

The Senate Finance Committee offered the following substitute to HB 334:

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 enact an alternative homestead option sales and use tax; to provide for
3 a short title; to provide for definitions; to provide for creation of special districts; to provide
4 for a referendum on levying the tax; to provide for collection and administration of the tax;
5 to provide for a credit for similar taxes collected in other jurisdictions; to provide for a
6 referendum on discontinuation of the tax; to provide an exemption for building and
7 construction materials; to provide that the commissioner shall have the power to issue rules
8 and regulations to administer this tax; to provide for related matters; to provide for an
9 effective date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 SECTION 1.

12 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
13 taxes, is amended by adding a new Article 2B, relating to an alternative homestead option
14 sales and use tax, to read as follows:

15 "ARTICLE 2B

16 48-8-109.1.

17 This article shall be known and may be cited as the 'Alternative Homestead Option Sales
18 and Use Tax Act.'

19 48-8-109.2.

20 As used in this article, the term:

21 (1) 'Ad valorem taxes for county purposes' means any and all ad valorem taxes for
22 county maintenance and operation purposes levied by, for, or on behalf of the county,

23 excluding taxes to retire general obligation bonded indebtedness of the county. In the
 24 case of any tax levied pursuant to this article, such term shall also include any special
 25 district ad valorem taxes.

26 (2) 'Homestead' shall have the same meaning as provided in Code Section 48-5-40, with
 27 the additional qualification that it shall include only the primary residence and not more
 28 than five contiguous acres of land immediately surrounding such residence.

29 48-8-109.3.

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

34 (b) When the imposition of a local sales and use tax is authorized according to the
 35 procedures provided in this article within a special district, the county whose geographical
 36 boundary is conterminous with that of the special district shall levy a local sales and use
 37 tax at the rate of 1 percent. Except as to rate, the local sales and use tax shall correspond
 38 to the tax imposed and administered by Article 1 of this chapter. No item or transaction
 39 which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and
 40 use tax levied pursuant to this article, except that the sales and use tax provided in this
 41 article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined
 42 in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and
 43 alcoholic beverages only to the extent provided for in paragraph (57) of Code Section
 44 48-8-3.

45 (c)(1) Except as otherwise provided in paragraph (2) of this subsection, the proceeds of
 46 the sales and use tax levied and collected under this article shall be used only for the
 47 purposes of funding services within a special district equal to the revenue lost to the
 48 homestead exemption as provided in Code Section 48-8-109.5 and of funding capital
 49 outlay projects and, in the event excess funds remain following the expenditure for such
 50 purposes, such excess funds shall be expended as provided in subparagraph (c)(2)(C) of
 51 Code Section 48-8-109.5.

52 (2) Prior to January 1 of the year immediately following the first complete calendar year
 53 in which the sales and use tax under this article is imposed, such proceeds may be used
 54 for funding all or any portion of those services which are to be provided by the governing
 55 authority of the county whose geographic boundary is conterminous with that of a special
 56 district pursuant to and in accordance with Article IX, Section II, Paragraph III of the
 57 Constitution of this state.

58 (d) Such sales and use tax shall only be levied in a special district following the enactment
59 of a local Act which provides for a homestead exemption of an amount to be determined
60 from the amount of sales and use tax collected under this article. Such exemption shall
61 commence with taxable years beginning on or after January 1 of the year immediately
62 following the first complete calendar year in which the sales and use tax under this article
63 is levied. Any such local Act shall incorporate by reference the terms and conditions
64 specified under this article. Any such homestead exemption under this article shall be in
65 addition to and not in lieu of any other homestead exemption applicable to county taxes for
66 county purposes within the special district. Notwithstanding any provision of such local
67 Act to the contrary, the referendum which shall otherwise be required to be conducted
68 under such local Act shall only be conducted if the resolution required under subsection (a)
69 of Code Section 48-8-109.4 is adopted prior to the issuance of the call for the referendum
70 under the local Act by the election superintendent. If such ordinance is not adopted by that
71 date, the referendum otherwise required to be conducted under the local Act shall not be
72 conducted.

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

75 48-8-109.4.

76 (a) Whenever the governing authority of any county whose geographic boundary is
77 conterminous with that of a special district wishes to submit to the electors of such special
78 district the question of whether the sales and use tax authorized by Code Section
79 48-8-109.3 shall be imposed, any such governing authority shall notify the election
80 superintendent of the county whose geographical boundary is conterminous with that of the
81 special district by forwarding to the superintendent a copy of a resolution of the governing
82 authority calling for a referendum election. Upon receipt of the resolution, it shall be the
83 duty of the election superintendent to issue the call for an election for the purpose of
84 submitting the question of the imposition of the sales and use tax to the voters of the special
85 district for approval or rejection. The election superintendent shall issue the call and shall
86 conduct the election on a date and in the manner authorized under Code Section 21-2-540.
87 Such election shall only be conducted on the date of and in conjunction with a referendum
88 provided for by local Act on the question of whether to impose a homestead exemption
89 within such county based on the amount of proceeds from the sales and use tax levied and
90 collected pursuant to this article and a homestead exemption within such county in an
91 amount sufficient to offset future millage rate increases. The election superintendent shall
92 cause the date and purpose of the election to be published once a week for two weeks
93 immediately preceding the date of the election in the official organ of such county. The

94 ballot shall have written or printed thereon the following statement which shall precede the
 95 ballot question specified in this subsection and the ballot question specified by the required
 96 local Act:

97 'NOTICE TO ELECTORS: Unless **BOTH** the homestead exemptions **AND** the retail
 98 homestead option sales and use tax are approved, then neither the exemptions nor the
 99 sales and use tax shall become effective.'

100 Such statement shall be followed by:

101 () YES Shall a homestead option sales and use tax of 1 percent be levied within
 102 the special district within _____ County for the purposes of
 103 () NO funding services to replace revenue lost to an additional homestead
 104 exemption of up to 100 percent of the assessed value of homesteads from
 105 county taxes for county purposes and, if excess proceeds remain, of
 106 funding capital outlay projects?'

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

111 (b) All persons desiring to vote in favor of levying the sales and use tax shall vote 'Yes,'
 112 and all persons opposed to levying the tax shall vote 'No.' If more than one-half of the
 113 votes cast are in favor of levying the tax and approving the local Act providing such
 114 homestead exemptions, then the tax shall be levied in accordance with this article;
 115 otherwise, the sales and use tax shall not be levied, and the question of the imposition of
 116 the sales and use tax may not again be submitted to the voters of the special district until
 117 after 24 months immediately following the month in which the election was held. It shall
 118 be the duty of the election superintendent to hold and conduct such elections under the
 119 same rules and regulations as govern special elections. It shall be the superintendent's
 120 further duty to canvass the returns, declare the result of the election, and certify the result
 121 to the Secretary of State and to the commissioner. The expense of the election shall be
 122 borne by the county whose geographical boundary is conterminous with that of the special
 123 district holding the election.

124 (c) If the imposition of the sales and use tax provided in Code Section 48-8-109.3 is
 125 approved in a referendum election as provided by subsections (a) and (b) of this Code
 126 section, the governing authority of the county whose geographical boundary is
 127 conterminous with that of the special district shall adopt a resolution during the first 30
 128 days following the certification of the result of the election imposing the sales and use tax
 129 authorized by Code Section 48-8-109.3 on behalf of the county whose geographical
 130 boundary is conterminous with that of the special district. The resolution shall be effective

131 on the first day of the next succeeding calendar quarter which begins more than 80 days
 132 after the adoption of the resolution. With respect to services which are billed on a regular
 133 monthly basis, however, the resolution shall become effective with the first regular billing
 134 period coinciding with or following the otherwise effective date of the resolution. A
 135 certified copy of the resolution shall be forwarded to the commissioner so that it will be
 136 received within five days after its adoption.

137 48-8-109.5.

138 (a) The sales and use tax levied pursuant to this article shall be exclusively administered
 139 and collected by the commissioner for the use and benefit of each county whose
 140 geographical boundary is conterminous with that of a special district. Such administration
 141 and collection shall be accomplished in the same manner and subject to the same applicable
 142 provisions, procedures, and penalties provided in Article 1 of this chapter except that the
 143 sales and use tax provided in this article shall be applicable to sales of motor fuels as
 144 prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that
 145 all moneys collected from each taxpayer by the commissioner shall be applied first to such
 146 taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the
 147 amount of the sales and use tax due and accounted for and shall be reimbursed in the form
 148 of a deduction in submitting, reporting, and paying the amount due if such amount is not
 149 delinquent at the time of payment. The deduction shall be at the rate and subject to the
 150 requirements specified under subsections (b) through (f) of Code Section 48-8-50.

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

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

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

162 (2) Except for the percentage provided in paragraph (1) of this subsection, the remaining
 163 proceeds of the sales and use tax shall be distributed to the governing authority of the
 164 county whose geographical boundary is conterminous with that of the special district. As
 165 a condition precedent for the authority to levy the sales and use tax or to collect any
 166 proceeds from the tax authorized by this article for the year following the first complete

167 calendar year in which it is levied and for all subsequent years except the year following
 168 the year in which the sales and use tax is terminated under Code Section 48-8-109.7, the
 169 county whose geographical boundary is conterminous with that of the special district
 170 shall, except as otherwise provided in subsection (c) of Code Section 48-8-109.3, expend
 171 such proceeds as follows:

172 (A) Such proceeds shall be expended for the purpose of funding services within the
 173 special district equal to the revenue lost to the homestead exemption as provided in this
 174 Code section as follows:

175 (i) The homestead factor shall be calculated by multiplying the quantity 1.000 times
 176 an amount equal to the net amount of sales and use tax collected in the special district
 177 pursuant to this article for the previous calendar year, and then dividing by the taxes
 178 levied for county purposes on only that portion of the county tax digest that represents
 179 net assessments on qualified homestead property after all other homestead exemptions
 180 have been applied, rounding the result to three decimal places;

181 (ii) If the homestead factor is less than or equal to 1.000, the amount of homestead
 182 exemption created under this article on qualified homestead property shall be equal
 183 to the product of the homestead factor multiplied times the net assessment of each
 184 qualified homestead remaining after all other homestead exemptions have been
 185 applied; and

186 (iii) If the homestead factor is greater than 1.000, the homestead exemption created
 187 by this article on qualified homestead property shall be equal to the net assessment of
 188 each homestead remaining after all other homestead exemptions have been applied;

189 (B) In the event that excess proceeds remain following the expenditure of proceeds
 190 under subparagraph (A) of this paragraph such that the homestead exemption provided
 191 for under this article is sufficient to equate to the complete elimination of ad valorem
 192 taxes for county purposes for each taxpayer receiving such exemption, then such
 193 remaining proceeds shall be expended for the purpose of funding capital outlay projects
 194 as follows:

195 (i) The governing authority of the county whose geographical boundary is
 196 conterminous with that of the special district shall establish the capital factor which
 197 shall not exceed .200; and

198 (ii) Capital outlay projects shall be funded from such excess proceeds in an amount
 199 equal to the product of the capital factor multiplied by the net amount of the sales and
 200 use tax proceeds collected under this article during the previous calendar year only
 201 to the extent that the amount of such excess proceeds will permit; and

202 (C) If any of such proceeds remain following the distribution provided for in
 203 subparagraphs (A) and (B) of this paragraph:

204 (i) The millage rate levied for county purposes shall be rolled back in an amount
 205 equal to such excess divided by the net taxable digest for county purposes after
 206 deducting all homestead exemptions, including the exemption under this article; and
 207 (ii) In the event the rollback created by division (i) of this subparagraph exceeds the
 208 millage rate for county purposes, the governing authority of the county whose
 209 boundary is conterminous with the special district shall be authorized to expend the
 210 surplus funds for funding all or any portion of those services which are to be provided
 211 by such governing authorities pursuant to and in accordance with Article IX, Section
 212 II, Paragraph III of the Constitution of this state.

213 48-8-109.6.

214 Where a local sales or use tax has been paid with respect to tangible personal property by
 215 the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction
 216 outside this state, the sales and use tax may be credited against the sales and use tax
 217 authorized to be imposed by this article upon the same property. If the amount of sales or
 218 use tax so paid is less than the amount of the use tax due under this article, the purchaser
 219 shall pay an amount equal to the difference between the amount paid in the other tax
 220 jurisdiction and the amount due under this article. The commissioner may require such
 221 proof of payment in another local tax jurisdiction as the commissioner deems necessary and
 222 proper. No credit shall be granted, however, against the sales and use tax imposed under
 223 this article for tax paid in another jurisdiction if the sales and use tax paid in such other
 224 jurisdiction is used to obtain a credit against any other local sales and use tax levied in the
 225 special district or in the county which is conterminous with the special district; and sales
 226 and use taxes so paid in another jurisdiction shall be credited first against the sales and use
 227 tax levied under this article and then against the sales and use tax levied under Article 3 of
 228 this chapter, if applicable.

229 48-8-109.7.

230 (a) Whenever the governing authority of any county whose geographic boundary is
 231 conterminous with that of the special district in which the sales and use tax authorized by
 232 this article is being levied wishes to submit to the electors of the special district the
 233 question of whether the sales and use tax authorized by Code Section 48-8-109.3 shall be
 234 discontinued, the governing authority shall notify the election superintendent of the county
 235 whose geographical boundary is conterminous with that of the special district by
 236 forwarding to the superintendent a copy of a resolution of the governing authority calling
 237 for the referendum election. Upon receipt of the resolution, it shall be the duty of the
 238 election superintendent to issue the call for an election for the purpose of submitting the

239 question of discontinuing the levy of the sales and use tax to the voters of the special
 240 district for approval or rejection. The election superintendent shall issue the call and shall
 241 conduct the election on a date and in the manner authorized under Code Section 21-2-540.
 242 Such election shall only be conducted on the date of and in conjunction with a referendum
 243 provided for by local Act on the question of whether to repeal the homestead exemption
 244 within such county which is funded from the proceeds of the sales and use tax levied and
 245 collected pursuant to this article. The election superintendent shall cause the date and
 246 purpose of the election to be published once a week for two weeks immediately preceding
 247 the date of the election in the official organ of such county. The ballot shall have written
 248 or printed thereon the following:

249 ' () YES Shall the 1 percent retail homestead option sales and use tax being
 250 levied within the special district within _____ County for the
 251 () NO purposes of funding capital outlay projects and of funding services to
 252 replace revenue lost to an additional homestead exemption of up to
 253 100 percent of the assessed value of homesteads from county taxes for
 254 county purposes be terminated?'

255 (b) All persons desiring to vote in favor of discontinuing the sales and use tax shall vote
 256 'Yes,' and those persons opposed to discontinuing the tax shall vote 'No.' If more than
 257 one-half of the votes cast are in favor of discontinuing the sales and use tax and repealing
 258 the local Act providing for such homestead exemption, then the sales and use tax shall
 259 cease to be levied on the last day of the taxable year following the taxable year in which
 260 the commissioner receives the certification of the result of the election; otherwise, the sales
 261 and use tax shall continue to be levied, and the question of the discontinuing of the tax may
 262 not again be submitted to the voters of the special district until after 24 months immediately
 263 following the month in which the election was held. It shall be the duty of the election
 264 superintendent to hold and conduct such elections under the same rules and regulations as
 265 govern special elections. It shall be the superintendent's further duty to canvass the returns,
 266 declare and certify the result of the election, and certify the result to the Secretary of State
 267 and to the commissioner. The expense of the election shall be borne by the county whose
 268 geographical boundary is conterminous with that of the special district holding the election.

269 48-8-109.8.

270 No sales and use tax provided for in Code Section 48-8-109.3 shall be imposed upon the
 271 sale of tangible personal property which is ordered by and delivered to the purchaser at a
 272 point outside the geographical area of the special district in which the sales and use tax is
 273 imposed under this article regardless of the point at which title passes, if the delivery is

274 made by the seller's vehicle, United States mail, or common carrier or by a licensed private
275 or contract carrier.

276 48-8-109.9.

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

283 (b) No sales and use tax provided for in Code Section 48-8-109.3 shall be imposed in such
284 special district upon the sale or use of building and construction materials when the
285 contract pursuant to which the building and construction materials are purchased or used
286 was advertised for bid prior to approval of the levy of the sales and use tax by the county
287 whose geographical boundary is conterminous with that of the special district and the
288 contract was entered into as a result of a bid actually submitted in response to the
289 advertisement prior to approval of the levy of the sales and use tax.

290 48-8-109.10.

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

295 **SECTION 2.**

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

298 **SECTION 3.**

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