

House Bill 470

By: Representative Martin of the 47th

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 transportation projects and services 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 style="text-align:center">**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 read as follows:

17 style="text-align:center">"ARTICLE 5

18 48-8-230.

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

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) 'Municipality' means any municipality in this state.

29 (3) 'Transportation project' means:

30 (A) A capital outlay project for the acquisition, construction, installation, replacement,
 31 maintenance, or repair of transportation facilities or maintenance and operation
 32 expenses in connection therewith; and

33 (B) Acquisition, construction, installation, replacement, maintenance, or repair of
 34 roads, streets, and bridges.

35 48-8-232.

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

47 48-8-233.

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

52 (1) The transportation projects for which the proceeds of the tax are to be used;

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

92 (d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes' and all persons
93 opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in
94 favor of imposing the tax then the tax shall be imposed as provided in this article;
95 otherwise the tax shall not be imposed and the question of imposing the tax shall not again
96 be submitted to the voters of the county until after 12 months immediately following the
97 month in which the election was held; provided, however, that if an election date
98 authorized under Code Section 21-2-540 occurs during the twelfth month immediately
99 following the month in which such election was held, the question of imposing the tax may
100 be submitted to the voters of the county on such date. The election superintendent shall
101 hold and conduct the election under the same rules and regulations as govern special
102 elections. The superintendent shall canvass the returns, declare the result of the election,
103 and certify the result to the Secretary of State and to the commissioner. The expense of the
104 election shall be paid from municipal funds.

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

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

127 (3) The tax authorized by this article shall not be subject to any maximum period of time
128 for which the tax may be levied if general obligation debt is to be issued in conjunction

129 with the imposition of the tax. In such case the resolution or ordinance calling for the
 130 imposition of the tax shall not be required to state a maximum period of time for which
 131 the tax is to be levied; and the language relating to the maximum period of time for which
 132 the tax is to be levied shall be omitted from the ballot. The resolution or ordinance
 133 calling for the imposition of the tax shall state the maximum amount of revenue to be
 134 raised by the tax, and the tax shall terminate as provided in paragraph (1) or (3) of
 135 subsection (b) of Code Section 48-8-234.

136 48-8-234.

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

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

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

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

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

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

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

160 (2) A municipality in which a tax authorized by this article is in effect may, while the tax
 161 is in effect, adopt a resolution or ordinance calling for the reimposition of a tax as
 162 authorized by this article upon the tax then in effect; and a referendum may be held for
 163 this purpose while the tax is in effect. Proceedings for reimposition of a tax shall be in
 164 the same manner as proceedings for the initial imposition of the tax, but the newly

165 authorized tax shall not be imposed until the expiration of the tax then in effect; provided,
 166 however, that in the event of emergency conditions under which a municipality is unable
 167 to conduct a referendum so as to continue the tax then in effect without interruption, the
 168 commissioner may, if feasible administratively, waive the limitations of subsection (a)
 169 of this Code section to the minimum extent necessary so as to permit the reimposition of
 170 a tax, if otherwise approved as required under this Code section, without interruption,
 171 upon the expiration of the tax then in effect.

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

175 48-8-235.

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

187 48-8-236.

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

194 48-8-237.

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

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

199 (2) Except for the percentage provided in paragraph (1) of this Code section, the
200 remaining proceeds of the tax shall be distributed to the governing authority of the
201 municipality imposing the tax and shall be expended for all purposes specified under
202 paragraph (3) of Code Section 48-8-231.

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 this state or in a tax jurisdiction
206 outside this 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 the commissioner deems necessary and proper. No credit shall be granted,
212 however, against the tax imposed under this article for tax paid in another jurisdiction if the
213 tax paid in such other jurisdiction is used to obtain a credit against any other local sales and
214 use tax levied in the municipality or in a special district which includes the municipality;
215 and taxes so paid in another jurisdiction shall be credited first against the tax levied under
216 Article 3 of this chapter, if applicable, then against the tax levied under Article 2 of this
217 chapter, if applicable, and then against the tax levied under this article.

218 48-8-239.

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

225 48-8-240.

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

231 48-8-241.

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

235 48-8-242.

236 The tax authorized by this article shall be in addition to any other local sales and use tax.
 237 The imposition of any other local sales and use tax within a county, municipality, or special
 238 district shall not affect the authority of a municipality to impose the tax authorized by this
 239 article and the imposition of the tax authorized by this article shall not affect the imposition
 240 of any otherwise authorized local sales and use tax within the county, municipality, or
 241 special district.

242 48-8-243.

243 (a) The proceeds received from the tax authorized by this article shall be used by the
 244 municipality exclusively for transportation projects and maintenance and operations
 245 expenses. Such proceeds shall be kept in a separate account from other funds of the
 246 municipality and shall not in any manner be commingled with other funds of the
 247 municipality prior to expenditure.

248 (b) The governing authority of the municipality shall maintain a record of each and every
 249 transportation project for which the proceeds of the tax are used. In each annual audit a
 250 schedule shall be included which shows for each ongoing transportation project the original
 251 estimated cost, the current estimated cost if it is not the original estimated cost, amounts
 252 expended in prior years, and amounts expended in the current year. The auditor shall
 253 verify and test expenditures sufficient to provide assurances that the schedule is fairly
 254 presented in relation to the financial statements. The auditor's report on the financial
 255 statements shall include an opinion, or disclaimer of opinion, as to whether the schedule
 256 is presented fairly in all material respects in relation to the financial statements taken as a
 257 whole."

258 **SECTION 2.**

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

261 "(b) There shall not be imposed in any jurisdiction in this state or on any transaction in this
 262 state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent.
 263 For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and
 264 use tax which is levied in an area consisting of less than the entire state, however

265 authorized, including such taxes authorized by or pursuant to constitutional amendment,
 266 except that the following taxes shall not count toward or be subject to such 2 percent
 267 limitation:

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

270 (2) Any tax levied for purposes of a metropolitan area system of public transportation,
 271 as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page
 272 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)
 273 of the Constitution; and the laws enacted pursuant to such constitutional amendment;
 274 provided, however, that the exception provided for under this paragraph shall only apply
 275 in a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code
 276 Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay
 277 project or projects, a sewer capital outlay project or projects, a water and sewer capital
 278 outlay project or projects, water and sewer projects and costs as defined under
 279 paragraph (3) of Code Section 48-8-200, or any combination thereof and with respect to
 280 which the county has entered into an intergovernmental contract with a municipality, in
 281 which the average waste-water system flow of such municipality is not less than 85
 282 million gallons per day, allocating proceeds to such municipality to be used solely for
 283 water and sewer projects and costs as defined under paragraph (3) of Code Section
 284 48-8-200. The exception provided for under this paragraph shall apply only during the
 285 period the tax under said subparagraph (a)(1)(D) is in effect. The exception provided for
 286 under this paragraph shall not apply in any county in which a tax is being imposed under
 287 Article 2A of this chapter;

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

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

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

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

297 **SECTION 3.**

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