

House Bill 1049

By: Representatives Stephens of the 164th, Abrams of the 84th, Wilkinson of the 52nd, Wix of the 33rd, Fludd of the 66th, and others

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 increments of less than 1 percent sales tax to be approved
3 by local voter referendum and used to fund locally determined projects for the support and
4 improvement of community cultural and other locally determined qualified projects
5 supporting economic development within special local community support districts within
6 the state; to provide for legislative findings; to provide for definitions; to provide for the
7 creation of districts; to provide for referendums for the approval of sales and use taxes for
8 the districts; to provide for distribution of funds; to provide for the management of the
9 districts; to exempt such taxes from the maximum ceiling; to provide for related matters; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 The General Assembly finds that:

- 14 (1) There exists different and critically important needs and opportunities for economic
15 and community development in local communities throughout Georgia using local
16 community cultural assets, programs, and projects;
- 17 (2) Strong and sustainable local cultural institutions are significant community assets
18 serving important public functions by encouraging local economic development, providing
19 resources for improvement of local schools and student performance, and encouraging the
20 growth of a creative local economy and quality of life, all of which contribute to the overall
21 economic development of the State of Georgia;
- 22 (3) Support of existing local cultural and community specific assets and qualified local
23 projects are best identified and regulated by local communities who may best determine
24 through a local referendum the amount, term, and scope of such support as might be
25 provided by each local community;

26 (4) Cultural organizations exist in a variety of forms and sizes throughout the State of
 27 Georgia and flexibility is required in funding support to meet the significant differences in
 28 the needs of such cultural organizations based on their size; and

29 (5) Each county in Georgia should have the opportunity to present to its citizens for
 30 referendum approval a resolution creating special local community support districts for
 31 economic development and quality of life and imposing an incremental sales tax of less
 32 than 1 percent in support of projects tailored to its local needs and priorities to sustain
 33 existing qualified local cultural institutions and other qualified local projects within such
 34 district.

35 SECTION 2.

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

38 "ARTICLE 5

39 48-8-240.

40 As used in this article, the term:

41 (1) 'Allocation plan' means the formula for the division of funds raised by the local levy
 42 approved by the citizens of each district as authorized by Code Section 48-8-242.

43 (2) 'Artist and support organization' means an organization which is a qualified local
 44 cultural organization that has average annual gross revenues of less than \$75,000.00 for
 45 its past three fiscal years.

46 (3) 'District' means a special local community support district for economic development
 47 and quality of life created pursuant to Code Section 48-8-241.

48 (4) 'Gross revenues' means the not for profit operating revenues from all sources earned
 49 by or funds paid or contributed to a qualified local cultural organization for performances,
 50 exhibitions, or activities within a district, except for capital construction fund income,
 51 designated funds raised for specific capital needs, or endowment corpus as shown by
 52 financial statements prepared in accordance with uniform accounting principles.

53 (5) 'Local levy' means the district-wide sales and use tax authorized pursuant to Code
 54 Section 48-8-242.

55 (6) 'Qualified local cultural organization' means a private not for profit arts and cultural
 56 organization having as its primary purpose the advancement of art, music, theater, dance,
 57 history, natural history, animal sciences, or botanical research or the advancement and
 58 preservation of plant sciences through horticultural display that is serving the public and

59 advancing local economic and cultural development and strengthening local education
 60 and that:

61 (A) Has been continuously producing or presenting seasons of cultural programs
 62 within the district for a period of not less than five years, and if operating in more than
 63 one district shall be deemed for the purposes of this article to operate in each such
 64 district pro rata on the basis of the service activity and budgets for operations in each
 65 district;

66 (B) Is qualified under Section 501(c)(3) of the Internal Revenue Code;

67 (C) Is open to the general public with or without fee, excluding projects, events, or
 68 organizations that are extensions of academic programs for which more than 50 percent
 69 of the participants receive academic credits;

70 (D) Provides publicly available periodic financial information and, if the organization
 71 has annual gross revenues greater than \$250,000.00, provides an audit; and

72 (E) Is neither an agency of the state nor a political subdivision of the state, nor an
 73 organization with average annual gross revenues for its past three fiscal years greater
 74 than \$300,000.00 which receives more than 30 percent of its annual gross revenues or
 75 total capital funding from governmental funding excluding funds provided for
 76 re-granting to other qualified local cultural organizations.

77 These may include, without limitation, museums, visual and performing arts centers and
 78 visual and performing arts organizations, zoos, aquariums, botanical gardens, and natural
 79 history organizations.

80 (7) 'Qualified local initiative' means a public authority, governmental entity, or private
 81 not for profit organization qualified under Section 501(c)(3) of the Internal Revenue
 82 Code, each of which has operated within the district for a period of not less than three
 83 years providing a public service or function by advancing local community development
 84 and improvement through the creation or operation of sports or recreational facilities or
 85 activities; after school or other educational programs; improvements in public safety;
 86 crime prevention; the acquisition, development, and maintenance of public parks, trails,
 87 and bikeways; the maintenance and improvement of public roads or transportation; or the
 88 creation of jobs within the district.

89 (8) 'Supervising organization' means the administrative entity established pursuant to
 90 Code Section 48-8-244 to manage, supervise, and distribute funds of a district.

91 48-8-241.

92 (a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the
 93 Constitution, a special local community support district for economic development and
 94 quality of life may be created:

- 95 (1) By any county in which is located one or more qualified local cultural organizations
 96 having combined annual gross revenues in excess of \$100 million;
 97 (2) By any county in which is located one or more qualified local cultural organizations
 98 having combined annual gross revenues equal to or less than \$100 million; or
 99 (3) By agreement of two or more contiguous counties seeking to create a joint district.

100 A county may not be a part of more than one district.

101 (b) Any such district shall be created by resolution of the governing authority of the county
 102 or by joint resolution of the governing authorities of two or more contiguous counties
 103 which shall be submitted for approval to the voters within each such proposing county and,
 104 for joint districts, shall be approved by the voters in each county within the proposed
 105 district. Subject to voter approval, such resolution shall propose to create a district and to
 106 levy an incremental sales and use tax as set forth in Code Section 48-8-242 for the purpose
 107 of funding both operating support and capital improvements of qualified local cultural
 108 organizations and other specifically identified qualified local initiatives for economic
 109 development within the proposed district. A district shall cease to exist upon the expiration
 110 of the levy.

111 48-8-242.

112 (a) On and after January 1, 2011, a single sales and use tax of up to 1 percent may be
 113 levied pursuant to the requirements of this Code section in a district in increments of
 114 one-tenth of 1 percent, as provided in this article, which shall fund:

- 115 (1) Qualified local cultural organizations for operating support and capital improvements
 116 at the election of the qualified local cultural organization; and
 117 (2) Other qualified local initiatives within the district.

118 Except as to rate, the tax shall correspond to the tax imposed and administered by Article 1
 119 of this chapter.

120 (b) Any county which proposes to create a district pursuant to paragraph (1) or (2) of
 121 subsection (a) of Code Section 48-8-241 may propose by resolution of the applicable
 122 governing authority or any two or more contiguous counties which propose to create a joint
 123 district pursuant to paragraph (3) of subsection (a) of Code Section 48-8-241 may propose
 124 by joint resolution to levy a special incremental sales and use tax:

- 125 (1) For a district created pursuant to paragraph (1) of subsection (a) of Code Section
 126 48-8-241 equal to not less than three-tenths of 1 percent for a term of 15 years; or
 127 (2) For a district created pursuant to paragraph (2) or (3) of subsection (a) of Code
 128 Section 48-8-241 equal to not less than one-tenth of 1 percent for a term not to exceed 15
 129 years as determined by the governing authority or applicable governing authorities, in the
 130 case of joint districts.

131 Such resolution shall also include the identification of the public services and function and
 132 uses of such proposed tax moneys, the proposed allocation plan, the identification of any
 133 qualified local initiative proposed by the governing authority or governing authorities, in
 134 the case of joint districts, for support of qualified local cultural organizations that would
 135 be supported by such levy and the expected public benefits to be received. Such resolution
 136 shall be submitted for approval to voters within each proposing county. The procedures for
 137 conducting the referendum shall correspond generally to the procedures provided for in
 138 Part 1 of Article 3 of this chapter relating to the county special 1 percent sales and use tax.

139 48-8-243.

140 (a) The moneys generated from any local levy approved by the voters and imposed under
 141 this article shall be distributed quarterly by the supervising organization of the district
 142 pursuant to the allocation plan as follows:

143 (1) One and one-half percent of said total local levy shall be distributed to the governing
 144 authority or governing authorities, in the case of joint districts, imposing the local levy
 145 to pay for administrative expenses incurred by such governing authority or authorities and
 146 the district's supervising organization;

147 (2) In districts created pursuant to paragraph (1) of subsection (a) of Code Section
 148 48-8-241:

149 (A) One percent of the first three-tenths of 1 percent levied shall be distributed to the
 150 supervising organization for competitive awards of project funding to artist and support
 151 organizations on the basis of criteria and guidelines issued by the supervising
 152 organization; and

153 (B) Fifty-five percent of the first three-tenths of 1 percent levied shall be distributed
 154 by the supervising organization to qualified local cultural organizations within such
 155 district as follows:

156 (i) To the largest 10 percent of qualified local cultural organizations, excluding artist
 157 and support organizations, a total sum equal to 15 percent of their combined average
 158 annual gross revenues for their past three fiscal years;

159 (ii) To the next largest 30 percent of qualified local cultural organizations, excluding
 160 artist and support organizations, a total sum equal to 17 percent of their combined
 161 average annual gross revenues for their past three fiscal years; and

162 (iii) To the remaining 60 percent of qualified local cultural organizations, excluding
 163 artist and support organizations, a total sum equal to 19 percent of their combined
 164 average annual gross revenues for their past three fiscal years;

165 (3) In districts created pursuant to paragraph (2) or (3) of subsection (a) of Code Section
 166 48-8-241, 55 percent of the first one-tenth of 1 percent levied shall be distributed by the

167 supervising organization to qualified local cultural organizations in accordance with
 168 locally created and uniformly applied rules and guidelines; and

169 (4) The balance of said total local levy shall be distributed to qualified local initiatives
 170 to perform the public service and public functions as set forth in the resolution approved
 171 by the voters.

172 (b) Each such qualified local cultural organization funded under this Code section shall
 173 receive 80 percent of the specified percentage of their average annual gross revenues for
 174 their past three fiscal years subject only to meeting uniform guidelines for financial
 175 reporting and stability established by the supervising organization. Each such qualified
 176 local cultural organization may compete with other such organizations in their size group
 177 for single or multi-year grants of the remaining 20 percent allocated to their group on the
 178 basis of criteria and guidelines issued by the supervising organization. If the collected
 179 amounts of incremental sales tax revenues available for distribution are insufficient to fund
 180 the total amount each qualified local cultural organization would receive under this article,
 181 then the distribution to each organization shall be made on a pro-rata basis.

182 48-8-244.

183 The management, supervision, and distribution of funds of each district shall be vested in
 184 a supervising organization created by, appointed by, or contracted with by the authorizing
 185 county commission or commissions. Each supervising organization shall have a governing
 186 board or committee empowered to exercise the responsibilities of the supervising
 187 organization under this article that shall be composed of 50 percent representatives of
 188 qualified local cultural organizations and in which all members of the governing board or
 189 committee shall recuse themselves from participating in issues presenting a direct conflict
 190 of personal interests. Such supervising organization shall elect its own chairperson and
 191 establish its own bylaws in conformance with the obligations imposed by this article and
 192 shall report annually on all expenditures and distributions to the authorizing county
 193 commission or commissions. Such supervising organizations shall have the following
 194 duties and responsibilities:

195 (1) To administer the funding of qualified local cultural organizations and qualified local
 196 initiatives in accordance with this article and as approved by the voters;

197 (2) To receive in trust and administer the distribution of all funds received from the
 198 locally approved levy under the provisions of this article;

199 (3) To properly determine and uniformly calculate the amounts to be received by each
 200 qualified local cultural organization under the provisions of this article;

201 (4) To institute and administer competitive grant programs for the support of cultural
 202 organizations and artists in accordance with this article;

203 (5) To determine and distribute the portion of the funds received from the locally
 204 approved levy to the qualified local initiatives as provided under the authorizing
 205 resolution of the county commission or commissions approved by the voters;

206 (6) To ensure that determinations as to funding of any recipients shall be based not on
 207 political expediency but rather on the organization's contribution to the general welfare
 208 of its intended audience and the demonstration of its relative ability to provide benefits
 209 to the citizens of the district and the state;

210 (7) To receive and review annual financial information from each qualified local cultural
 211 organization and qualified local initiative and prepare an annual report to the public and
 212 the authorizing county commission or commissions on all expenditures and distributions;
 213 and

214 (8) To employ such staff and consultants as deemed necessary to fulfill its
 215 responsibilities under this article and to perform such other tasks as may be appropriate
 216 to fulfill its purposes not inconsistent with the law."

217 **SECTION 3.**

218 Said chapter is further amended in Code Section 48-8-6, relating to a ceiling on local sales
 219 and use taxes, by revising subsection (b) as follows:

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

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

229 (2) Any tax levied for purposes of a metropolitan area system of public transportation,
 230 as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page
 231 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)
 232 of the Constitution; and the laws enacted pursuant to such constitutional amendment;
 233 provided, however, that the exception provided for under this paragraph shall only apply
 234 in a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code
 235 Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay
 236 project or projects, a sewer capital outlay project or projects, a water and sewer capital
 237 outlay project or projects, water and sewer projects and costs as defined under
 238 paragraph ~~(3)~~ (4) of Code Section 48-8-200, or any combination thereof and with respect

239 to which the county has entered into an intergovernmental contract with a municipality,
 240 in which the average waste-water system flow of such municipality is not less than 85
 241 million gallons per day, allocating proceeds to such municipality to be used solely for
 242 water and sewer projects and costs as defined under paragraph ~~(3)~~ (4) of Code Section
 243 48-8-200. The exception provided for under this paragraph shall apply only during the
 244 period the tax under said subparagraph (a)(1)(D) is in effect. The exception provided for
 245 under this paragraph shall not apply in any county in which a tax is being imposed under
 246 Article 2A of this chapter;

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

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

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

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

256 **SECTION 4.**

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