the Federal Highway
236 Administration or the Georgia Public Service Commission.

237 48-8-240.

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

243 48-8-241.

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

247 48-8-242.

248 The tax authorized by this article shall be in addition to any other local sales and use tax.
249 The imposition of any other local sales and use tax within a county, municipality, or special
250 district shall not affect the authority of a municipality to impose the tax authorized by this
251 article and the imposition of the tax authorized by this article shall not affect the imposition
252 of any otherwise authorized local sales and use tax within the county, municipality, or
253 special district.

254 48-8-243.

255 (a) The proceeds received from the tax authorized by this article shall be used by the
256 municipality exclusively for water and sewer projects and costs and maintenance and
257 operations expenses. Such proceeds shall be kept in a separate account from other funds
258 of the municipality and shall not in any manner be commingled with other funds of the
259 municipality prior to expenditure.

260 (b) The governing authority of the municipality shall maintain a record of each and every
261 water and sewer project and cost for which the proceeds of the tax are used. In each annual
262 audit a schedule shall be included which shows for each ongoing water and sewer project
263 the original estimated cost, the current estimated cost if it is not the original estimated cost,
264 amounts expended in prior years, and amounts expended in the current year. The auditor
265 shall verify and test expenditures sufficient to provide assurances that the schedule is fairly
266 presented in relation to the financial statements. The auditor's report on the financial
267 statements shall include an opinion, or disclaimer of opinion, as to whether the schedule

268 is presented fairly in all material respects in relation to the financial statements taken as a
 269 whole."

270 **SECTION 2.**

271 Said chapter is further amended by revising subsection (b) of Code Section 48-8-6, relating
 272 to limitations on imposition of certain local taxes, as follows:

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

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

282 (2) Any tax levied for purposes of a metropolitan area system of public transportation,
 283 as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page
 284 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)
 285 of the Constitution; and the laws enacted pursuant to such constitutional amendment;
 286 provided, however, that the exception provided for under this paragraph shall only apply
 287 in a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code
 288 Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay
 289 project or projects, a sewer capital outlay project or projects, a water and sewer capital
 290 outlay project or projects, water and sewer projects and costs as defined under
 291 paragraph (3) of Code Section 48-8-200, or any combination thereof and with respect to
 292 which the county has entered into an intergovernmental contract with a municipality, in
 293 which the average waste-water system flow of such municipality is not less than 85
 294 million gallons per day, allocating proceeds to such municipality to be used solely for
 295 water and sewer projects and costs as defined under paragraph (3) of Code Section
 296 48-8-200. The exception provided for under this paragraph shall apply only during the
 297 period the tax under said subparagraph (a)(1)(D) is in effect. The exception provided for
 298 under this paragraph shall not apply in any county in which a tax is being imposed under
 299 Article 2A of this chapter;

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

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

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

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

309 **SECTION 3.**

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