

The House Committee on Ways and Means offers the following substitute to HB 403:

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 provide for funding of projects and services through the levy and
3 collection of a municipal option sales and use tax; to provide for a short title; to provide for
4 definitions; to provide for the rate and manner of imposition of such tax; to provide for
5 applicability to certain sales; to provide for powers, duties, and authority of municipal
6 governing authorities with respect to such tax; to provide for powers, duties, and authorities
7 of the state revenue commissioner with respect to such tax; to provide for collection and
8 administration of such tax; to provide for returns; to provide for distribution and expenditure
9 of proceeds; to provide for a method for discontinuation of such tax; to change certain
10 provisions regarding limitations on imposition of certain local taxes; to provide for other
11 matters relative to the foregoing; to provide for an effective date; to provide for automatic
12 repeal of this Act; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
16 taxes, is amended by adding a new article to be designated Article 4A to read as follows:

17 "ARTICLE 4A

18 48-8-220.

19 This article shall be known and may be cited as the 'Municipal Option Sales Tax for Water
20 and Sewer Improvements Act.'

21 48-8-221.

22 As used in this article, the term:

23 (1) 'Building and construction materials' means all building and construction materials,
 24 supplies, fixtures, or equipment, any combination of such items, and any other leased or
 25 purchased articles when the materials, supplies, fixtures, equipment, or articles are to be
 26 utilized or consumed during construction or are to be incorporated into construction work
 27 pursuant to a bona fide written construction contract.

28 (2) 'Capital outlay project' means:

29 (A) Acquisition, construction, installation, replacement, maintenance, or repair of
 30 water facilities; and

31 (B) Acquisition, construction, installation, replacement, maintenance, or repair of
 32 sewer facilities.

33 (3) 'Municipality' means a municipality that provides water and sewer service, among
 34 other municipal services, and which is, at the time of the call for the referendum, subject
 35 to an order of a federal or state agency, or court, to improve its water and sewer
 36 infrastructure and is located within a disaster area designated by the President of the
 37 United States.

38 48-8-222.

39 The governing authority of any municipality in this state may, subject to the requirement
 40 of referendum approval and other requirements of this article, impose within the
 41 municipality a sales and use tax for a limited period of time. Such tax shall only be
 42 imposed for all of the purposes specified in paragraph (2) of Code Section 48-8-221. Any
 43 tax imposed under this article shall be at the rate of 1 percent. Except as to rate, a tax
 44 imposed under this article shall correspond to the tax imposed by Article 1 of this chapter.
 45 No item or transaction which is not subject to taxation under Article 1 of this chapter shall
 46 be subject to a tax imposed under this article, except that a tax imposed under this article
 47 shall apply to sales of motor fuels as that term is defined by Code Section 48-9-2 and shall
 48 be applicable to the sale of food and beverages as provided for in division (57)(D)(i) of
 49 Code Section 48-8-3.

50 48-8-223.

51 (a) A municipal governing authority voting to impose the tax authorized by this article
 52 shall notify the municipal election superintendent by forwarding to the superintendent a
 53 copy of the resolution or ordinance of the municipal governing authority calling for the
 54 imposition of the tax. Such ordinance or resolution shall specify the following:

55 (1) The capital outlay projects for which the proceeds of the tax are to be used;

56 (2) The maximum period of time of the tax, to be stated in calendar years or calendar
 57 quarters and not to exceed five years;

58 (3) The maximum cost of the project or projects which will be funded from the proceeds
 59 of the tax, which shall also be the maximum amount of net proceeds to be raised by the
 60 tax; and

61 (4) If general obligation debt is to be issued in conjunction with the imposition of the tax
 62 as authorized by this article, the principal amount of the debt to be issued, the purpose for
 63 which the debt is to be issued, the interest rate or rates or the maximum interest rate or
 64 rates which such debt is to bear, and the amount of principal to be paid in each year
 65 during the life of the debt.

66 (b) Upon receipt of the resolution or ordinance, the municipal election superintendent shall
 67 issue the call for an election for the purpose of submitting the question of the imposition
 68 of the tax to the voters of the municipality. The election superintendent shall issue the call
 69 and shall conduct the election on a date and in the manner authorized under Code Section
 70 21-2-540. The election superintendent shall cause the date and purpose of the election to
 71 be published once a week for four weeks immediately preceding the date of the election
 72 in the legal organ of the county in which the majority of the municipal population resides
 73 or in a newspaper having general circulation in the municipality at least equal to that of the
 74 legal organ. If general obligation debt is to be issued in conjunction with the imposition
 75 of the tax, the notice published by the election superintendent shall also include, in such
 76 form as may be specified by the municipal governing authority, the principal amount of the
 77 debt, the purpose or purposes for which the debt is to be issued, the rate or rates of interest
 78 or the maximum rate or rates of interest the debt will bear, and the amount of principal to
 79 be paid in each year during the life of the debt; and such publication of notice by the
 80 election superintendent shall take the place of the notice otherwise required by Code
 81 Section 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall
 82 therefore not be required.

83 (c)(1) If the tax is to be imposed solely for capital outlay and maintenance and operations
 84 purposes and if no debt is to be issued, the ballot shall have written or printed thereon the
 85 following:

86 ' () YES Shall a 1 percent sales and use tax be imposed in the municipality of
 87 _____ for a period of time not to exceed _____ and for
 88 () NO the raising of not more than \$ _____ for the purpose of funding
 89 _____ ?'

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

92 'If imposition of the tax is approved by the voters, such vote shall also constitute
 93 approval of the issuance of general obligation debt of the municipality of _____
 94 in the principal amount of \$ _____ for the above purpose.'

95 (d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes' and all persons
96 opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in
97 favor of imposing the tax, then the tax shall be imposed as provided in this article;
98 otherwise the tax shall not be imposed and the question of imposing the tax shall not again
99 be submitted to the voters of the county until after 12 months immediately following the
100 month in which the election was held; provided, however, that if an election date
101 authorized under Code Section 21-2-540 occurs during the twelfth month immediately
102 following the month in which such election was held, the question of imposing the tax may
103 be submitted to the voters of the county on such date. The election superintendent shall
104 hold and conduct the election under the same rules and regulations as govern special
105 elections. The superintendent shall canvass the returns, declare the result of the election,
106 and certify the result to the Secretary of State and to the commissioner. The expense of the
107 election shall be paid from municipal funds.

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

114 (2) If the issuance of general obligation debt is included and approved as provided in this
115 Code section, then the governing authority of the municipality may incur such debt either
116 through the issuance and validation of general obligation bonds or through the execution
117 of a promissory note or notes or other instrument or instruments. If such debt is incurred
118 through the issuance of general obligation bonds, such bonds and their issuance and
119 validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as
120 specifically provided otherwise in this article. If such debt is incurred through the
121 execution of a promissory note or notes or other instrument or instruments, no validation
122 proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10
123 through 36-80-14 except as specifically provided otherwise in this article. In either event,
124 such general obligation debt shall be payable first from the separate account in which are
125 placed the proceeds received by the municipality from the tax authorized by this article.
126 Such general obligation debt shall, however, constitute a pledge of the full faith, credit,
127 and taxing power of the municipality; and any liability on such debt which is not satisfied
128 from the proceeds of the tax authorized by this article shall be satisfied from the general
129 funds of the municipality.

130 (3) The tax authorized by this article shall not be subject to any maximum period of time
131 for which the tax may be levied if general obligation debt is to be issued in conjunction

132 with the imposition of the tax. In such case the resolution or ordinance calling for the
 133 imposition of the tax shall not be required to state a maximum period of time for which
 134 the tax is to be levied; and the language relating to the maximum period of time for which
 135 the tax is to be levied shall be omitted from the ballot. The resolution or ordinance
 136 calling for the imposition of the tax shall state the maximum amount of revenue to be
 137 raised by the tax, and the tax shall terminate as provided in paragraph (1) or (3) of
 138 subsection (b) of Code Section 48-8-224.

139 48-8-224.

140 (a)(1) If the imposition of the tax is approved by referendum, the tax shall be imposed
 141 on the first day of the next succeeding calendar quarter which begins more than 80 days
 142 after the date of the election at which the tax was approved by the voters.

143 (2) With respect to services which are regularly billed on a monthly basis, however, the
 144 resolution or ordinance imposing the tax shall become effective with respect to and the
 145 tax shall apply to the first regular billing period coinciding with or following the effective
 146 date specified in paragraph (1) of this subsection. A certified copy of the ordinance or
 147 resolution imposing the tax shall be forwarded to the commissioner so that it will be
 148 received within five business days after certification of the election results.

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

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

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

157 (3) As of the end of the calendar quarter during which the commissioner determines that
 158 the tax will have raised revenues sufficient to provide to the municipality net proceeds
 159 equal to or greater than the amount specified as the maximum amount of net proceeds to
 160 be raised by the tax.

161 (c)(1) No municipality shall impose at any time more than a single 1 percent tax under
 162 this article.

163 (2) A municipality in which a tax authorized by this article is in effect may, while the tax
 164 is in effect, adopt a resolution or ordinance calling for the reimposition of a tax as
 165 authorized by this article upon the tax then in effect; and a referendum may be held for
 166 this purpose while the tax is in effect. Proceedings for reimposition of a tax shall be in
 167 the same manner as proceedings for the initial imposition of the tax, but the newly

168 authorized tax shall not be imposed until the expiration of the tax then in effect; provided,
 169 however, that in the event of emergency conditions under which a municipality is unable
 170 to conduct a referendum so as to continue the tax then in effect without interruption, the
 171 commissioner may, if feasible administratively, waive the limitations of subsection (a)
 172 of this Code section to the minimum extent necessary so as to permit the reimposition of
 173 a tax, if otherwise approved as required under this Code section, without interruption,
 174 upon the expiration of the tax then in effect.

175 (3) Following the expiration of a tax under this article, a municipality may initiate
 176 proceedings for the reimposition of a tax under this article in the same manner as
 177 provided in this article for the initial imposition of such tax.

178 48-8-225.

179 A tax levied pursuant to this article shall be exclusively administered and collected by the
 180 commissioner for the use and benefit of the municipality imposing the tax. Such
 181 administration and collection shall be accomplished in the same manner and subject to the
 182 same applicable provisions, procedures, and penalties provided in Article 1 of this chapter;
 183 provided, however, that all moneys collected from each taxpayer by the commissioner shall
 184 be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be
 185 allowed a percentage of the amount of the tax due and accounted for and shall be
 186 reimbursed in the form of a deduction in submitting, reporting, and paying the amount due
 187 if such amount is not delinquent at the time of payment. The deduction shall be at the rate
 188 and subject to the requirements specified under subsections (b) through (f) of Code Section
 189 48-8-50.

190 48-8-226.

191 Each sales and use tax return remitting sales and use taxes collected under this article shall
 192 separately identify the location of each retail establishment at which any of the sales and
 193 use taxes remitted were collected and shall specify the amount of sales and the amount of
 194 taxes collected at each establishment for the period covered by the return in order to
 195 facilitate the determination by the commissioner that all sales and use taxes imposed by this
 196 article are collected and distributed according to situs of sale.

197 48-8-227.

198 The proceeds of the tax collected by the commissioner in each municipality under this
 199 article shall be disbursed as soon as practicable after collection as follows:

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

202 (2) Except for the percentage provided in paragraph (1) of this Code section, the
203 remaining proceeds of the tax shall be distributed to the governing authority of the
204 municipality imposing the tax and shall be expended for all purposes specified under
205 paragraph (2) of Code Section 48-8-221.

206 48-8-228.

207 Where a local sales or use tax has been paid with respect to tangible personal property by
208 the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction
209 outside this state, the tax may be credited against the tax authorized to be imposed by this
210 article upon the same property. If the amount of sales or use tax so paid is less than the
211 amount of the use tax due under this article, the purchaser shall pay an amount equal to the
212 difference between the amount paid in the other tax jurisdiction and the amount due under
213 this article. The commissioner may require such proof of payment in another local tax
214 jurisdiction as the commissioner deems necessary and proper. No credit shall be granted,
215 however, against the tax imposed under this article for tax paid in another jurisdiction if the
216 tax paid in such other jurisdiction is used to obtain a credit against any other local sales and
217 use tax levied in the municipality or in a special district which includes the municipality;
218 and taxes so paid in another jurisdiction shall be credited first against the tax levied under
219 Article 3 of this chapter, if applicable, then against the tax levied under Article 2 of this
220 chapter, if applicable, and then against the tax levied under this article.

221 48-8-229.

222 No tax provided for in this article shall be imposed upon the sale of tangible personal
223 property which is ordered by and delivered to the purchaser at a point outside the
224 geographical area of the municipality in which the tax is imposed regardless of the point
225 at which title passes, if the delivery is made by the seller's vehicle, United States mail, or
226 common carrier or by private or contract carrier licensed by the Federal Highway
227 Administration or the Georgia Public Service Commission.

228 48-8-230.

229 No tax provided for in this article shall be imposed upon the sale or use of building and
230 construction materials when the contract pursuant to which the materials are purchased or
231 used was advertised for bid prior to the voters' approval of the levy of the tax and the
232 contract was entered into as a result of a bid actually submitted in response to the
233 advertisement prior to approval of the levy of the tax.

234 48-8-231.

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

238 48-8-232.

239 The tax authorized by this article shall be in addition to any other local sales and use tax.
 240 The imposition of any other local sales and use tax within a county, municipality, or special
 241 district shall not affect the authority of a municipality to impose the tax authorized by this
 242 article and the imposition of the tax authorized by this article shall not affect the imposition
 243 of any otherwise authorized local sales and use tax within the county, municipality, or
 244 special district.

245 48-8-233.

246 (a) The proceeds received from the tax authorized by this article shall be used by the
 247 municipality exclusively for capital outlay projects and maintenance and operations
 248 expenses. Such proceeds shall be kept in an account separate from other funds of the
 249 municipality and shall not in any manner be commingled with other funds of the
 250 municipality prior to expenditure.

251 (b) The governing authority of the municipality shall maintain a record of each and every
 252 capital outlay project for which the proceeds of the tax are used. In each annual audit a
 253 schedule shall be included which shows for each ongoing capital outlay project the original
 254 estimated cost, the current estimated cost if it is not the original estimated cost, amounts
 255 expended in prior years, and amounts expended in the current year. The auditor shall
 256 verify and test expenditures sufficient to provide assurances that the schedule is fairly
 257 presented in relation to the financial statements. The auditor's report on the financial
 258 statements shall include an opinion, or disclaimer of opinion, as to whether the schedule
 259 is presented fairly in all material respects in relation to the financial statements taken as a
 260 whole."

261 **SECTION 2.**

262 Said chapter is further amended by revising subsection (a) of Code Section 48-8-6, relating
 263 to limitations on imposition of certain local taxes, as follows:

264 "(a) There shall not be imposed in any jurisdiction in this state or on any transaction in
 265 this state local sales taxes, local use taxes, or local sales and use taxes in excess of 2
 266 percent. For purposes of this prohibition, the taxes affected are any sales tax, use tax, or
 267 sales and use tax which is levied in an area consisting of less than the entire state,

268 however authorized, including such taxes authorized by or pursuant to constitutional
 269 amendment, except that the following taxes shall not count toward or be subject to such
 270 2 percent limitation:

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

273 (2) Any tax levied for purposes of a metropolitan area system of public transportation,
 274 as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page
 275 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)
 276 of the Constitution; and the laws enacted pursuant to such constitutional amendment;
 277 provided, however, that the exception provided for under this paragraph shall only apply:

278 (A) In a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code
 279 Section 48-8-111 in whole or in part for the purpose or purposes of a water capital
 280 outlay project or projects, a sewer capital outlay project or projects, a water and sewer
 281 capital outlay project or projects, water and sewer projects and costs as defined under
 282 paragraph (4) of Code Section 48-8-200, or any combination thereof and with respect
 283 to which the county has entered into an intergovernmental contract with a municipality,
 284 in which the average waste-water system flow of such municipality is not less than 85
 285 million gallons per day, allocating proceeds to such municipality to be used solely for
 286 water and sewer projects and costs as defined under paragraph (4) of Code Section
 287 48-8-200. The exception provided for under this subparagraph shall apply only during
 288 the period the tax under such subparagraph (a)(1)(D) is in effect. The exception
 289 provided for under this subparagraph shall not apply in any county in which a tax is
 290 being imposed under Article 2A of this chapter; or

291 (B) In a county in which the tax levied for purposes of a metropolitan area system of
 292 public transportation is first levied after January 1, 2010, and before November 1, 2012.
 293 Such tax shall not apply to the following:

294 (i) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport. For
 295 purposes of this division, a 'qualifying airline' means any person which is authorized
 296 by the Federal Aviation Administration or another appropriate agency of the United
 297 States to operate as an air carrier under an air carrier operating certificate and which
 298 provides regularly scheduled flights for the transportation of passengers or cargo for
 299 hire. For purposes of this division, a 'qualifying airport' means any airport in the state
 300 that has had more than 750,000 takeoffs and landings during a calendar year; and

301 (ii) The sale of motor vehicles;

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

304 imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent
305 sales and use tax;
306 (4) A sales and use tax levied under Article 4 of this chapter; ~~and~~
307 (5) A sales and use tax levied under Article 4A of this chapter; and
308 (6) A sales and use tax levied under Article 5 of this chapter.
309 If the imposition of any otherwise authorized local sales tax, local use tax, or local sales
310 and use tax would result in a tax rate in excess of that authorized by this subsection, then
311 such otherwise authorized tax shall not be imposed."

312 **SECTION 3.**

313 This Act shall become effective upon its approval by the Governor or upon its becoming law
314 without such approval and shall stand repealed on June 30, 2020; provided, however, that
315 any approved tax existing on such date shall remain in effect for the duration of the period
316 of time for which such tax was approved.

317 **SECTION 4.**

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