

House Bill 1005

By: Representatives Powell of the 171<sup>st</sup>, Harrell of the 106<sup>th</sup>, Burns of the 159<sup>th</sup>, Ehrhart of the 36<sup>th</sup>, Holmes of the 129<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to the joint county and municipal sales and use tax, so as to lengthen the period  
3 before such tax can be reimposed after it is not extended; to provide for related matters; to  
4 provide for effective dates; to provide for automatic repeal; to repeal conflicting laws; and  
5 for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the  
9 joint county and municipal sales and use tax, is amended by revising Code Section 48-8-85,  
10 relating to the referendum election to decide imposition of the tax, as follows:

11 "48-8-85.

12 (a) Whenever the governing authority of any county or qualified municipality located  
13 wholly or partially within a special district in which a joint county and municipal sales and  
14 use tax was not imposed on January 1, 1980, wishes to submit to the electors of the special  
15 district the question of whether the tax authorized by Code Section 48-8-82 shall be  
16 imposed, any such governing authority shall notify the election superintendent of the  
17 county whose geographical boundary is conterminous with that of the special district by  
18 forwarding to the superintendent a copy of a resolution of the governing authority calling  
19 for a referendum election. Upon receipt of the resolution, it shall be the duty of the election  
20 superintendent to issue the call for an election for the purpose of submitting the question  
21 of the imposition of the tax to the voters of the special district for approval or rejection.  
22 The election superintendent shall set the date of the election for a day not less than 30 nor  
23 more than 45 days after the date of the issuance of the call. The election superintendent  
24 shall cause the date and purpose of the election to be published once a week for two weeks  
25 immediately preceding the date of the election in the official organ of the county. The  
26 ballot shall have written or printed thereon the following:

27 '( ) YES Shall a retail sales and use tax of 1 percent be levied within the special  
 28 ( ) NO district within \_\_\_\_\_ County?'

29 (b) All persons desiring to vote in favor of levying the tax shall vote 'Yes,' and those  
 30 persons opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast  
 31 are in favor of levying the tax, then the tax shall be levied in accordance with this article;  
 32 otherwise, the tax may not be levied, and, except as otherwise provided in subsection (c)  
 33 of this Code section, the question of the imposition of the tax may not again be submitted  
 34 to the voters of the special district until after 24 months immediately following the month  
 35 in which the election was held. It shall be the duty of the election superintendent to hold  
 36 and conduct such elections under the same rules and regulations as govern special  
 37 elections. It shall be his or her further duty to canvass the returns, declare the result of the  
 38 election, and certify the result to the Secretary of State and to the commissioner. The  
 39 expense of the election shall be borne by the county whose geographical boundary is  
 40 conterminous with that of the special district holding the election.

41 (c)(1) If the governing authority of any county or qualified municipality located wholly  
 42 or partially within a special district in which a joint county and municipal sales and use  
 43 tax was imposed on or prior to July 1, 2016, allows the tax to be discontinued due to the  
 44 failure to file a new or revised certificate with the commissioner in accordance with the  
 45 provisions of Code Section 48-8-89 or 48-8-89.1, the question of the imposition of the  
 46 tax shall not again be submitted to the voters of the special district until after five years  
 47 immediately following the month in which the collection of the previously levied joint  
 48 county and municipal sales and use tax was discontinued.

49 (2) If the governing authority of any county or qualified municipality located wholly or  
 50 partially within a special district in which a joint county and municipal sales and use tax  
 51 was imposed on or prior to July 1, 2016, allows the tax to be discontinued due to the  
 52 failure to file a new or revised certificate with the commissioner in accordance with the  
 53 provisions of Code Section 48-8-89 or 48-8-89.1, the question of the imposition of a tax  
 54 under the provisions of Article 2A of this chapter shall not again be submitted to the  
 55 voters of the special district until after five years immediately following the month in  
 56 which the collection of the previously levied joint county and municipal sales and use tax  
 57 was discontinued.

58 (3) In any county or qualified municipality located wholly or partially within a special  
 59 district in which a joint county and municipal sales and use tax was imposed on or prior  
 60 to July 1, 2016, which tax was later discontinued due to the failure to file a new or revised  
 61 certificate with the commissioner in accordance with Code Section 48-8-89 or 48-8-89.1,  
 62 the board of education may choose to levy a second sales tax for educational purposes  
 63 pursuant to Article VIII, Section VI, Paragraph V of the Constitution."

64

**SECTION 2.**

65 Said article is further amended by revising Code Section 48-8-89, relating to the distribution  
66 of proceeds, as follows:

67 "48-8-89.

68 (a) The proceeds of the tax collected by the commissioner in each special district under  
69 this article shall be disbursed as soon as practicable after collection as follows:

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

72 (2) Except for the percentage provided in paragraph (1) of this subsection, the remaining  
73 proceeds of the tax shall be distributed to the governing authority of each qualified  
74 municipality within the special district and to the governing authority of the county  
75 whose geographical boundary is conterminous with that of the special district for the  
76 purpose of assisting such political subdivisions in funding all or any portion of those  
77 services which are to be provided by such governing authorities pursuant to and in  
78 accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

79 (b) It is the intent of the General Assembly that no agreement as to the distribution of the  
80 proceeds of the tax shall enrich any political subdivision beyond a sum which in the  
81 absence of the distribution would be raised through other sources of revenue. The  
82 distribution shall be in accordance with a certificate which shall be executed ~~in~~ on behalf  
83 of each respective governing authority, except as otherwise provided in this subsection, and  
84 which shall encompass all respective political subdivisions, shall be filed with the  
85 commissioner, and shall specify by percentage that portion of the remaining proceeds of  
86 the tax available for distribution which each such political subdivision shall receive. On  
87 or after July 1, 1995, the distribution of proceeds of the tax as specified in the certificate  
88 shall be based upon, but not be limited to, the following criteria:

89 (1) The service delivery responsibilities of each political subdivision to the population  
90 served by the political jurisdiction and served during normal business hours, conventions,  
91 trade shows, athletic events and the inherent value to a community of a central business  
92 district and the unincorporated areas of the county and the obligation of all residents of  
93 the county for the maintenance and prosperity of the central business district and the  
94 unincorporated areas of the county;

95 (2) The service delivery responsibilities of each political subdivision to the resident  
96 population of the subdivision;

97 (3) The existing service delivery responsibility of each political subdivision;

98 (4) The effect of a change in sales tax distribution on the ability of each political  
99 subdivision to meet its short-term and long-term debt;

100 (5) The point of sale and use which generates the tax to be apportioned;

101 (6) The existence of intergovernmental agreements among and between the political  
102 subdivisions;

103 (7) The use by any political subdivision of property taxes and other revenues from some  
104 taxpayers to subsidize the cost of services provided to other taxpayers of the levying  
105 subdivision; and

106 (8) Any coordinated plan of county and municipal service delivery and financing.

107 Notwithstanding the fact that a certificate shall not contain an execution ~~in~~ on behalf of one  
108 or more qualified municipalities within the special district, if the combined total of the  
109 populations of all such absent municipalities is less than one-half of the aggregate  
110 population of all qualified municipalities located within the special district, the submitting  
111 political subdivisions shall, ~~in~~ on behalf of the absent municipalities, specify a percentage  
112 of that portion of the remaining proceeds which each such municipality shall receive,  
113 which percentage shall not be less than that proportion which each absent municipality's  
114 population bears to the total population of all qualified municipalities within the special  
115 district multiplied by that portion of the remaining proceeds which are received by all  
116 qualified municipalities within the special district. For the purpose of determining the  
117 population of the absent municipalities, only that portion of the population of each such  
118 municipality which is located within the special district shall be computed. No certificate  
119 may contain a total of specified percentages in excess of 100 percent. The certificate shall  
120 be filed with the commissioner by March 1, 1980, for those special districts in which the  
121 tax authorized by this article is being levied on January 1, 1980. For all other special  
122 districts in which the tax shall be imposed subsequent to January 1, 1980, the certificate  
123 shall be filed with the commissioner within 60 days after the tax is imposed within the  
124 district. The commissioner shall continue to distribute the proceeds of the tax as otherwise  
125 provided in this Code section until the first day of the next calendar year following the  
126 month in which the commissioner receives a certificate as provided in this Code section,  
127 which certificate shall provide other percentages upon which the commissioner shall make  
128 the distribution to the political subdivisions entitled to the proceeds of the tax. At such  
129 time, the commissioner shall thereafter distribute the proceeds of the tax in accordance with  
130 the directions of the certificate.

131 (c) If the certificate provided for in subsection (b) of this Code section is not received by  
132 the commissioner by the required date, the authority to impose the tax authorized by Code  
133 Section 48-8-82 shall cease on the first day of the second calendar month following the  
134 month in which the tax was initially imposed and the tax shall not be levied in the special  
135 district after such date unless the reimposition of the tax is subsequently authorized  
136 pursuant to Code Section 48-8-85. When the imposition of the tax is so terminated, the  
137 commissioner shall retain the proceeds of the tax which were to be distributed to the

138 governing authorities of the county and qualified municipalities within the special district  
139 ~~until he receives a certificate in behalf of each such governing authority specifying the~~  
140 ~~percentage of the proceeds which each such governing authority shall receive. If no such~~  
141 ~~certificate is received by the commissioner within 120 days of the date on which the~~  
142 ~~authority to levy the tax was terminated, the and such proceeds shall escheat to the state~~  
143 and the commissioner shall transfer the proceeds to the state's general fund.

144 (d)(1) A certificate providing for the distribution of the proceeds of the tax authorized  
145 by this article shall expire on December 31 of the second year following the year in which  
146 the decennial census is conducted. No later than December 30 of the second year  
147 following the year in which the census is conducted, a new distribution certificate  
148 meeting the requirements for certificates specified by subsection (b) of this Code section  
149 shall be filed with and received by the commissioner. The General Assembly recognizes  
150 that the requirement for government services is not always in direct correlation with  
151 population. Although a new distribution certificate is required within a time certain of  
152 the decennial census, this requirement is not meant to convey an intent by the General  
153 Assembly that population as a criterion should be more heavily weighted than other  
154 criteria. It is the express intent of the General Assembly in requiring such renegotiation  
155 that eligible political subdivisions shall analyze local service delivery responsibilities and  
156 the existing allocation of proceeds made available to such governments under the  
157 provisions of this article and make rational the allocation of such resources to meet such  
158 service delivery responsibilities. Political subdivisions in their renegotiation of such  
159 distributions shall at a minimum consider the criteria specified in subsection (b) of this  
160 Code section.

161 (2) The commissioner shall be notified in writing of the commencement of renegotiation  
162 proceedings by the county governing authority on behalf of all eligible political  
163 subdivisions within the special district. The eligible political subdivisions shall  
164 commence renegotiations at the call of the county governing authority before July 1 of  
165 the second year following the year in which the census is conducted. If the county  
166 governing authority does not issue the call by that date, any eligible municipality may  
167 issue the call and so notify the commissioner and all eligible political subdivisions within  
168 the special district.

169 (3) Following the commencement of such renegotiation, if the parties necessary to an  
170 agreement fail to reach an agreement within 60 days, such parties shall submit the dispute  
171 to nonbinding arbitration, mediation, or such other means of resolving conflicts in a  
172 manner which attempts to reach a resolution of the dispute. Any renegotiation agreement  
173 reached pursuant to this paragraph shall be in accordance with the requirements specified  
174 in paragraph (1) of this subsection.

175 (4) Reserved.

176 (5) If a new distribution certificate as provided for in this Code section is not received  
 177 by the commissioner, the authority to impose the tax authorized by Code Section 48-8-82  
 178 shall cease, and the tax shall not be levied in the special district after such date unless the  
 179 reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85.  
 180 When the imposition of the tax is so terminated, the commissioner shall retain the  
 181 proceeds of the tax which were to be distributed to the governing authorities of the county  
 182 and qualified municipalities within the special district ~~until the commissioner receives a~~  
 183 ~~certificate on behalf of each such governing authority specifying the percentage of the~~  
 184 ~~proceeds which each such governing authority shall receive. If no such certificate is~~  
 185 ~~received by the commissioner within 120 days of the date on which the authority to levy~~  
 186 ~~the tax was terminated, the~~ and such proceeds shall escheat to the state, and the  
 187 commissioner shall transfer the proceeds to the state's general fund.

188 (6) If the commissioner receives a new distribution certificate by the required date, the  
 189 commissioner shall distribute the proceeds of the tax in accordance with the directions  
 190 of the new distribution certificate commencing on January 1 of the year immediately  
 191 following the year in which such certificate was executed by the parties or the judge or  
 192 the first day of the second calendar month following the month such certificate was  
 193 executed by the parties or the judge, whichever is sooner.

194 (7) Costs of any conflict resolution under paragraph (3) or (4) of this subsection shall be  
 195 borne proportionately by the affected political subdivisions in accordance with the final  
 196 percentage distributions of the proceeds of the tax as reflected by the new distribution  
 197 certificate.

198 (8) Political subdivisions shall be authorized, at their option, to renegotiate distribution  
 199 certificates on a more frequent basis than is otherwise required under this subsection.

200 (9) No provision of this subsection shall apply to any county which is authorized to levy  
 201 or which levies a local sales tax, local use tax, or local sales and use tax for educational  
 202 purposes pursuant to a local constitutional amendment or to any county which is  
 203 authorized to expend all or any portion of the proceeds of any sales tax, use tax, or sales  
 204 and use tax for educational purposes pursuant to a local constitutional amendment."

205 **SECTION 3.**

206 (a) Except as provided in subsection (b) of this section, this Act shall become effective upon  
 207 its approval by the Governor or upon its becoming law without such approval.

208 (b) Paragraph (3) of subsection (c) of Code Section 48-8-85, as enacted in Section 1 of this  
 209 Act, shall become effective on January 1, 2017, only if the constitutional amendment  
 210 providing for a second sales tax for educational purposes is ratified by the voters at the

211 November, 2016, general election. If such constitutional amendment is rejected by the  
212 voters, paragraph (3) of subsection (c) of Code Section 48-8-85, as enacted in Section 1 of  
213 this Act, shall be automatically repealed.

214

**SECTION 4.**

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