

House Bill 173

By: Representatives Holmes of the 61<sup>st</sup>, Bruce of the 64<sup>th</sup>, Brooks of the 63<sup>rd</sup>, Williams of the 89<sup>th</sup>, Stanley-Turner of the 53<sup>rd</sup>, 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 authorize the imposition of a local option sales and use tax for  
3 transportation within special districts; to provide for applicability with respect to the ceiling  
4 on local sales and use taxes; to establish special districts; to provide for procedures,  
5 conditions, and limitations for the imposition, collection, disbursement, and removal of the  
6 tax; to provide for powers, duties, and authority of the state revenue commissioner; to provide  
7 for related matters; to provide an effective date; to repeal conflicting laws; and for other  
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use  
12 taxes, is amended by revising subsection (b) of Code Section 48-8-6, relating to prohibitions  
13 regarding the imposition of certain local taxes, as follows:

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

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

22 (2) Any tax levied for purposes of a metropolitan area system of public transportation, as  
23 authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008;  
24 the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the  
25 Constitution; and the laws enacted pursuant to such constitutional amendment; provided,  
26 however, that the exception provided for under this paragraph shall only apply in a county

1 in which a tax is being imposed under subparagraph (a)(1)(D) of Code Section 48-8-111  
 2 in whole or in part for the purpose or purposes of a water capital outlay project or projects,  
 3 a sewer capital outlay project or projects, a water and sewer capital outlay project or  
 4 projects, water and sewer projects and costs as defined under paragraph (3) of Code  
 5 Section 48-8-200, or any combination thereof and with respect to which the county has  
 6 entered into an intergovernmental contract with a municipality, in which the average  
 7 waste-water system flow of such municipality is not less than 85 million gallons per day,  
 8 allocating proceeds to such municipality to be used solely for water and sewer projects and  
 9 costs as defined under paragraph (3) of Code Section 48-8-200. The exception provided  
 10 for under this paragraph shall apply only during the period the tax under said subparagraph  
 11 (a)(1)(D) is in effect. The exception provided for under this paragraph shall not apply in  
 12 any county in which a tax is being imposed under Article 2A of this chapter;

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

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

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

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

## 22 SECTION 2.

23 Said chapter is further amended by adding a new article at the end thereof to be designated  
 24 Article 5, to read as follows:

## 25 "ARTICLE 5

26 48-8-230.

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

31 (b) When the imposition of a special district sales and use tax is authorized according to the  
 32 procedures provided in this article within a special district, the governing authority of any  
 33 county in this state may, subject to the requirement of referendum approval and the other  
 34 requirements of this article, impose within the special district a special sales and use tax for

1 a limited period of time which tax shall be known as the county transportation local option  
2 sales tax.

3 (c) Any tax imposed under this article shall be at the rate of 1 percent. Except as to rate, a  
4 tax imposed under this article shall correspond to the tax imposed by Article 1 of this  
5 chapter. No item or transaction which is not subject to taxation under Article 1 of this  
6 chapter shall be subject to a tax imposed under this article, except that a tax imposed under  
7 this article shall apply to sales of motor fuels as that term is defined by Code Section 48-9-2  
8 and shall be applicable to the sale of food and beverages as provided for in division  
9 (57)(D)(i) of Code Section 48-8-3.

10 48-8-231.

11 (a) Prior to the vote of a county governing authority to impose the tax under this article,  
12 such governing authority shall deliver or mail a written notice to the mayor or chief elected  
13 official in each municipality located within the county. Such notice shall contain the date,  
14 time, place, and purpose of a meeting at which the governing authorities of the county and  
15 of each municipality are to meet to discuss the proposed tax levy. The notice shall be  
16 delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be  
17 held at least 30 days prior to the issuance of the call for the referendum. Following such  
18 meeting, a county governing authority voting to impose the tax authorized by this article shall  
19 notify the county election superintendent by forwarding to the superintendent a copy of the  
20 resolution or ordinance of the governing authority calling for the imposition of the tax. Such  
21 ordinance or resolution shall specify:

22 (1) The purpose or purposes for which the proceeds of the tax are to be used and may be  
23 expended, which purpose or purposes may consist of projects located within or outside,  
24 or both within and outside, any incorporated areas in the county or outside the county, as  
25 authorized by subparagraph (B) of this paragraph for regional facilities, and which may  
26 include any of the following purposes:

27 (A) Local transportation projects, including sidewalks and bicycle paths;

28 (B) Regional transportation projects, including buses, trains, and other regional projects;

29 (C) Matching funds for contributing to local or regional projects; or

30 (D) Any combination of the foregoing;

31 (2) The maximum period of time, to be stated in calendar years or calendar quarters and  
32 not to exceed 20 years;

33 (3) The maximum cost of the purpose or purposes which will be funded from the proceeds  
34 of the tax, which maximum cost shall also be the maximum amount of net proceeds to be  
35 raised by the tax; and

1 (4) If general obligation debt is to be issued in conjunction with the imposition of the tax,  
 2 the principal amount of the debt to be issued, the purpose for which the debt is to be issued,  
 3 the interest rate or rates or the maximum interest rate or rates which such debt is to bear,  
 4 and the amount of principal to be paid in each year during the life of the debt.

5 (b) Upon receipt of the resolution or ordinance, the election superintendent shall issue the  
 6 call for an election for the purpose of submitting the question of the imposition of the tax  
 7 to the voters of the county. The election superintendent shall issue the call and shall conduct  
 8 the election on a date and in the manner authorized under Code Section 21-2-540. The  
 9 election superintendent shall cause the date and purpose of the election to be published once  
 10 a week for four weeks immediately preceding the date of the election in the official organ  
 11 of the county. If general obligation debt is to be issued in conjunction with the imposition  
 12 of the tax, the notice published by the election superintendent shall also include, in such form  
 13 as may be specified by the county governing authority, the principal amount of the debt, the  
 14 purpose for which the debt is to be issued, the rate or rates of interest or the maximum rate  
 15 or rates of interest the debt will bear, and the amount of principal to be paid in each year  
 16 during the life of the debt; and such publication of notice by the election superintendent shall  
 17 take the place of the notice otherwise required by Code Section 36-80-11 or by subsection  
 18 (b) of Code Section 36-82-1, which notice shall not be required.

19 (c)(1) If the tax is to be imposed and if no debt is to be issued, the ballot shall have written  
 20 or printed thereon the following:

21 '( ) YES Shall a special 1 percent sales and use tax be imposed in \_\_\_\_\_  
 22 County for a period of time not to exceed \_\_\_\_\_ and for the  
 23 ( ) NO raising of not more than \$\_\_\_\_\_ for the purpose of \_\_\_\_\_?'

24 (2) If debt is to be issued, the ballot shall also have written or printed thereon, following  
 25 the language specified by paragraph (1) of this subsection, the following:

26 'If imposition of the tax is approved by the voters, such vote shall also constitute approval  
 27 of the issuance of general obligation debt of \_\_\_\_\_ County in the principal  
 28 amount of \$\_\_\_\_\_ for the above purpose.'

29 (d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes' and all persons  
 30 opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in favor  
 31 of imposing the tax then the tax shall be imposed as provided in this article; otherwise the  
 32 tax shall not be imposed and the question of imposing the tax shall not again be submitted to  
 33 the voters of the county until after 12 months immediately following the month in which the  
 34 election was held. The election superintendent shall hold and conduct the election under the  
 35 same rules and regulations as govern special elections. The superintendent shall canvass the

1 returns, declare the result of the election, and certify the result to the Secretary of State and  
2 to the commissioner. The expense of the election shall be paid from county funds.

3 (e)(1) If the proposal includes the authority to issue general obligation debt and if more  
4 than one-half of the votes cast are in favor of the proposal, then the authority to issue such  
5 debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to  
6 the proper officers of the county; otherwise such debt shall not be issued. If the authority  
7 to issue such debt is so approved by the voters, then such debt may be issued without  
8 further approval by the voters.

9 (2) If the issuance of general obligation debt is included and approved as provided in this  
10 Code section, then the governing authority of the county may incur such debt either through  
11 the issuance and validation of general obligation bonds or through the execution of a  
12 promissory note or notes or other instrument or instruments. If such debt is incurred  
13 through the issuance of general obligation bonds, such bonds and their issuance and  
14 validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as  
15 specifically provided otherwise in this article. If such debt is incurred through the  
16 execution of a promissory note or notes or other instrument or instruments, no validation  
17 proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10  
18 through 36-80-14 except as specifically provided otherwise in this article. In either event,  
19 such general obligation debt shall be payable first from the separate account in which are  
20 placed the proceeds received by the county from the tax authorized by this article. Such  
21 general obligation debt shall, however, constitute a pledge of the full faith, credit, and  
22 taxing power of the county; and any liability on such debt which is not satisfied from the  
23 proceeds of the tax authorized by this article shall be satisfied from the general funds of  
24 the county.

25 48-8-232.

26 With respect to any consolidated government created by the consolidation of a county and  
27 one or more municipalities, the levy of a tax under this article by a consolidated government  
28 shall be in the same manner as the levy of the tax by any other county.

29 48-8-233.

30 (a) If the imposition of the tax is approved at the special election, the tax shall be imposed  
31 on the first day of the next succeeding calendar quarter which begins more than 80 days after  
32 the date of the election at which the tax was approved by the voters. With respect to services  
33 which are regularly billed on a monthly basis, however, the resolution shall become effective  
34 with respect to and the tax shall apply to services billed on or after the effective date  
35 specified in the previous sentence.

1 (b) The tax shall cease to be imposed on the earliest of the following dates:

2 (1) If the resolution or ordinance calling for the imposition of the tax provided for the  
3 issuance of general obligation debt and such debt is the subject of validation proceedings,  
4 as of the end of the first calendar quarter ending more than 80 days after the date on which  
5 a court of competent jurisdiction enters a final order denying validation of such debt;

6 (2) On the final day of the maximum period of time specified for the imposition of the tax;  
7 or

8 (3) As of the end of the calendar quarter during which the commissioner determines that  
9 the tax will have raised revenues sufficient to provide to the county net proceeds equal to  
10 or greater than the amount specified as the maximum amount of net proceeds to be raised  
11 by the tax.

12 (c)(1) No county shall impose at any time more than a single 1 percent tax under this  
13 article.

14 (2) A county in which a tax authorized by this article is in effect may, while the tax is in  
15 effect, adopt a resolution or ordinance calling for the reimposition of a tax as authorized  
16 by this article upon the termination of the tax then in effect; and a special election may be  
17 held for this purpose while the tax is in effect. Proceedings for the reimposition of a tax  
18 shall be in the same manner as proceedings for the initial imposition of the tax, but the  
19 newly authorized tax shall not be imposed until the expiration of the tax then in effect;  
20 provided, however, that in the event of emergency conditions under which a county is  
21 unable to conduct a referendum so as to continue the tax then in effect without interruption,  
22 the commissioner may, if feasible administratively, waive the limitations of subsection (a)  
23 of this Code section to the minimum extent necessary so as to permit the reimposition of  
24 a tax, if otherwise approved as required under this Code section, without interruption, upon  
25 the expiration of the tax then in effect.

26 (3) Following the expiration of a tax under this article, a county may initiate proceedings  
27 for the reimposition of a tax under this article in the same manner as provided in this article  
28 for initial imposition of such tax.

29 48-8-234.

30 A tax levied pursuant to this article shall be exclusively administered and collected by the  
31 commissioner for the use and benefit of the county imposing the tax. Such administration  
32 and collection shall be accomplished in the same manner and subject to the same applicable  
33 provisions, procedures, and penalties provided in Article 1 of this chapter; provided,  
34 however, that all moneys collected from each taxpayer by the commissioner shall be applied  
35 first to such taxpayer's liability for taxes owed the state; and provided, further, that the  
36 commissioner may rely upon a representation by or in behalf of the county or the Secretary

1 of State that such a tax has been validly imposed, and the commissioner and the  
2 commissioner's agents shall not be liable to any person for collecting any such tax which was  
3 not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and  
4 accounted for and shall be reimbursed in the form of a deduction in submitting, reporting,  
5 and paying the amount due if such amount is not delinquent at the time of payment. The  
6 deduction shall be at the rate and subject to the requirements specified under subsections (b)  
7 through (f) of Code Section 48-8-50.

8 48-8-235.

9 Each sales tax return remitting taxes collected under this article shall separately identify the  
10 location of each retail establishment at which any of the taxes remitted were collected and  
11 shall specify the amount of sales and the amount of taxes collected at each establishment for  
12 the period covered by the return in order to facilitate the determination by the commissioner  
13 that all taxes imposed by this article are collected and distributed according to situs of sale.

14 48-8-236.

15 The proceeds of the tax collected by the commissioner in each county under this article shall  
16 be disbursed as soon as practicable after collection as follows:

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

19 (2) Except for the percentage provided in paragraph (1) of this Code section, the remaining  
20 proceeds of the tax shall be distributed to the governing authority of the county imposing  
21 the tax.

22 48-8-237.

23 Where a local sales or use tax has been paid with respect to tangible personal property by the  
24 purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction  
25 outside the state, the tax may be credited against the tax authorized to be imposed by this  
26 article upon the same property. If the amount of sales or use tax so paid is less than the  
27 amount of the use tax due under this article, the purchaser shall pay an amount equal to the  
28 difference between the amount paid in the other tax jurisdiction and the amount due under  
29 this article. The commissioner may require such proof of payment in another local tax  
30 jurisdiction as he or she deems necessary and proper. No credit shall be granted, however,  
31 against the tax imposed under this article for tax paid in another jurisdiction if the tax paid  
32 in such other jurisdiction is used to obtain a credit against any other local sales and use tax  
33 levied in the county or in a special district which includes the county; and taxes so paid in

1 another jurisdiction shall be credited first against the tax levied under Article 2 of this  
2 chapter, if applicable, and then against the tax levied under this article.

3 48-8-238.

4 No tax provided for in this article shall be imposed upon the sale of tangible personal  
5 property which is ordered by and delivered to the purchaser at a point outside the  
6 geographical area of the county in which the tax is imposed regardless of the point at which  
7 title passes, if the delivery is made by the seller's vehicle, United States mail, or common  
8 carrier or by private or contract carrier licensed by the Interstate Commerce Commission  
9 or the Georgia Public Service Commission.

10 48-8-239.

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

16 (b) No tax provided for in this article shall be imposed upon the sale or use of building and  
17 construction materials when the contract pursuant to which the materials are purchased or  
18 used was advertised for bid prior to the voters' approval of the levy of the tax and the contract  
19 was entered into as a result of a bid actually submitted in response to the advertisement prior  
20 to approval of the levy of the tax.

21 48-8-240.

22 The commissioner shall have the power and authority to promulgate such rules and  
23 regulations as shall be necessary for the effective and efficient administration and  
24 enforcement of the collection of the tax authorized to be imposed by this article.

25 48-8-241.

26 Except as provided in Code Section 48-8-6, the tax authorized by this article shall be in  
27 addition to any other local sales and use tax. Except as provided in Code Section 48-8-6, the  
28 imposition of any other local sales and use tax within a county shall not affect the authority  
29 of a county to impose the tax authorized by this article and the imposition of the tax  
30 authorized by this article shall not affect the imposition of any otherwise authorized local  
31 sales and use tax within the county.

32 48-8-242.

1 (a)(1) The proceeds received from the tax authorized by this article shall be used by the  
2 county exclusively for the purpose or purposes specified in the resolution or ordinance  
3 calling for imposition of the tax. Such proceeds shall be kept in a separate account from  
4 other funds of the county and shall not in any manner be commingled with other funds of  
5 the county prior to the expenditure.

6 (2) The governing authority of the county and the governing authority of each municipality  
7 receiving any proceeds from the tax pursuant to a contract with the county shall maintain  
8 a record of each and every purpose for which the proceeds of the tax are used. A schedule  
9 shall be included in each annual audit which shows for each purpose in the resolution or  
10 ordinance calling for imposition of the tax the original estimated cost, the current  
11 estimated cost if it is not the original estimated cost, amounts expended in prior years, and  
12 amounts expended in the current year. The auditor shall verify and test expenditures  
13 sufficient to provide assurances that the schedule is fairly presented in relation to the  
14 financial statements. The auditor's report on the financial statements shall include an  
15 opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all  
16 material respects in relation to the financial statements taken as a whole.

17 (b) No general obligation debt shall be issued in conjunction with the imposition of the tax  
18 authorized by this article unless the county governing authority determines that, and if the  
19 debt is to be validated it is demonstrated in the validation proceedings that, during each year  
20 in which any payment of principal or interest on the debt comes due the county will receive  
21 from the tax authorized by this article net proceeds sufficient to fully satisfy such liability.  
22 General obligation debt issued under this article shall be payable first from the separate  
23 account in which are placed the proceeds received by the county from the tax authorized by  
24 this article. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing  
25 power of the county; and any liability on said debt which is not satisfied from the proceeds  
26 of the tax authorized by this article shall be satisfied from the general funds of the county.

27 (c) The resolution or ordinance calling for imposition of the tax authorized by this article  
28 may specify that all of the proceeds of the tax will be used for payment of general obligation  
29 debt issued in conjunction with the imposition of the tax. If the resolution or ordinance so  
30 provides, then such proceeds shall be used solely for such purpose except as provided in  
31 subsection (f) of this Code section.

32 (d) The resolution or ordinance calling for the imposition of the tax authorized by this  
33 article may specify that a part of the proceeds of the tax will be used for payment of general  
34 obligation debt issued in conjunction with the imposition of the tax. If the ordinance or  
35 resolution so provides, it shall specifically state the other purposes for which such proceeds  
36 will be used. In such a case no part of the net proceeds from the tax received in any year shall  
37 be used for such other purposes until all debt service requirements of the general obligation

1 debt for that year have first been satisfied from the account in which the proceeds of the tax  
2 are placed.

3 (e) The resolution or ordinance calling for the imposition of the tax may specify that no  
4 general obligation debt is to be issued in conjunction with the imposition of the tax. If the  
5 ordinance or resolution so provides, it shall specifically state the purpose or purposes for  
6 which the proceeds will be used.

7 (f)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of  
8 payment of general obligation debt issued in conjunction with the imposition of the tax,  
9 then any net proceeds of the tax in excess of the amount required for final payment of  
10 such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

11 (B) If the county receives from the tax net proceeds in excess of the maximum cost of  
12 the purpose or purposes stated in the resolution or ordinance calling for the imposition  
13 of the tax or in excess of the actual cost of such purpose or purposes, then such excess  
14 proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

15 (C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section  
16 48-8-233 by reason of denial of validation of debt, then all net proceeds received by the  
17 county from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

18 (2) Excess proceeds subject to this subsection shall be used solely for the purpose of  
19 reducing any indebtedness of the county other than indebtedness incurred pursuant to this  
20 article. If there is no such other indebtedness or, if the excess proceeds exceed the amount  
21 of any such other indebtedness, then the excess proceeds shall next be paid into the general  
22 fund of the county, it being the intent that any funds so paid into the general fund of the  
23 county be used for the purpose of reducing ad valorem taxes.

24 48-8-243.

25 The governing authority of the county and the governing authority of each municipality  
26 receiving any proceeds from the tax under this article shall maintain a record of each and  
27 every purpose for which the proceeds of the tax are used. Not later than December 31 of  
28 each year, the governing authority of each local government receiving any proceeds from the  
29 tax under this article shall publish annually, in a newspaper of general circulation in the  
30 boundaries of such local government, a simple, nontechnical report which shows for each  
31 purpose in the resolution or ordinance calling for imposition of the tax the original estimated  
32 cost, the current estimated cost if it is not the original estimated cost, amounts expended in  
33 prior years, and amounts expended in the current year. The report shall also include a  
34 statement of what corrective action the local government intends to implement with respect  
35 to each purpose which is underfunded or behind schedule and a statement of any surplus  
36 funds which have not been expended for a purpose."

1 **SECTION 3.**

2 This Act shall become effective on July 1, 2007.

3 **SECTION 4.**

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