

House Bill 365

By: Representatives Jerguson of the 22nd, Wix of the 33rd, Casas of the 103rd, and Hill of the 21st

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 authorize the imposition of a local option sales and use tax for
3 transportation projects and costs within special districts; to establish special districts; to
4 provide for procedures, conditions, and limitations for the imposition, collection,
5 disbursement, and termination of the tax; to provide for powers, duties, and authority of the
6 state revenue commissioner; to provide for related matters; to provide an effective date; to
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
11 taxes, is amended by adding a new article to read as follows:

12 "ARTICLE 5

13 48-8-230.

14 As used in this article, the term:

- 15 (1) 'Cost of project' or 'project costs' means the cost of construction, including without
16 limitation relocation or adjustments of utilities; the cost of all lands, properties, rights,
17 easements, and franchises acquired; relocation expenses; the cost of all machinery and
18 equipment necessary for the operation of the project, the cost of engineering, legal
19 expenses, plans and specifications, and other expenses necessary or incident to
20 determining the feasibility or practicability of the project; administrative expenses; and
21 such other expenses as may be necessary or incident to the construction of any project,
22 the placing of the same in operation, or the maintenance and operation of the same.
23 (2) 'Dealer' means a dealer as defined in paragraph (3) of Code Section 48-8-2.

24 (3) 'Project' means existing or future land public transportation systems, including
25 without limitation: (A) one or more roads or bridges or a system of roads, bridges, and
26 tunnels or maintenance and operations thereof, with access limited or unlimited, and such
27 buildings, structures, parking areas, appurtenances, and facilities related thereto,
28 including but not limited to approaches, cross streets, roads, bridges, tunnels, and avenues
29 of access for such system; and (B) any program for mass public transportation or mass
30 public transportation facilities or maintenance and operations thereof and such buildings,
31 structures, parking areas, appurtenances, and facilities related thereto, including but not
32 limited to approaches, cross streets, roads, bridges, tunnels, and avenues of access for
33 such facilities.

34 48-8-231.

35 (a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the
36 Constitution of this state, there are created within this state 159 special districts. The
37 geographical boundary of each county shall correspond with and shall be conterminous
38 with the geographical boundary of the 159 special districts.

39 (b) When the imposition of a special district sales and use tax is authorized according to
40 the procedures provided in this article within a special district, the governing authority of
41 any county in this state may, subject to the requirement of referendum approval and the
42 other requirements of this article, impose within the special district a special sales and use
43 tax for a limited period of time which tax shall be known as the county transportation
44 projects and costs local option sales tax.

45 (c) Any tax imposed under this article shall be at the rate of 1 percent. Except as to rate,
46 a tax imposed under this article shall correspond to the tax imposed by Article 1 of this
47 chapter. No item or transaction which is not subject to taxation under Article 1 of this
48 chapter shall be subject to a tax imposed under this article, except that a tax imposed under
49 this article shall apply to sales of motor fuels as that term is defined by Code Section
50 48-9-2 and shall be applicable to the sale of food and beverages as provided for in division
51 (57)(D)(i) of Code Section 48-8-3.

52 (d) No sales and use tax shall be levied in a special district under this article in which a tax
53 is levied and collected under Article 2 of this chapter.

54 48-8-232.

55 (a) Prior to the vote of a county governing authority to impose the tax under this article,
56 such governing authority shall deliver or mail a written notice to the mayor or chief elected
57 official in each municipality located within the county. Such notice shall contain the date,
58 time, place, and purpose of a meeting at which the governing authorities of the county and

59 of each municipality are to meet to discuss the proposed tax levy. The notice shall be
 60 delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be
 61 held at least 30 days prior to the issuance of the call for the referendum. Following such
 62 meeting, a county governing authority voting to impose the tax authorized by this article
 63 shall notify the county election superintendent by forwarding to the superintendent a copy
 64 of the resolution or ordinance of the governing authority calling for the imposition of the
 65 tax. Such ordinance or resolution shall specify the transportation projects and costs for
 66 which the proceeds of the tax are to be used and may be expended and specify:

67 (1) The maximum period of time, to be stated in calendar years or calendar quarters and
 68 not to exceed five years;

69 (2) The maximum cost of the transportation projects and costs which will be funded from
 70 the proceeds of the tax, which maximum cost shall also be the maximum amount of net
 71 proceeds to be raised by the tax; and

72 (3) If general obligation debt is to be issued in conjunction with the imposition of the tax,
 73 the principal amount of the debt to be issued, the purpose for which the debt is to be
 74 issued, the interest rate or rates or the maximum interest rate or rates which such debt is
 75 to bear, and the amount of principal to be paid in each year during the life of the debt.

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

90 (c)(1) If the tax is to be imposed and if no debt is to be issued, the ballot shall have
 91 written or printed thereon the following:

92 '() YES Shall a special 1 percent sales and use tax be imposed in _____
 93 County for a period of time not to exceed _____ and for the
 94 () NO raising of not more than \$ _____ for the following transportation
 95 projects and costs: _____?'

96 (2) If debt is to be issued, the ballot shall also have written or printed thereon, following
 97 the language specified by paragraph (1) of this subsection, the following:

98 'If imposition of the tax is approved by the voters, such vote shall also constitute
 99 approval of the issuance of general obligation debt of _____ County in the
 100 principal amount of \$ _____ for the above purpose.'

101 (d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes' and all persons
 102 opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in
 103 favor of imposing the tax then the tax shall be imposed as provided in this article;
 104 otherwise the tax shall not be imposed and the question of imposing the tax shall not again
 105 be submitted to the voters of the county until after 12 months immediately following the
 106 month in which the election was held. The election superintendent shall hold and conduct
 107 the election under the same rules and regulations as govern special elections. The
 108 superintendent shall canvass the returns, declare the result of the election, and certify the
 109 result to the Secretary of State and to the commissioner. The expense of the election shall
 110 be paid from county funds.

111 (e)(1) If the proposal includes the authority to issue general obligation debt and if more
 112 than one-half of the votes cast are in favor of the proposal, then the authority to issue such
 113 debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given
 114 to the proper officers of the county; otherwise such debt shall not be issued. If the
 115 authority to issue such debt is so approved by the voters, then such debt may be issued
 116 without further approval by the voters.

117 (2) If the issuance of general obligation debt is included and approved as provided in this
 118 Code section, then the governing authority of the county may incur such debt either
 119 through the issuance and validation of general obligation bonds or through the execution
 120 of a promissory note or notes or other instrument or instruments. If such debt is incurred
 121 through the issuance of general obligation bonds, such bonds and their issuance and
 122 validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as
 123 specifically provided otherwise in this article. If such debt is incurred through the
 124 execution of a promissory note or notes or other instrument or instruments, no validation
 125 proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10
 126 through 36-80-14 except as specifically provided otherwise in this article. In either event,
 127 such general obligation debt shall be payable first from the separate account in which are
 128 placed the proceeds received by the county from the tax authorized by this article. Such
 129 general obligation debt shall, however, constitute a pledge of the full faith, credit, and
 130 taxing power of the county; and any liability on such debt which is not satisfied from the
 131 proceeds of the tax authorized by this article shall be satisfied from the general funds of
 132 the county.

133 48-8-233.

134 With respect to any consolidated government created by the consolidation of a county and
 135 one or more municipalities, the levy of a tax under this article by a consolidated
 136 government shall be in the same manner as the levy of the tax by any other county.

137 48-8-234.

138 (a) If the imposition of the tax is approved at the special election, the tax shall be imposed
 139 on the first day of the next succeeding calendar quarter which begins more than 80 days
 140 after the date of the election at which the tax was approved by the voters. With respect to
 141 services which are regularly billed on a monthly basis, however, the resolution shall
 142 become effective with respect to and the tax shall apply to services billed on or after the
 143 effective date specified in the previous sentence.

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

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

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

152 (3) As of the end of the calendar quarter during which the commissioner determines that
 153 the tax will have raised revenues sufficient to provide to the county net proceeds equal
 154 to or greater than the amount specified as the maximum amount of net proceeds to be
 155 raised by the tax.

156 (c)(1) No county shall impose at any time more than a single 1 percent tax under this
 157 article.

158 (2) A county in which a tax authorized by this article is in effect may, while the tax is in
 159 effect, adopt a resolution or ordinance calling for the reimposition of a tax as authorized
 160 by this article upon the termination of the tax then in effect; and a special election may
 161 be held for this purpose while the tax is in effect. Proceedings for the reimposition of a
 162 tax shall be in the same manner as proceedings for the initial imposition of the tax, but
 163 the newly authorized tax shall not be imposed until the expiration of the tax then in effect;
 164 provided, however, that in the event of emergency conditions under which a county is
 165 unable to conduct a referendum so as to continue the tax then in effect without
 166 interruption, the commissioner may, if feasible administratively, waive the limitations of
 167 subsection (a) of this Code section to the minimum extent necessary so as to permit the

168 reimposition of a tax, if otherwise approved as required under this Code section, without
169 interruption, upon the expiration of the tax then in effect.

170 (3) Following the expiration of a tax under this article, a county may initiate proceedings
171 for the reimposition of a tax under this article in the same manner as provided in this
172 article for initial imposition of such tax.

173 48-8-235.

174 A tax levied pursuant to this article shall be exclusively administered and collected by the
175 commissioner for the use and benefit of the county imposing the tax. Such administration
176 and collection shall be accomplished in the same manner and subject to the same applicable
177 provisions, procedures, and penalties provided in Article 1 of this chapter; provided,
178 however, that all moneys collected from each taxpayer by the commissioner shall be
179 applied first to such taxpayer's liability for taxes owed the state; and provided, further, that
180 the commissioner may rely upon a representation by or in behalf of the county or the
181 Secretary of State that such a tax has been validly imposed, and the commissioner and the
182 commissioner's agents shall not be liable to any person for collecting any such tax which
183 was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax
184 due and accounted for and shall be reimbursed in the form of a deduction in submitting,
185 reporting, and paying the amount due if such amount is not delinquent at the time of
186 payment. The deduction shall be at the rate and subject to the requirements specified under
187 subsections (b) through (f) of Code Section 48-8-50.

188 48-8-236.

189 Each sales tax return remitting taxes collected under this article shall separately identify
190 the location of each retail establishment at which any of the taxes remitted were collected
191 and shall specify the amount of sales and the amount of taxes collected at each
192 establishment for the period covered by the return in order to facilitate the determination
193 by the commissioner that all taxes imposed by this article are collected and distributed
194 according to situs of sale.

195 48-8-237.

196 The proceeds of the tax collected by the commissioner in each county under this article
197 shall be disbursed as soon as practicable after collection as follows:

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

200 (2) Except for the percentage provided in paragraph (1) of this Code section, the
201 remaining proceeds of the tax shall be distributed to the governing authority of the county
202 imposing the tax.

203 48-8-238.

204 Where a local sales or use tax has been paid with respect to tangible personal property by
205 the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction
206 outside the state, the tax may be credited against the tax authorized to be imposed by this
207 article upon the same property. If the amount of sales or use tax so paid is less than the
208 amount of the use tax due under this article, the purchaser shall pay an amount equal to the
209 difference between the amount paid in the other tax jurisdiction and the amount due under
210 this article. The commissioner may require such proof of payment in another local tax
211 jurisdiction as he or she deems necessary and proper. No credit shall be granted, however,
212 against the tax imposed under this article for tax paid in another jurisdiction if the tax paid
213 in such other jurisdiction is used to obtain a credit against any other local sales and use tax
214 levied in the county or in a special district which includes the county; and taxes so paid in
215 another jurisdiction shall be credited first against the tax levied under Article 2 of this
216 chapter, if applicable, and then against the tax levied under this article.

217 48-8-239.

218 No tax provided for in this article shall be imposed upon the sale of tangible personal
219 property which is ordered by and delivered to the purchaser at a point outside the
220 geographical area of the county in which the tax is imposed regardless of the point at which
221 title passes, if the delivery is made by the seller's vehicle, United States mail, or common
222 carrier or by private or contract carrier licensed by the Interstate Commerce Commission
223 or the Georgia Public Service Commission.

224 48-8-240.

225 (a) As used in this Code section, the term 'building and construction materials' means all
226 building and construction materials, supplies, fixtures, or equipment, any combination of
227 such items, and any other leased or purchased articles when the materials, supplies,
228 fixtures, equipment, or articles are to be utilized or consumed during construction or are
229 to be incorporated into construction work pursuant to a bona fide written construction
230 contract.

231 (b) No tax provided for in this article shall be imposed upon the sale or use of building and
232 construction materials when the contract pursuant to which the materials are purchased or
233 used was advertised for bid prior to the voters' approval of the levy of the tax and the

234 contract was entered into as a result of a bid actually submitted in response to the
 235 advertisement prior to approval of the levy of the tax.

236 48-8-241.

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

240 48-8-242.

241 Except as provided in Code Section 48-8-6, the tax authorized by this article shall be in
 242 addition to any other local sales and use tax. Except as provided in Code Section 48-8-6,
 243 the imposition of any other local sales and use tax within a county shall not affect the
 244 authority of a county to impose the tax authorized by this article and the imposition of the
 245 tax authorized by this article shall not affect the imposition of any otherwise authorized
 246 local sales and use tax within the county.

247 48-8-243.

248 (a)(1) The proceeds received from the tax authorized by this article shall be used by the
 249 county exclusively for the transportation projects and costs specified in the resolution or
 250 ordinance calling for imposition of the tax. Such proceeds shall be kept in a separate
 251 account from other funds of the county and shall not in any manner be commingled with
 252 other funds of the county prior to the expenditure.

253 (2) The governing authority of the county and the governing authority of each
 254 municipality receiving any proceeds from the tax pursuant to a contract with the county
 255 shall maintain a record of each and every purpose for which the proceeds of the tax are
 256 used. A schedule shall be included in each annual audit which shows for each purpose
 257 in the resolution or ordinance calling for imposition of the tax the original estimated cost,
 258 the current estimated cost if it is not the original estimated cost, amounts expended in
 259 prior years, and amounts expended in the current year. The auditor shall verify and test
 260 expenditures sufficient to provide assurances that the schedule is fairly presented in
 261 relation to the financial statements. The auditor's report on the financial statements shall
 262 include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly
 263 in all material respects in relation to the financial statements taken as a whole.

264 (b) No general obligation debt shall be issued in conjunction with the imposition of the tax
 265 authorized by this article unless the county governing authority determines that, and if the
 266 debt is to be validated it is demonstrated in the validation proceedings that, during each
 267 year in which any payment of principal or interest on the debt comes due the county will

268 receive from the tax authorized by this article net proceeds sufficient to fully satisfy such
269 liability. General obligation debt issued under this article shall be payable first from the
270 separate account in which are placed the proceeds received by the county from the tax
271 authorized by this article. Such debt, however, shall constitute a pledge of the full faith,
272 credit, and taxing power of the county; and any liability on said debt which is not satisfied
273 from the proceeds of the tax authorized by this article shall be satisfied from the general
274 funds of the county.

275 (c) The resolution or ordinance calling for imposition of the tax authorized by this article
276 may specify that all of the proceeds of the tax will be used for payment of general
277 obligation debt issued in conjunction with the imposition of the tax. If the resolution or
278 ordinance so provides, then such proceeds shall be used solely for such purpose except as
279 provided in subsection (f) of this Code section.

280 (d) The resolution or ordinance calling for the imposition of the tax authorized by this
281 article may specify that a part of the proceeds of the tax will be used for payment of general
282 obligation debt issued in conjunction with the imposition of the tax. If the ordinance or
283 resolution so provides, it shall specifically state the other purposes for which such proceeds
284 will be used. In such a case no part of the net proceeds from the tax received in any year
285 shall be used for such other purposes until all debt service requirements of the general
286 obligation debt for that year have first been satisfied from the account in which the
287 proceeds of the tax are placed.

288 (e) The resolution or ordinance calling for the imposition of the tax may specify that no
289 general obligation debt is to be issued in conjunction with the imposition of the tax. If the
290 ordinance or resolution so provides, it shall specifically state the purpose or purposes for
291 which the proceeds will be used.

292 (f)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of
293 payment of general obligation debt issued in conjunction with the imposition of the tax,
294 then any net proceeds of the tax in excess of the amount required for final payment of
295 such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

296 (B) If the county receives from the tax net proceeds in excess of the maximum cost of
297 the transportation projects and costs stated in the resolution or ordinance calling for the
298 imposition of the tax or in excess of the actual cost of such purpose or purposes, then
299 such excess proceeds shall be subject to and applied as provided in paragraph (2) of this
300 subsection.

301 (C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section
302 48-8-233 by reason of denial of validation of debt, then all net proceeds received by the
303 county from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

304 (2) Excess proceeds subject to this subsection shall be used solely for the purpose of
305 reducing any indebtedness of the county other than indebtedness incurred pursuant to this
306 article. If there is no such other indebtedness or, if the excess proceeds exceed the
307 amount of any such other indebtedness, then the excess proceeds shall next be paid into
308 the general fund of the county, it being the intent that any funds so paid into the general
309 fund of the county be used for the purpose of reducing ad valorem taxes.

310 48-8-244.

311 The governing authority of the county and the governing authority of each municipality
312 receiving any proceeds from the tax under this article shall maintain a record of each and
313 every purpose for which the proceeds of the tax are used. Not later than December 31 of
314 each year, the governing authority of each local government receiving any proceeds from
315 the tax under this article shall publish annually, in a newspaper of general circulation in the
316 boundaries of such local government, a simple, nontechnical report which shows for each
317 purpose in the resolution or ordinance calling for imposition of the tax the original
318 estimated cost, the current estimated cost if it is not the original estimated cost, amounts
319 expended in prior years, and amounts expended in the current year. The report shall also
320 include a statement of what corrective action the local government intends to implement
321 with respect to each purpose which is underfunded or behind schedule and a statement of
322 any surplus funds which have not been expended for a purpose."

323 **SECTION 2.**

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

326 **SECTION 3.**

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