

House Bill 1051

By: Representative Butler of the 18th

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 homestead option sales and use tax for
3 educational purposes; to establish special districts; to provide for definitions, procedures,
4 conditions, and limitations for the imposition, collection, disbursement, and termination of
5 the tax; to provide for powers, duties, and authority of the state revenue commissioner; to
6 provide for related matters; to provide for a contingent effective date; to provide for
7 applicability; to provide for automatic repeal under certain circumstances; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

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

13 "ARTICLE 5

14 48-8-230.

15 This article shall be known and may be cited as the 'Homestead Option Sales and Use Tax
16 for Educational Purposes Act.'

17 48-8-231.

18 As used in this article, the term:

19 (1) 'Ad valorem taxes for educational purposes' means any and all ad valorem taxes for
20 school district or independent school district purposes levied by, for, or on behalf of the
21 county, excluding taxes to retire general obligation bonded indebtedness of the county.

22 (2) 'Board of education' means the governing body of a county school district or an
23 independent school district.

24 (3) 'Homestead' means homestead as defined and qualified in Code Section 48-5-40.
25 48-8-232.
26 (a) Pursuant to the authority granted by Article VIII, Section VI, Paragraph V and Article
27 IX, Section II, Paragraph VI of the Constitution of this state, there are created within this
28 state education special districts. The geographical boundary of each county school district
29 shall correspond with and shall be conterminous with the geographical boundary of one of
30 the special districts, and the geographic boundary of each independent school district shall
31 correspond with and shall be conterminous with the geographic boundary of one of the
32 special districts.
33 (b) When the imposition of a local sales and use tax is authorized according to the
34 procedures provided in this article within a special district, the board of education whose
35 geographical boundary is conterminous with that of the special district shall levy a local
36 sales and use tax at the rate of 1 percent. Except as to rate, the local sales and use tax shall
37 correspond to the tax imposed and administered by Article 1 of this chapter. No item or
38 transaction which is not subject to taxation by Article 1 of this chapter shall be subject to
39 the sales and use tax levied pursuant to this article, except that the sales and use tax
40 provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that
41 term is defined by paragraph (5.1) of Code Section 48-8-2 and shall be applicable to the
42 sale of food and beverages only to the extent provided for in paragraph (57) of Code
43 Section 48-8-3.
44 (c) The proceeds of the sales and use tax levied and collected under this article shall be
45 used only for the purpose of funding the homestead exemption as provided in Code Section
46 48-8-233.
47 (d) Such sales and use tax shall only be levied in a special district following the enactment
48 of a local Act which provides for a homestead exemption of an amount to be determined
49 from the amount of sales and use tax collected under this article. Any such local Act shall
50 incorporate by reference the terms and conditions specified under this article. Any such
51 homestead exemption under this article shall be in addition to and not in lieu of any other
52 homestead exemption applicable to school district taxes for educational purposes within
53 the special district. Notwithstanding any provision of such local Act to the contrary, the
54 referendum which shall otherwise be required to be conducted under such local Act shall
55 only be conducted if the resolution required under subsection (a) of Code Section 48-8-232
56 is adopted prior to the issuance of the call for the referendum under the local Act by the
57 election superintendent. If such ordinance is not adopted by that date, the referendum
58 otherwise required to be conducted under the local Act shall not be conducted.

59 48-8-233.

60 (a) Whenever the board of education in a special district wishes to submit to the electors
 61 of the special district the question of whether the sales and use tax authorized by Code
 62 Section 48-8-232 shall be imposed, any such board of education shall notify the election
 63 superintendent of the political subdivision whose geographical boundary is conterminous
 64 with that of the special district by forwarding to the superintendent a copy of a resolution
 65 of the political subdivision calling for a referendum election. Upon receipt of the
 66 resolution, it shall be the duty of the election superintendent to issue the call for an election
 67 for the purpose of submitting the question of the imposition of the sales and use tax to the
 68 voters of the special district for approval or rejection. The election superintendent shall
 69 issue the call and shall conduct the election on a date and in the manner authorized under
 70 Code Section 21-2-540. Such election shall only be conducted on the date of and in
 71 conjunction with a referendum provided for by local Act on the question of whether to
 72 impose a homestead exemption within such county or independent school district and
 73 based on the amount of proceeds from the sales and use tax levied and collected pursuant
 74 to this article. The election superintendent shall cause the date and purpose of the election
 75 to be published once a week for two weeks immediately preceding the date of the election
 76 in the official organ of such county. The ballot shall have written or printed thereon the
 77 following statement which shall precede the ballot question specified in this subsection and
 78 the ballot question specified by the required local Act:

79 'NOTICE TO ELECTORS: Unless **BOTH** the homestead exemption **AND** the retail
 80 homestead option sales and use tax are approved, then neither the exemption nor the sales
 81 and use tax shall become effective.'

82 Such statement shall be followed by the following:

83 () YES Shall a retail homestead option sales and use tax for educational
 84 purposes of 1 percent be levied within the special district within
 85 () NO _____ (County) (the City of _____) for the
 86 purposes of funding a homestead exemption of up to 100 percent of the
 87 assessed value of homesteads from school district taxes for educational
 88 purposes?'

89 Notwithstanding any other provision of law to the contrary, the statement, ballot question,
 90 and local Act ballot question referred to in this subsection shall precede any and all other
 91 ballot questions calling for the levy or imposition of any other sales and use tax which are
 92 to appear on the same ballot.

93 (b) All persons desiring to vote in favor of levying the sales and use tax shall vote 'Yes,'
 94 and all persons opposed to levying the tax shall vote 'No.' If more than one-half of the votes
 95 cast are in favor of levying the tax and approving the local Act providing such homestead

96 exemption, then the tax shall be levied in accordance with this article; otherwise, the sales
97 and use tax may not be levied, and the question of the imposition of the sales and use tax
98 may not again be submitted to the voters of the special district until after 24 months
99 immediately following the month in which the election was held. It shall be the duty of the
100 election superintendent to hold and conduct such elections under the same rules and
101 regulations as govern special elections. It shall be the superintendent's further duty to
102 canvass the returns, declare the result of the election, and certify the result to the Secretary
103 of State and to the commissioner. The expense of the election shall be borne by the board
104 of education whose geographical boundary is conterminous with that of the special district
105 holding the election.

106 (c) If the imposition of the sales and use tax provided in Code Section 48-8-232 is
107 approved in a referendum election as provided by subsections (a) and (b) of this Code
108 section, the board of education of the special district shall adopt a resolution during the first
109 30 days following the certification of the result of the election imposing the sales and use
110 tax authorized by Code Section 48-8-232 in the special district. The resolution shall be
111 effective on the first day of the next succeeding calendar quarter which begins more than
112 80 days after the adoption of the resolution. With respect to services which are billed on
113 a regular monthly basis, however, the resolution shall become effective with the first
114 regular billing period coinciding with or following the otherwise effective date of the
115 resolution. A certified copy of the resolution shall be forwarded to the commissioner so that
116 it will be received within five days after its adoption.

117 48-8-234.

118 (a) The sales and use tax levied pursuant to this article shall be exclusively administered
119 and collected by the commissioner for the use and benefit of the special district in which
120 the tax is levied. Such administration and collection shall be accomplished in the same
121 manner and subject to the same applicable provisions, procedures, and penalties provided
122 in Article 1 of this chapter except that the sales and use tax provided in this article shall be
123 applicable to sales of motor fuels as prepaid local tax as that term is defined by paragraph
124 (5.1) of Code Section 48-8-2; provided, however, that all moneys collected from each
125 taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes
126 owed the state. Dealers shall be allowed a percentage of the amount of the sales and use
127 tax due and accounted for and shall be reimbursed in the form of a deduction in submitting,
128 reporting, and paying the amount due if such amount is not delinquent at the time of
129 payment. The deduction shall be at the rate and subject to the requirements specified under
130 subsections (b) through (f) of Code Section 48-8-50.

131 (b) Each sales and use tax return remitting sales and use taxes collected under this article
132 shall separately identify the location of each retail establishment at which any of the sales
133 and use taxes remitted were collected and shall specify the amount of sales and the amount
134 of taxes collected at each establishment for the period covered by the return in order to
135 facilitate the determination by the commissioner that all sales and use taxes imposed by this
136 article are collected and distributed according to situs of sale.

137 (c) The proceeds of the sales and use tax collected by the commissioner in each special
138 district under this article shall be disbursed as soon as practicable after collection as
139 follows:

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

142 (2) Except for the percentage provided in paragraph (1) of this subsection, the remaining
143 proceeds of the sales and use tax shall be distributed to the board of education of the
144 special district and shall be expended solely for the purpose of funding the homestead
145 exemption.

146 48-8-235.

147 Where a local sales or use tax has been paid with respect to tangible personal property by
148 the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction
149 outside the state, the sales and use tax may be credited against the sales and use tax
150 authorized to be imposed by this article upon the same property. If the amount of sales or
151 use tax so paid is less than the amount of the use tax due under this article, the purchaser
152 shall pay an amount equal to the difference between the amount paid in the other tax
153 jurisdiction and the amount due under this article. The commissioner may require such
154 proof of payment in another local tax jurisdiction as the commissioner deems necessary and
155 proper. No credit shall be granted, however, against the sales and use tax imposed under
156 this article for tax paid in another jurisdiction if the sales and use tax paid in such other
157 jurisdiction is used to obtain a credit against any other local sales and use tax levied in the
158 special district or in the county which is conterminous with the special district; and sales
159 and use taxes so paid in another jurisdiction shall be credited first against the sales and use
160 tax levied under this article and then against the sales and use tax levied under Article 3 of
161 this chapter, if applicable.

162 48-8-236.

163 (a) Whenever the board of education in the special district in which the sales and use tax
164 authorized by this article is being levied wishes to submit to the electors of the special
165 district the question of whether the sales and use tax authorized by Code Section 48-8-232

166 shall be discontinued, the board of education shall notify the election superintendent of the
 167 political subdivision whose geographical boundary is conterminous with that of the special
 168 district by forwarding to the superintendent a copy of a resolution of the board of education
 169 calling for the referendum election. Upon receipt of the resolution, it shall be the duty of
 170 the election superintendent to issue the call for an election for the purpose of submitting
 171 the question of discontinuing the levy of the sales and use tax to the voters of the special
 172 district for approval or rejection. The election superintendent shall issue the call and shall
 173 conduct the election on a date and in the manner authorized under Code Section 21-2-540.
 174 Such election shall only be conducted on the date of and in conjunction with a referendum
 175 provided for by local Act on the question of whether to repeal the homestead exemption
 176 within such county school district or independent school district which is funded from the
 177 proceeds of the sales and use tax levied and collected pursuant to this article. The election
 178 superintendent shall cause the date and purpose of the election to be published once a week
 179 for two weeks immediately preceding the date of the election in the official organ of such
 180 county. The ballot shall have written or printed thereon the following:

181 '() YES Shall the 1 percent retail homestead option sales and use tax being levied
 182 within the special district within _____ (County) (City of
 183 () NO _____) for the purposes of funding an additional homestead
 184 exemption of up to 100 percent of the assessed value of homesteads
 185 from school district taxes for county educational be terminated?'

186 (b) All persons desiring to vote in favor of discontinuing the sales and use tax shall vote
 187 'Yes,' and all persons opposed to discontinuing the tax shall vote 'No.' If more than one-half
 188 of the votes cast are in favor of discontinuing the sales and use tax and repealing the local
 189 Act providing for such homestead exemption, then the sales and use tax shall cease to be
 190 levied on the last day of the taxable year following the taxable year in which the
 191 commissioner receives the certification of the result of the election; otherwise, the sales and
 192 use tax shall continue to be levied, and the question of the discontinuing of the tax may not
 193 again be submitted to the voters of the special district until after 24 months immediately
 194 following the month in which the election was held. It shall be the duty of the election
 195 superintendent to hold and conduct such elections under the same rules and regulations as
 196 govern special elections. It shall be the superintendent's further duty to canvass the returns,
 197 declare and certify the result of the election, and certify the result to the Secretary of State
 198 and to the commissioner. The expense of the election shall be borne by the county whose
 199 geographical boundary is conterminous with that of the special district holding the election.

200 48-8-237.

201 No sales and use tax provided for in Code Section 48-8-232 shall be imposed upon the sale
 202 of tangible personal property which is ordered by and delivered to the purchaser at a point
 203 outside the geographical area of the special district in which the sales and use tax is
 204 imposed under this article regardless of the point at which title passes, if the delivery is
 205 made by the seller's vehicle, United States mail, or common carrier or by private or contract
 206 carrier licensed by the Interstate Commerce Commission or the Georgia Public Service
 207 Commission.

208 48-8-238.

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

215 (b) No sales and use tax provided for in Code Section 48-8-232 shall be imposed in such
 216 special district upon the sale or use of building and construction materials when the
 217 contract pursuant to which the materials are purchased or used was advertised for bid prior
 218 to approval of the levy of the sales and use tax by the county whose geographical boundary
 219 is conterminous with that of the special district and the contract was entered into as a result
 220 of a bid actually submitted in response to the advertisement prior to approval of the levy
 221 of the sales and use tax.

222 48-8-239.

223 The commissioner shall have the power and authority to promulgate such rules and
 224 regulations as shall be necessary for the effective and efficient administration and
 225 enforcement of the collection of the sales and use tax authorized to be imposed by this
 226 article."

227 **SECTION 2.**

228 This Act shall become effective on January 1, 2011; provided, however, that this Act shall
 229 only become effective on January 1, 2011, upon the ratification of a resolution at the
 230 November, 2010, state-wide general election, which resolution amends the Constitution of
 231 the State of Georgia so as to authorize a board of education to levy a homestead option sales
 232 and use tax for educational purposes. If such resolution is not ratified, this Act shall not
 233 become effective and shall stand repealed in its entirety on January 1, 2011.

234

SECTION 3.

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