

House Bill 938

By: Representatives Setzler of the 35th, Golick of the 34th, and Ramsey of the 72nd

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 repeal and reenact Article 5, relating to a transportation sales and use
3 tax; to provide findings by the General Assembly; to provide definitions; to provide for an
4 up to 1 percent local sales tax to be used to fund transportation projects in special
5 transportation districts within this state; to provide for the creation of such districts, the
6 governance thereof, and the development of a list of transportation projects for the district;
7 to provide for an approval process; to provide that counties may opt out of a district under
8 specified circumstances; to provide for counties to pass a resolution calling for a referendum
9 within the district to approve the levy of the tax; to require hearings; to provide for the tax
10 to be levied by the participating counties; to provide for the funds to be collected by the
11 Department of Revenue and to be deposited in trust accounts; to provide for funding local
12 projects through the local maintenance and improvement grant program; to provide that an
13 approved levy shall not be subject to allocation and balancing of state and federal funds; to
14 provide for contracting and constructing of the approved transportation projects; to provide
15 for exemptions; to provide for annual reporting; to provide for related matters; to provide for
16 a conditional effective date; to repeal conflicting laws; and for other purposes.

17 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18 **PART I**
19 **SECTION 1-1.**

20 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
21 taxes, is amended by repealing Article 5, relating to a transportation sales and use tax, and
22 designating said article as reserved.

PART II
SECTION 2-1.

Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, is amended by enacting a new Article 5 to read as follows:

"ARTICLE 5

48-8-240.

(a) The General Assembly of the State of Georgia finds that:

(1) An efficient and effective transportation system is essential to the health and welfare of the state, its businesses, and its citizens;

(2) The development and maintenance of such a system is dependent on the provision of a reliable source of local revenue to fund the transportation projects and transportation purposes necessary therefor;

(3) Districts with geographical boundaries that correspond with and are coterminous with the boundaries of one or more counties may be created and local sales and use taxes may be levied therein pursuant to Article IX, Section II, Paragraph VI; Article IX, Section IV, Paragraph I(a); and Article IX, Section IV, Paragraph V of the Georgia Constitution; and

(4) The creation of such districts and the levy of such taxes therein is in the best interests of the citizens of the State of Georgia.

(b) As used in this article, the term:

(1) 'District' or 'transportation district' means a transportation district authorized by Article IX, Section II, Paragraph VI and Article IX, Section IV, Paragraph V of the Georgia Constitution and created pursuant to Code Sections 48-8-241 and 48-8-242.

(2) 'Intergovernmental agreement' means a contract entered into pursuant to Article IX, Section III, Paragraph I of the Georgia Constitution.

(3) 'Tax' or 'transportation tax' or 'levy' means a local district-wide sales and use tax levied pursuant to this article and authorized by Article IX, Section II, Paragraph VI; Article IX, Section IV, Paragraph I(a); and Article IX, Section IV, Paragraph V of the Georgia Constitution.

(4) 'Transportation agency' means a state government, a local government, or a community improvement district or authority created by general law, by local law, or as a result of an intergovernmental agreement entered into for the purpose of engaging in activities constituting or relating to transportation projects or transportation purposes.

(5) 'Transportation project' or 'transportation purpose' means, without limitation, a project that can reasonably be expected to be completed in ten years, including roads and bridges, freight and passenger rail, airports, buses, and seaports and all activities and

58 structures useful and incident to providing, operating, and maintaining the same,
 59 including such purposes as defined in subsection (b) of Code Section 48-8-121 and
 60 further including reasonable and necessary expenses for the operation of a special
 61 transportation district created pursuant to this article; provided, however, that
 62 transportation project or transportation purpose shall not include projects which are
 63 inconsistent with the goals of any state-wide strategic transportation plan; and provided,
 64 further, that the Metropolitan Atlanta Rapid Transit Authority, created by an Act
 65 approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, shall not be authorized to
 66 use any proceeds from a tax levied under the provisions of this article for expenses of
 67 maintenance and operation of such portions of the transportation system of such authority
 68 in existence on January 1, 2012.

69 48-8-240.1.

70 The approval of the levy of tax provided for under this article in a special district shall not
 71 in any way diminish the percentage of funds allocated to a special district or any of the
 72 local governments within a special district under the provisions of subsection (c) of Code
 73 Section 32-5-27. The amount of funds expended in a special district shall not be decreased
 74 due to the use of proceeds from the special district transportation sales and use tax to
 75 construct transportation projects that have a high priority in the state-wide strategic
 76 transportation plan. If a special district constructs a transportation project on the approved
 77 investment list using proceeds from the special district tax, then the state funding under
 78 subsection (c) of Code Section 32-5-27 shall not be diverted to priority projects in other
 79 special districts.

80 48-8-241.

81 (a)(1) Pursuant to the authority granted by Article IX, Section II, Paragraph VI and
 82 Article IX, Section IV, Paragraph V of the Georgia Constitution, there are created within
 83 this state 159 special transportation districts. The geographical boundary of each county
 84 shall correspond with and shall be coterminous with the geographical boundary of the
 85 159 special transportation districts. A county shall be wholly within one transportation
 86 district. No county shall be divided among more than one district.

87 (2) Any two or more contiguous counties may enter into an intergovernmental agreement
 88 for the purpose of merging two or more single-county special transportation districts into
 89 a multicounty special transportation district.

90 (b) On or after January 1, 2013, a single local sales and use tax of up to 1 percent may be
 91 levied as provided in this article to fund transportation projects or transportation purposes
 92 in a special transportation district consisting of one or more counties.

93 48-8-242.

94 (a)(1) Special transportation districts may be created by the governing authorities of two
95 or more contiguous counties by intergovernmental agreement executed pursuant to
96 Article IX, Section III, Paragraph I and Article IX, Section IV, Paragraph V of the
97 Georgia Constitution.

98 (2)(A) Prior to the execution of the intergovernmental agreement required by
99 paragraph (1) of this subsection, the counties that desire to levy a transportation tax
100 within a special transportation district created pursuant to this Code section shall
101 schedule a meeting or meetings to discuss possible transportation projects for inclusion
102 in the project list. At the conclusion of the final meeting, a final project list shall be
103 conditionally approved and sent to the governing authorities of each participating
104 county for final approval. The governing authority of each participating county shall,
105 within 30 days of receiving the proposed project list, approve the list, reject the list, or
106 suggest amendments to the list. If the governing authority of any participating county
107 suggests amendments to the list, further negotiations among the counties shall be
108 initiated to consider the amendments. If the governing authority of any participating
109 county rejects the list, that county shall be excluded from the special transportation
110 district, and if there are two or more remaining participating counties, the negotiation
111 of a new project list among the remaining counties shall begin. No referendum shall
112 be scheduled under subsection (c) of this Code section until the governing authorities
113 of each participating county have approved the project list.

114 (B) Any transportation project on the project list that requires the use of any federal
115 matching funds, or any other source of anticipated funding not directly coming from the
116 levy authorized under this article, shall be guaranteed by a pledge of the full faith and
117 credit of the governing authority of the county or counties that propose the project to
118 ensure that if the matching or other anticipated funding does not materialize, the
119 shortfall shall be made up by the use of general funds of the proposing county or
120 counties.

121 (b) At a minimum, the intergovernmental agreement authorized by paragraph (1) of
122 subsection (a) of this Code section shall include:

123 (1) A list of the transportation projects and transportation purposes approved pursuant
124 to paragraph (2) of subsection (a) of this Code section proposed to be funded from the
125 levy authorized by this article;

126 (2) The estimated or projected dollar amounts allocated for each transportation project
127 from proceeds from the levy authorized by this article;

128 (3) The procedures for distributing proceeds from the levy authorized by this article to
129 the counties in the special transportation district;

- 130 (4) A schedule for distributing proceeds from the levy authorized by this article to the
131 counties in the special transportation district. Such schedule shall include the priority or
132 order in which transportation projects will be fully or partially funded;
- 133 (5) A provision that all transportation projects included in the agreement shall be funded
134 from proceeds from the levy authorized by this article;
- 135 (6) A provision that proceeds from the levy authorized by this article shall be maintained
136 in separate accounts and utilized exclusively for the specified transportation purposes;
- 137 (7) Record-keeping and audit procedures necessary to carry out the purposes of this
138 article; and
- 139 (8) Such other provisions as the participating counties choose to address.
- 140 (c)(1) As soon as practicable after the execution of an intergovernmental agreement
141 authorized by paragraph (1) of subsection (a) of this Code section, the governing
142 authorities of the counties within the special transportation district may by a majority vote
143 on a resolution offered for such purpose submit the project list and the question of
144 whether the levy provided for by this article should be approved to electors of the special
145 transportation district in an election called for such purpose, and each participating
146 county governing authority shall notify their respective county election superintendent
147 within the district by forwarding to each superintendent a copy of such resolution calling
148 for the imposition of the levy. Each county election superintendent shall issue the call
149 and shall conduct the election on the date of the general primary in 2014 and in the
150 manner authorized under Code Section 21-2-540.
- 151 (2) Prior to the adoption of the resolution calling for the levy of the transportation tax
152 within the district required by paragraph (1) of this subsection, a public hearing shall be
153 held at which time any persons wishing to be heard on the proposed resolution may
154 appear. Notice of the time and place of the hearing shall be determined by the counties
155 within the district and shall be published at least one week before the hearing is held. The
156 notice shall be published in one or more newspapers of general circulation within the
157 special transportation district.
- 158 (3) The resolution authorized by paragraph (1) of this subsection shall describe:
- 159 (A) The specific transportation projects or transportation purposes to be funded;
- 160 (B) The approximate cost of such transportation projects or transportation purposes,
161 including any federal, state, or private funds anticipated to be allocated to such
162 transportation projects or transportation purposes, which shall also be the maximum
163 amount of net proceeds to be raised by the levy. For the purposes of this subparagraph,
164 the term 'private funds' shall include any tolls, fares, fees, or tax increments projected
165 for use of such transportation projects or transportation purposes; and

166 (C) The maximum period of time, up to ten years maximum, to be stated in calendar
 167 years, for which the levy may be levied and the rate thereof.

168 (d) The governing authority of each county in a district may select one or more
 169 transportation agencies to be responsible for designing, planning, and contracting for the
 170 construction of district transportation projects within the boundaries of the county.

171 (e) The proposed list of transportation projects or transportation purposes specified in
 172 paragraph (1) of subsection (a) of this Code section shall be subject to review and approval
 173 by the director of planning of the Department of Transportation to ensure that it is
 174 consistent with any state-wide strategic plan. The Department of Transportation shall be
 175 authorized to promulgate reasonable rules or regulations establishing procedures for the
 176 review of such lists. Any such regulations shall include a provision that the review and
 177 approval process shall take no more than 30 calendar days and shall be completed prior to
 178 the call for the referendum authorized by subsection (c) of this Code section.

179 48-8-243.

180 (a) Except as otherwise provided in this Code section, the procedures for conducting the
 181 referendum on the question of imposing the levy shall correspond generally to the
 182 procedures provided for by Part 1 of Article 3 of this chapter, except that the project list
 183 provided for by Code Section 48-8-242, or a digest thereof, shall be available during
 184 regular business hours in the office of the county clerk of each county that has authorized
 185 the levy authorized by this article.

186 (b) The ballot submitting the question of the imposition of the levy authorized by this
 187 article to the voters within the special transportation district shall have written or printed
 188 thereon the following:

189 '() YES For the purpose of improving transportation mobility, shall a special
 190 percent local sales and use tax be levied for a limited time in the special

191 () NO transportation district consisting of Counties to expire on
 192 (date) to raise an estimated \$ to fund a defined list of projects?'

193 (c) The election superintendent in each county within the transportation district shall hold
 194 and conduct the election under the same rules and regulations as govern special elections.
 195 The superintendent shall canvass the returns, declare the result of the election, and certify
 196 the result to the Secretary of State and to the commissioner. The expense of the election
 197 shall be paid from county funds. All persons desiring to vote in favor of imposing the levy
 198 shall vote 'Yes,' and all persons opposed to imposing the levy shall vote 'No.' If more than
 199 one-half of the votes cast throughout the entire special transportation district are in favor
 200 of imposing the levy, then the levy shall be imposed as provided in this article.

201 (d) Where such question is not approved by the voters of the district, the county or
 202 counties of the special transportation district may resubmit such question from time to time
 203 and may amend such project list or digest thereof. Proceedings for the reimposition of such
 204 levy shall be in the same manner as proceedings for the initial imposition of the levy, but
 205 the newly authorized levy shall not be imposed until the expiration of the levy then in
 206 effect unless the levy in effect is less than 1 percent. In no circumstances shall more than
 207 1 percent be levied at any time.

208 (e) Whenever the levy is authorized pursuant to the provisions of this article, the counties
 209 within the approving district shall levy a sales and use tax as provided for by this article,
 210 to be collected as provided by law.

211 48-8-244.

212 (a) A tax levied pursuant to this article shall be exclusively administered and collected by
 213 the state revenue commissioner for the use and benefit of the counties within such special
 214 transportation district imposing the tax. Such administration and collection shall be
 215 accomplished in the same manner and subject to the same applicable provisions,
 216 procedures, and penalties provided in Article 1 of this chapter except that the sales and use
 217 tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax
 218 as that term is defined by paragraph (23) of Code Section 48-8-2, provided that the
 219 commissioner may rely upon a representation by or on behalf of the counties within the
 220 transportation district or the Secretary of State that such a tax has been validly imposed,
 221 and the commissioner and the commissioner's agents shall not be liable to any person for
 222 collecting any such tax which was not validly imposed. Dealers, as defined by paragraph
 223 (8) of Code Section 48-8-2, shall be allowed a percentage of the amount of the tax due and
 224 accounted for and shall be reimbursed in the form of a deduction in submitting, reporting,
 225 and paying the amount due if such amount is not delinquent at the time of payment. The
 226 deduction shall be at the rate and subject to the requirements specified under subsections
 227 (b) through (f) of Code Section 48-8-50.

228 (b) All of the proceeds of a levy authorized by this article and collected by the
 229 commissioner in a special transportation district wherein the tax is levied shall be
 230 transferred to a trust fund maintained by a county governing authority or an entity other
 231 than an entity established pursuant to Article 2 or 4 of Chapter 8 of Title 50 as agreed to
 232 by intergovernmental agreement or other writing of the counties included in a special
 233 transportation district. Such proceeds shall be expended as provided for by this article and
 234 shall be used exclusively for the transportation purposes specified in the resolution calling
 235 for imposition of the levy and shall not be commingled in any manner with any other funds
 236 held or received by any county.

237 48-8-245.

238 Upon request of the counties included in the special transportation district, the Georgia
239 Department of Transportation shall cooperate with the district and its constituent counties
240 and may enter into intergovernmental agreements to design, plan, and contract for the
241 construction and operation of the proposed transportation projects.

242 48-8-246.

243 (a) Nothing in this article shall be construed to prohibit counties and municipalities located
244 in a special transportation district from imposing as additional taxes local sales and use
245 taxes otherwise authorized by general law.

246 (b) The tax authorized by this article shall be in addition to any other local sales and use
247 tax. The imposition of any other local sales and use tax within a county shall not affect the
248 authority to impose the tax authorized by this article, and the imposition of the tax
249 authorized by this article shall not affect the imposition of any otherwise authorized local
250 sales and use tax within the county.

251 48-8-247.

252 The levy authorized by this article shall not be subject to any allocation or balancing of
253 state and federal funds provided for by general law, nor may such proceeds be considered
254 or taken into account in any such allocation or balancing.

255 48-8-248.

256 Except as otherwise specifically provided in this article, the levy authorized by this article
257 shall be subject to any sales and use tax exemption which is otherwise imposed by general
258 law; provided, however, that such levy shall be levied on the sale of food or beverages as
259 provided for in paragraph (57) of Code Section 48-8-3.

260 48-8-249.

261 A record of transportation projects on which proceeds from the levy authorized by this
262 article are used shall be maintained by each county receiving proceeds from the levy, and
263 a report shall be prepared not later than December 31 of each year. Such record and report
264 shall conform to the requirements of Code Section 48-8-122."

265

PART III

266

SECTION 3-1.

267 (a) This part and Part I of this Act shall become effective upon this Act's approval by the
268 Governor or upon its becoming law without such approval.

269 (b) Part II of his Act shall become effective on January 1, 2013; provided, however, that
270 Part II of this Act shall only become effective on January 1, 2013, upon the ratification of
271 a resolution at the November, 2012, state-wide general election, which resolution amends
272 the Constitution so as to authorize regional funding sources for transportation purposes.
273 If such resolution is not so ratified, Part II of this Act shall not become effective and shall
274 stand repealed in its entirety on January 1, 2013.

275

SECTION 3-2.

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