

House Bill 642 (COMMITTEE SUBSTITUTE)

By: Representatives Nimmer of the 178<sup>th</sup>, Stephens of the 164<sup>th</sup>, Gardner of the 57<sup>th</sup>, Kelley of the 16<sup>th</sup>, and Fleming of the 121<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,  
2 so as to provide definitions; to provide for the creation and termination of special  
3 improvement districts; to provide for the levying of a special improvement tax in such  
4 districts; to provide for the disposition and use of the funds from such districts; to provide  
5 for bonds and financing for the districts; to provide for termination; to provide for related  
6 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
10 by adding a new chapter, which was reserved, to read as follows:

11 "CHAPTER 77

12 36-77-1.

13 As used in this chapter, the term:

14 (1) 'Commercial' or 'commercial residential' means any real property that is not exempt  
15 from ad valorem taxation under the Constitution of Georgia or the laws of the State of  
16 Georgia or designated for single-family residential, agricultural, or forestry purposes by  
17 the tax assessor, board of assessors, or other official or public body then charged with  
18 assessing property for ad valorem tax purposes for or on behalf of the applicable  
19 municipality or county.

20 (2) 'Cost of the project' or 'cost of any project' means and includes:

21 (A) All costs of acquisition by purchase or otherwise, construction, assembly,  
22 installation, modification, renovation, or rehabilitation incurred in connection with any  
23 project or any part of any project authorized under this chapter;

24 (B) All costs of real property, fixtures, or personal property used in or in connection  
25 with or necessary for any project or for any facilities related thereto, including, but not  
26 limited to, the cost of all land, estates for years, easements, rights, improvements, water  
27 rights, connections for utility services, fees, franchises, permits, approvals, licenses, and  
28 certificates; the cost of securing any such franchises, permits, approvals, licenses, or  
29 certificates; the cost of preparation of any application therefor; and the cost of all  
30 fixtures, machinery, equipment including all transportation equipment and rolling stock,  
31 furniture, and other property used in or in connection with or necessary for the project;  
32 (C) All financing charges and loan fees and all interest on bonds, notes, or other  
33 obligations which accrue or are paid prior to and during the period of construction of  
34 a project and during such additional period as the governing authority creating such  
35 district may reasonably determine to be necessary to place such project in operation;  
36 (D) All costs of engineering, surveying, architectural, and legal services and all  
37 expenses incurred by engineers, surveyors, architects, and attorneys in connection with  
38 the project;  
39 (E) All expenses for inspection of the project;  
40 (F) All fees of fiscal agents, paying agents, consultants, attorneys, and trustees for  
41 bondholders under any trust agreement, indenture of trust, or similar instrument or  
42 agreement; all expenses incurred by any such fiscal agents, paying agents, consultants,  
43 attorneys, and trustees; and all other costs and expenses incurred relative to the issuance  
44 of any bonds, notes, or other obligations for the project;  
45 (G) All expenses of or incidental to determining the feasibility or practicability of the  
46 project;  
47 (H) All costs of plans and specifications for the project;  
48 (I) All costs of title insurance and examinations of title with respect to the project;  
49 (J) Repayment of any loans made for the advance payment of any part of any of the  
50 foregoing costs, including interest thereon and any other expenses of such loans;  
51 (K) Administrative expenses and such other expenses as may be necessary for or  
52 incidental to the project or the financing thereof or the placing of the project in  
53 operation; and  
54 (L) The establishment of a fund or funds for the creation of a debt service reserve, a  
55 renewal and replacement reserve, or such other funds or reserves as the governing  
56 authority creating such special improvement district may approve with respect to the  
57 financing and operation of the project and as may be authorized by any bond resolution,  
58 trust agreement, indenture of trust, or similar instrument or agreement pursuant to the  
59 provisions of which the issuance of any bonds, notes, or other obligations for the  
60 benefit of the district may be authorized.

61 Any cost, obligation, or expense incurred for any of the foregoing purposes shall be a part  
 62 of the cost of the project and may be paid or reimbursed as such out of proceeds of bonds,  
 63 notes, or other obligations issued for the benefit of the district.

64 (3) 'District' means the geographical area designated as such by the resolution of the  
 65 governing authority consenting to the creation of the special improvement district or as  
 66 thereafter modified by any subsequent resolution or ordinance of the governing authority.

67 (4) 'Governing authority' means the commission, council, or other governmental body  
 68 which is charged with the administration of the governmental services for the county or  
 69 municipality in which one or more districts are formed.

70 (5) 'Project' means the proposed multi-use trail project, which forms a part of a surface  
 71 transportation project, which is expected to be provided by the provision of the  
 72 supplemental services or the imposition of the special improvement tax contemplated in  
 73 this chapter.

74 (6) 'Special improvement district' means a special service district created pursuant to this  
 75 chapter pursuant to the provisions of Article IX, Section II, Paragraph VI of the Georgia  
 76 Constitution.

77 (7) 'Special improvement tax' means a tax, fee, or assessment levied by the governing  
 78 authority in which the special improvement district is located to fund the supplemental  
 79 services to be provided.

80 (8) 'Supplemental services' means those services provided for the improvement of the  
 81 special improvement district, as and to the extent associated with the design, acquisition,  
 82 and improvement of any multi-use trail that is part of a surface transportation project.

83 (9) 'Surface transportation project' means a project for public improvement and any  
 84 related public facilities which is planned to impact 10,000 or more acres and at least ten  
 85 transit miles within the area of operation of the sponsoring local government, including  
 86 any related facilities, systems, parks, trails, streets, greenspace, and any other integrated  
 87 public or private development features included within any adopted infrastructure or  
 88 transportation plan, urban redevelopment plan, strategic implementation plan,  
 89 redevelopment plan, workable programs, or comprehensive plans; provided that the  
 90 location of such surface transportation project is wholly within a county or counties that  
 91 impose a sales tax levied for the purposes of a metropolitan area system of public  
 92 transportation; and provided, further, that the project is within the boundaries of a tax  
 93 allocation district authorized under the provisions of Chapter 44 of this title.

94 (10) 'Taxpayer' means any entity or person paying ad valorem taxes on real property,  
 95 whether on one or more businesses or one or more parcels of property within a special  
 96 improvement district whose property is not exempt from ad valorem taxation under the  
 97 Constitution of Georgia or the laws of the State of Georgia or designated for residential,

98 but not including commercial residential; agricultural; or forestry purposes by the tax  
 99 assessor, board of assessors, or other official or public body then charged with assessing  
 100 property for ad valorem tax purposes on behalf of the applicable municipality or county.  
 101 The owner of the property or properties subject to the special improvement tax and not  
 102 the tenant or tenants, lessee or lessees, or other user or users shall for all purposes of this  
 103 chapter be deemed the applicable taxpayer.

104 36-77-2.

105 Upon the establishment of any special improvement district pursuant to this chapter and  
 106 Article IX, Section II, Paragraph VI of the Constitution of this state, the governing  
 107 authority of any municipality or county to which this chapter is applicable shall have  
 108 authority to exercise the following powers with respect to each such district, subject to this  
 109 chapter:

110 (1) To fix and levy annually a millage upon commercial or commercial residential  
 111 property as designated by the assessor, board of assessors, or other official or public body  
 112 then charged with assessing property for ad valorem tax purposes for or on behalf of the  
 113 applicable county or municipality, to make such assessments and liens upon the  
 114 properties, and to enforce such liens in the same manner and with the same priority as  
 115 other city or county taxes; and

116 (2) To provide supplemental services or to contract with nonprofit corporations,  
 117 development authorities, or other governmental agencies or authorities for all or part of  
 118 the supplemental services required to implement the project. For purposes of clarification  
 119 and without intending to limit the foregoing, municipalities and counties creating districts  
 120 pursuant to this chapter shall be authorized to enter into intergovernmental contracts  
 121 relating to the undertakings of such districts as provided in Article IX, Section III,  
 122 Paragraph I of the Constitution of Georgia.

123 36-77-3.

124 The governing authority of any municipality or county to which this chapter is applicable  
 125 may create one or more special improvement districts by the adoption of district boundaries  
 126 as follows:

127 (1) Upon a written petition signed and acknowledged by either:

128 (A) At least 51 percent of the taxpayers, as shown by the most recent list of taxpayers  
 129 billed by the municipality or county, of the district proposed for creation or extension  
 130 at the time of such creation or extension; provided, however, that taxpayers owning at  
 131 least 51 percent of the taxable property designated as commercial residential in the

132 district shall be included in the aggregate calculation of the requisite percentage of  
 133 taxpayers petitioning for the creation of the district; or

134 (B) Taxpayers owning at least 75 percent by assessed value, as shown by the most  
 135 recent assessment rolls of the municipality or county, of the taxable property subject to  
 136 ad valorem real property taxation in the district at the time of creation or extension of  
 137 the district; provided, however, that taxpayers owning at least 75 percent of the taxable  
 138 property designated as commercial residential in the district shall be included in the  
 139 aggregate calculation of the requisite percentage of taxpayers petitioning for the  
 140 creation of the district at the time of creation or extension of the district.

141 (2) Such petition shall be accompanied by a map that shows the proposed geographic  
 142 boundaries of the special improvement district which shall include a surface  
 143 transportation project, but shall not include an area larger than an officially adopted  
 144 planning area directly associated with such surface transportation project; and

145 (3) The petition shall be presented to the governing authority of the municipality or  
 146 county, which shall approve or disapprove the boundaries of the district.

147 36-77-4.

148 The expense incurred in the provision of supplemental services within a special  
 149 improvement district shall be financed in accordance with this chapter, or as otherwise  
 150 provided under applicable provisions of state law, and shall be consistent with the plans  
 151 that created the surface transportation project, provided that the cost of supplemental  
 152 services shall not include the cost of services performed by the municipality or county on  
 153 a city-wide or county-wide basis. Any property tax charges shall be levied and collected  
 154 in the same manner, at the same time, and by the same officers as other city or county taxes  
 155 and assessments.

156 36-77-5.

157 Except as otherwise provided by law, the governing authority, agency, or authority may  
 158 incur debt without regard to the requirements of Article IX, Section V of the Constitution  
 159 of Georgia, or any other provision of law, prohibiting or restricting the borrowing of money  
 160 or the creation of debt by political subdivisions of the State of Georgia, which debt shall  
 161 be backed by the full faith and credit and taxing power of the governing authority within  
 162 the district but shall not be an obligation of the State of Georgia or any other unit of  
 163 government of the State of Georgia.

164 36-77-6.

165 (a) Notes or other obligations issued pursuant to this chapter other than general obligation  
166 bonds shall be paid solely from the property, funds, or revenues pledged to pay such notes  
167 or other obligations. Each such bond, note, or other obligation shall contain recitals as are  
168 necessary to show that it is only so payable and that it does not otherwise constitute  
169 indebtedness or a charge against the general taxing power of the political subdivision or  
170 county. General obligation bonds issued by the city or county for the benefit of the district  
171 created pursuant to this chapter shall constitute a general obligation, the repayment of  
172 which the full faith and credit and taxing power of the governing authority shall be  
173 pledged.

174 (b) All bonds, notes, and other obligations issued by the governing authority for the benefit  
175 of a district shall be authorized by resolution of the governing authority at a regular or  
176 special meeting.

177 (c) Bonds, notes, or other obligations shall bear such date or dates, shall mature at such  
178 time or times not more than 30 years from their respective dates, shall bear interest at such  
179 rate or rates which may be fixed or may fluctuate or otherwise change from time to time,  
180 shall be subject to redemption on such terms, and shall contain such other terms,  
181 provisions, covenants, assignments, and conditions as the resolution authorizing the  
182 issuance of such bonds, notes, or other obligations may permit or provide. The terms,  
183 provisions, covenants, assignments, and conditions contained in or provided or permitted  
184 by any resolution authorizing the issuance of such bonds, notes, or other obligations shall  
185 bind the members of the governing authority then in office and their successors.

186 (d) The governing authority shall have power from time to time and whenever it deems it  
187 expedient to refund any bonds by the issuance of new bonds, whether or not the bonds to  
188 be refunded have matured, and may issue bonds partly to refund bonds then outstanding  
189 and partly for any other purpose permitted by this chapter. The refunding bonds may be  
190 exchanged for the bonds to be refunded, with such cash adjustments as may be agreed  
191 upon, or may be sold and the proceeds applied to the purchase or redemption of the bonds  
192 to be refunded.

193 (e) There shall be no limitation upon the interest rates or any maximum interest rate or  
194 rates on any bonds, notes, or other obligations issued for the benefit of the district created  
195 pursuant to this chapter; and the usury laws of this state shall not apply to such bonds,  
196 notes, or other obligations.

197 (f) Bonds issued pursuant to this chapter may be in such form, either coupon or fully  
198 registered, or both coupon and fully registered, and may be subject to such exchangeability  
199 and transferability provisions as the bond resolution authorizing the issuance of such bonds  
200 or any indenture or trust agreement may provide.

201 (g) All bonds issued pursuant to this chapter shall be issued and validated under and in  
 202 accordance with Article 3 of Chapter 82 of this title. The signature of the clerk of the  
 203 superior court of the county in which the district is located may be made on the certificate  
 204 of validation of such bonds by facsimile or by manual execution, stating the date on which  
 205 such bonds were validated; and such entry shall be original evidence of the fact of  
 206 judgment and shall be received as original evidence in any court in this state.

207 (h) In lieu of specifying the rate or rates of interest which such bonds are to bear, and the  
 208 principal amount and maturities of such bonds, the notice to the district attorney or the  
 209 Attorney General, the notice to the public of the time, place, and date of the validation  
 210 hearing, and the petition and complaint for validation may state that the bonds when issued  
 211 will bear interest at a rate not exceeding a maximum per annum rate of interest which may  
 212 be fixed or may fluctuate or otherwise change from time to time and that the principal  
 213 amount will not exceed and the final maturity date will not be later than as specified in such  
 214 notices and petition and complaint or may state that, in the event the bonds are to bear  
 215 different rates of interest for different maturity dates, none of such rates will exceed the  
 216 maximum rate which may be fixed or may fluctuate or otherwise change from time to time  
 217 so specified; provided, however, that nothing in this subsection shall be construed as  
 218 prohibiting or restricting the right of the governing authority to sell such bonds at a  
 219 discount, even if in doing so the effective interest cost resulting would exceed the  
 220 maximum per annum interest rate specified in such notices and in the petition and  
 221 complaint.

222 (i) The terms 'cost of the project' and 'cost of any project' shall have the meaning  
 223 prescribed in this chapter whenever those terms are referred to in bond resolutions or  
 224 ordinances of the governing authority, in bonds, notes, or other obligations issued pursuant  
 225 to this chapter, in intergovernmental contracts and other agreements authorized pursuant  
 226 to this chapter, or otherwise under state law, or in notices or proceedings to validate such  
 227 bonds, notes, or other obligations.

228 36-77-7.

229 (a) The governing authority may levy taxes, fees, and assessments within the district only  
 230 on real property not exempt from ad valorem taxation under the Constitution of Georgia  
 231 or the laws of the State of Georgia or designated for residential, not including commercial  
 232 residential; agricultural; or forestry purposes by the tax assessor, board of assessors, or  
 233 other official or public body then charged with assessing property for ad valorem tax  
 234 purposes for or on behalf of the applicable municipality or county. Any tax, fee, or  
 235 assessment so levied shall not exceed a millage rate of 3.5 mills on all such real property.  
 236 The taxes, fees, and assessments levied by the governing authority shall be equitably

237 apportioned among the properties subject to such taxes, fees, and assessments according  
 238 to any factors or methodology reasonably determined by the governing authority relating  
 239 to the need for governmental services and facilities created by, among other factors, the  
 240 degree of density of development of each such property. The proceeds of taxes, fees, and  
 241 assessments levied by the governing authority shall be used only for the purpose of  
 242 providing governmental services and facilities which are specially required by the degree  
 243 of density of development within the district and not for the purpose of providing those  
 244 governmental services and facilities provided to the county or municipality as a whole.  
 245 Any tax, fee, or assessment so levied shall be collected by the county or municipality in  
 246 which the district was created in the same manner as taxes, fees, and assessments are levied  
 247 by such county or municipality. Delinquent taxes shall bear the same interest and penalties  
 248 as county or municipal ad valorem taxes and may be enforced and collected in the same  
 249 manner. The proceeds of taxes, fees, and assessments so levied, less a fee to cover the  
 250 costs of collection of 1 percent of such proceeds, but not more than \$25,000.00 in any one  
 251 calendar year, shall be transmitted by the tax commissioner or other official or public body  
 252 collecting taxes, fees, and assessments for or on behalf of the county or municipality  
 253 creating the district to the governing authority and shall be expended by the governing  
 254 authority only for the purposes authorized by this chapter.

255 (b) The governing authority shall levy the taxes, fees, and assessments in subsection (a)  
 256 of this Code section subsequent to the report of the assessed taxable values for the current  
 257 calendar year and notify in writing the collecting governing bodies so they may include the  
 258 levy on their regular ad valorem tax bills. All taxes, fees, and assessments levied by and  
 259 collected by the county or municipality in which the district was created in the same  
 260 manner as taxes, fees, and assessments are levied by such county or municipality shall be  
 261 segregated, and neither the county, municipality, nor the tax commissioner shall expend  
 262 such funds for any purpose not authorized by the governing authority except as authorized  
 263 in subsection (a) of this Code section.

264 (c) If, but for this provision, a parcel of real property is removed from a district or  
 265 otherwise would become nontaxable, it shall continue to bear its tax millage then extant  
 266 upon such event for bonded indebtedness of the district then outstanding until such bonded  
 267 indebtedness then outstanding is paid or refunded.

268 36-77-8.

269 Any district which is created or renewed pursuant to Code Section 36-77-3 shall terminate  
 270 and cease to exist upon the earlier to occur of:

271 (1) Thirty years from the date of creation; or

272 (2) The certification by the governing authority, pursuant to a resolution or ordinance,  
273 that the special improvement district shall have paid, or provided for payment in full, of  
274 all outstanding debt contracted for at the time of termination. A district created under this  
275 chapter shall continue, without further action by the governing authority or the taxpayers,  
276 and the governing authority shall be required to levy and assess special improvement  
277 taxes until such time as all outstanding debt and other obligations contracted for the  
278 benefit of the district have been fully paid or provided for.

279 36-77-9.

280 The powers provided by this chapter are intended by the General Assembly to be  
281 cumulative and supplemental to any powers heretofore provided by law for counties,  
282 municipalities, and consolidated governments of this state and not in lieu of any such  
283 powers."

284 **SECTION 2.**

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

287 **SECTION 3.**

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