House Bill 1519 (AS PASSED HOUSE AND SENATE)

By: Representatives Porter of the 143rd and Coleman of the 142nd

A BILL TO BE ENTITLED

AN ACT

To amend Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to the excise tax on the furnishing for value to the public of any rooms, lodgings, or accommodations, so as to change certain provisions regarding the levy and collection of such tax; to provide authorization with certain conditions for certain counties and municipalities to levy such tax; to change certain provisions authorizing certain counties and municipalities to levy such tax under certain conditions; to provide for requirements and limitations with respect thereto; to amend Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to specific, business, and occupation taxes, so as to provide remedies for the imposition of excessive regulatory fees by a county or municipal government; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to the excise tax on the furnishing for value to the public of any rooms, lodgings, or accommodations, is amended by striking paragraphs (1) and (2) of subsection (a) of Code Section 48-13-51, relating to the levy and collection of certain excise taxes, and inserting in their place new paragraphs (1) and (2) to read as follows:

"(a)(1)(A) The governing authority of each municipality in this state may levy and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value. Within the territorial limits of the special district located within the county, each county in this state may levy and collect an excise tax upon the furnishing for value to the public of

any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the county for operating within the special district a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value. The provisions of this Code section shall control over the provisions of any local ordinance or resolution to the contrary enacted pursuant to Code Section 48-13-53 and in effect prior to July 1, 1998. Any such ordinance shall not be deemed repealed by this Code section but shall be administered in conformity with this Code section.

(B)(i) The excise tax shall be imposed on any person or legal entity licensed by or required to pay a business or occupation tax to the governing authority imposing the tax for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value and shall apply to the furnishing for value of any room, lodging, or accommodation. Every person or entity subject to a tax levied as provided in this Code section shall, except as provided in this Code section, be liable for the tax at the applicable rate on the lodging charges actually collected or, if the amount of taxes collected from the hotel or motel guest is in excess of the total amount that should have been collected, the total amount actually collected must be remitted.

(ii) Any tax levied as provided in this Code section is also imposed upon every person or entity who is a hotel or motel guest and who receives a room, lodging, or accommodation that is subject to the tax levied under this Code section. Every such guest subject to the tax levied under this Code section shall pay the tax to the person or entity providing the room, lodging, or accommodation. The tax shall be a debt of the person obtaining the room, lodging, or accommodation to the person or entity providing such room, lodging, or accommodation until it is paid and shall be recoverable at law by the person or entity providing such room, lodging, or accommodation in the same manner as authorized for the recovery of other debts. The person or entity collecting the tax from the hotel or motel guest shall remit the tax to the governing authority imposing the tax, and the tax remitted shall be a credit against the tax imposed by division (i) of this subparagraph on the person or entity providing the room, lodging, or accommodation.

(C)(i) The tax authorized by this Code section shall not apply to charges made for any rooms, lodgings, or accommodations provided to any persons who certify that they are staying in such room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty. The tax authorized by

this Code section shall apply to the fees or charges for any rooms, lodgings, or accommodations during the first ten days of continuous occupancy and shall not apply to charges imposed for any continuous occupancy thereafter. The tax authorized by this Code section shall not apply to charges made for the use of meeting rooms and other such facilities or to any rooms, lodgings, or accommodations provided without charge.

(ii) The tax authorized by this Code section shall not apply to the charges for any rooms, lodgings, or accommodations furnished for a period of one or more days for use by Georgia state or local governmental officials or employees when traveling on official business. Notwithstanding the availability of any other means of identifying the person as a state or local government official or employee, whenever a person pays for any rooms, lodgings, or accommodations with a state or local government credit or debit card, such rooms, lodgings, or accommodations shall be deemed to have been furnished for use by a Georgia state or local government official or employee traveling on official business for purposes of the exemption provided by this division.

(D) Except as provided in paragraphs (2.1), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), and (5.2) of this subsection, no tax levied pursuant to this Code section shall be levied or collected at a rate exceeding 3 percent of the charge to the public for the furnishings.

(2) A county or municipality levying a tax as provided in paragraph (1) of this subsection shall in each fiscal year beginning on or after July 1, 1987, expend for the purpose of promoting tourism, conventions, and trade shows a percentage of the total taxes collected under this Code section which is not less than the percentage of such tax collections expended for such purposes during the immediately preceding fiscal year. In addition, if during such immediately preceding fiscal year any portion of such tax receipts was expended for such purposes through a grant to or a contract or contracts with the state, a department of state government, a state authority, or a private sector nonprofit organization, then in each fiscal year beginning on or after July 1, 1987, at least the same percentage shall be expended through a contract or contracts with one or more such entities for the purpose of promoting tourism, conventions, and trade shows. The expenditure requirements of this paragraph shall cease to apply to a county or municipality which levies a tax at a rate in excess of 3 percent, as authorized under paragraphs (2.1), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), and (5.2) of this subsection; and in such case the expenditure

requirements of such paragraph of this subsection pursuant to which such tax is levied shall apply instead."

SECTION 2.

Said article is further amended in subsection (a) of Code Section 48-13-51, relating to the levy and collection of certain excise taxes, by adding a new paragraph immediately following paragraph (2), to be designated paragraph (2.1), to read as follows:

"(2.1)(A) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within such a county in which county or municipality community auditorium or theater facilities owned and operated by a municipality have been renovated which renovations are completed substantially on or before July 1, 1995, and which county and municipalities have not previously levied a 6 percent tax under paragraph (4) of this subsection may levy a tax under this Code section at a rate of 5 percent.

(B) A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of general recreation. Amounts so expended shall be expended only through a contract or contracts with a recreation authority created by local Act of the General Assembly."

SECTION 3.

Said article is further amended by striking paragraph (6) of subsection (a) of Code Section 48-13-51, relating to the levy and collection of certain excise taxes, and inserting in its place a new paragraph (6) to read as follows:

"(6) At no time shall a county or municipality levy a tax under more than one paragraph of this subsection. Following the termination of a tax under paragraph (2.1), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), or (5.2) of this subsection, any county or municipality which has levied a tax pursuant to paragraph (2.1), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), or (5.2) of this subsection shall be authorized to levy a tax in the manner and at the rate authorized by either paragraph (1), paragraph (3), or paragraph (4) of this subsection but shall not thereafter be authorized to again levy a tax under paragraph (2.1), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), or (5.2) of this subsection."

SECTION 4.

Said article is further amended by striking paragraphs (9) and (10) of subsection (a) of Code Section 48-13-51, relating to the levy and collection of certain excise taxes, and inserting in their places new paragraphs (9) and (10) to read as follows:

"(9)(A) A county or municipality imposing a tax under paragraph (1), (2), (2.1), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), or (5.2) of this subsection shall prior to the imposition of the tax (if the tax is imposed on or after July 1, 1990) and prior to each fiscal year thereafter in which the tax is imposed adopt a budget plan specifying how the expenditure requirements of this Code section will be met. Prior to the adoption of such budget plan, the county or municipality shall obtain from the authorized entity with which it proposes to contract to meet the expenditure requirements of this Code section a budget for expenditures to be made by such organization; and such budget shall be made a part of the county or municipal budget plan.

(B) The determination as to whether a county or municipality has complied with the expenditure requirements of paragraph (2), (2.1), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), or (5.2) of this subsection shall be made for each fiscal year beginning on or after July 1, 1987, as of the end of each fiscal year, shall be prominently reflected in the audit required under Code Section 36-81-7, and shall be determined by: (i) calculating the amount of funds expended or contractually committed for expenditure as provided in paragraph (2), (2.1), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), or (5.2) of this subsection, whichever is applicable, during the fiscal year; and (ii) expressing such amount as a percentage of tax receipts under this Code section during such fiscal year. A county or municipality contractually expending funds to meet the expenditure requirements of paragraph (2), (2.1), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), or (5.2) of this subsection shall require the contracting party to provide audit verification that the contracting party makes use of such funds in conformity with the requirements of this subsection.

(10) Nothing in this article shall be construed to limit the power of a county or municipality to expend more than the required amounts, or all, of the total taxes collected under this Code section for the purposes described in paragraph (2), (2.1), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), or (5.2) of this subsection."

SECTION 4A.

Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to specific, business, and occupation taxes, is amended by inserting a new Code section to be designated Code Section 48-13-9.1 to read as follows:

"48-13-9.1.

A civil action to enforce the limitation on regulatory fees set out in Code Section 48-13-9 may be filed after the exhaustion of administrative remedies. The prevailing party in such an action shall be awarded reasonable attorney's fees."

SECTION 4B.

Section 4A of this Act shall become effective on January 1, 2003.

SECTION 5.

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

SECTION 6.

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