

The House Committee on Rules offers the following substitute to HB 5EX:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 45-12-22 of the Official Code of Georgia Annotated, relating to
2 suspension of collection of taxes by the Governor, so as to limit the Governor's authority to
3 suspend the collection of taxes on the sale or use of jet fuel; to amend Chapter 8 of Title 48
4 of the Official Code of Georgia Annotated, relating to sales and use taxes, so as to provide
5 for legislative findings; to ratify an executive order of the Governor suspending the collection
6 of sales and use tax levied on jet fuel and to provide for the continuance of such suspension
7 indefinitely; to exempt jet fuel from certain sales and use taxes under certain conditions and
8 to a certain extent; to limit the taxation of the sale and use of jet fuel pursuant to the Joint
9 County and Municipal Sales and Use Tax (LOST) and the "Metropolitan Atlanta Rapid
10 Transit Authority Act of 1965"; to provide for a definition; to repeal provisions limiting an
11 exemption from such taxes on the sale or use of jet fuel for certain qualifying airlines at
12 certain qualifying airports; to repeal provisions relating to an expired exemption from a
13 portion of state sales and use tax for certain qualifying airlines at certain qualifying airports;
14 to repeal inapplicable definitions; to provide for related matters; to provide for effective
15 dates; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 style="text-align:center">**PART I**
18 style="text-align:center">**SECTION 1-1.**

19 Code Section 45-12-22 of the Official Code of Georgia Annotated, relating to suspension of
20 collection of taxes by the Governor, is amended by revising subsection (b) as follows:

21 "(b) Unless there has been a state of emergency declaration by the Governor, the Governor
22 shall not suspend or modify in any manner the collection of any rate of state motor fuel
23 taxes under Code Section 48-9-3 as it applies to sales of motor fuel and aviation gasoline
24 as such terms are defined in Code Section 48-9-2 or taxes levied on the sale or use of jet
25 fuel as such term is defined in Code Section 48-8-2. Any suspension or modification of

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26 any rate of state motor fuel taxes or taxes levied on the sale or use of jet fuel under this
 27 subsection by the Governor shall be effective only until the next meeting of the General
 28 Assembly which must ratify such suspension or modification by a two-thirds' vote of both
 29 chambers. In the event the General Assembly fails to ratify the Governor's actions, state
 30 motor fuel taxes or taxes on the sale or use of jet fuel suspended or modified under this
 31 subsection shall be collected at the rate specified absent such suspension or modification
 32 and any amounts unpaid due to such suspension or modification shall be collected using
 33 such rate."

34 PART II

35 SECTION 2-1.

36 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
 37 taxes, is amended by adding a new Code section to read as follows:

38 "48-8-19.

39 (a) The General Assembly finds that:

40 (1) The annual economic impact of Georgia airports amounts to more than \$62 billion
 41 per year;

42 (2) Direct flights out of Hartsfield-Jackson Atlanta International Airport alone have
 43 supported nearly \$11 billion in foreign investment and 42,000 jobs across the state;

44 (3) Georgia's sales and use tax levy on jet fuel amounts to the fourth highest tax burden
 45 on jet fuel among states with major airport hubs, placing Georgia at a competitive
 46 disadvantage compared to major airport hubs in Florida, New York, North Carolina, and
 47 Texas, among others; and

48 (4) The distribution of the proceeds of sales and use tax on jet fuel could jeopardize
 49 Georgia's legal standing and compliance with federal aviation programs.

50 (b) The General Assembly of Georgia hereby ratifies the Executive Order of the Governor
 51 dated July 30, 2018, and filed in the official records of the office of the Governor as
 52 Executive Order 07.30.18.01 which suspended the collection of any rate of sales and use
 53 tax as such tax applies to jet fuel. The General Assembly of Georgia hereby continues such
 54 suspension of collection indefinitely.

55 (c) For the time period commencing on August 1, 2018, as specified in the Executive
 56 Order of the Governor dated July 30, 2018, and filed in the official records of the office of
 57 the Governor as Executive Order 07.30.18.01, and concluding at the last moment of
 58 November 30, 2018, sales and use taxation pursuant to Code Section 48-8-30 as such tax
 59 applies to jet fuel shall be governed by the provisions of this Code section notwithstanding
 60 any provisions of Code Section 48-8-30 or any other law to the contrary.

61 (d) The commissioner is authorized to prescribe forms and promulgate rules and
 62 regulations deemed necessary in order to administer and effectuate this Code section."

63 **PART III**

64 **SECTION 3-1.**

65 Said chapter is further amended in Code Section 48-8-2, relating to definitions, by adding a
 66 new paragraph to read as follows:

67 "(16.1) 'Jet fuel' means any form of fuel that is designed for or used in the operation of
 68 aircraft powered by jet turbine or turboprop engines, including but not limited to Jet-A,
 69 and excludes aviation gasoline designed for or used in piston engines, including but not
 70 limited to avgas."

71 **SECTION 3-2.**

72 Said chapter is further amended in Code Section 48-8-3, relating to exemptions from state
 73 sales and use taxes, by revising paragraph (33.1) as follows:

74 ~~"(33.1)(A) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport,~~
 75 ~~to the extent provided in subparagraphs (B) and (C) of this paragraph.~~

76 ~~(B) For the period of time beginning July 1, 2012, and ending on June 30, 2015, the~~
 77 ~~sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt~~
 78 ~~from 1 percent of the 4 percent state sales and use tax.~~

79 ~~(C) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall~~
 80 ~~be exempt at all times from the sales or use tax levied and imposed as authorized~~
 81 ~~pursuant to Part 1 of Article 3 of this chapter. As used in this subparagraph, the term~~
 82 ~~'qualifying airport' means any airport in this state that has had more than 750,000~~
 83 ~~takeoffs and landings during a calendar year, and the term 'qualifying airline' shall have~~
 84 ~~the same meaning as set forth in subparagraph (E) of this paragraph.~~

85 ~~(D) Except as provided for in subparagraph (C) of this paragraph, this exemption shall~~
 86 ~~not apply to any other local sales and use tax levied or imposed at any time in any area~~
 87 ~~consisting of less than the entire state, however authorized, not to exceed the rate at~~
 88 ~~which such taxes were levied as of January 1, 2014, including, but not limited to, such~~
 89 ~~taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga.~~
 90 ~~L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act~~
 91 ~~of 1965,' or such taxes as authorized by or pursuant to Part 2 of Article 3 or Article 2,~~
 92 ~~2A, or 4 of this chapter.~~

93 ~~(E) For purposes of subparagraph (B) of this paragraph and paragraph (2) of subsection~~
 94 ~~(d) of Code Section 48-8-241, a 'qualifying airline' shall mean any person which is~~

95 ~~authorized by the Federal Aviation Administration or appropriate agency of the United~~
 96 ~~States to operate as an air carrier under an air carrier operating certificate and which~~
 97 ~~provides regularly scheduled flights for the transportation of passengers or cargo for~~
 98 ~~hire.~~

99 ~~(F) For purposes of subparagraph (B) of this paragraph and paragraph (2) of subsection~~
 100 ~~(d) of Code Section 48-8-241, the term 'qualifying airport' means a certificated air~~
 101 ~~carrier airport in Georgia.~~

102 ~~(G) On or after July 1, 2017, revenue derived from the levy of sales and use taxes on~~
 103 ~~jet fuel shall be used for a state aviation program or airport related purposes to the~~
 104 ~~extent required to comply with 49 U.S.C. Sections 47107(b) and 47113. Any portion~~
 105 ~~of such revenue so derived which is in excess of the amount required for purposes of~~
 106 ~~such compliance with federal law may be appropriated by the General Assembly for~~
 107 ~~other purposes.~~

108 ~~(H) The commissioner shall adopt rules and regulations to carry out the provisions of~~
 109 ~~this paragraph; Reserved."~~

110 SECTION 3-3.

111 Said chapter is further amended by adding a new Code section to read as follows:

112 "48-8-3.5.

113 (a) The sale or use of jet fuel that is pumped into an aircraft in this state and the use of jet
 114 fuel that is pumped into an aircraft in another state shall be exempt from all sales and use
 115 tax except such tax levied:

116 (1) By the state pursuant to Code Section 48-8-30 at a rate that shall not exceed 4
 117 percent;

118 (2) Pursuant to Article 2 of this chapter by a jurisdiction in which a sales and use tax
 119 was levied on jet fuel on December 30, 1987, at a rate that shall not exceed the rate in
 120 effect on December 30, 1987; and

121 (3) Pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243),
 122 as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' by a
 123 jurisdiction in which such tax was levied on jet fuel on December 30, 1987, at a rate that
 124 shall not exceed the rate in effect on December 30, 1987.

125 (b) For the period of time beginning December 1, 2018, and ending at the last moment of
 126 June 30, 2019, the sale or use of jet fuel that is pumped into an aircraft in this state and the
 127 use of jet fuel that is pumped into an aircraft in another state shall be exempt from the sales
 128 and use tax levied by the state pursuant to Code Section 48-8-30.

129 (c) To the extent required to comply with 49 U.S.C. Sections 47107(b) and 47133, revenue
 130 derived from the levy of sales and use taxes on jet fuel and other fuels sold or used at an

131 airport for aviation purposes shall be used for a state aviation program or airport related
 132 purposes. Any portion of such revenue so derived which is not required or exceeds the
 133 amount required for purposes of such compliance with federal law may be appropriated for
 134 other purposes as provided by law.

135 (d) The commissioner shall adopt rules and regulations to carry out the provisions of this
 136 Code section."

137 **SECTION 3-4.**

138 Said chapter is further amended by revising Code Section 48-8-6, relating to prohibition of
 139 political subdivisions from imposing various taxes, ceiling on local sales and use taxes, and
 140 taxation of mobile telecommunications, as follows:

141 "48-8-6.

142 (a) There shall not be imposed in any jurisdiction in this state or on any transaction in this
 143 state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent.
 144 For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and
 145 use tax which is levied in an area consisting of less than the entire state, however
 146 authorized, including such taxes authorized by or pursuant to constitutional amendment,
 147 except that the following taxes shall not count toward or be subject to such 2 percent
 148 limitation:

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

151 (2) Any tax levied for purposes of a metropolitan area system of public transportation,
 152 as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page
 153 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)
 154 of the Constitution; and the laws enacted pursuant to such constitutional amendment;
 155 provided, however, that the exception provided for under this paragraph shall only apply:

156 (A) In a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code
 157 Section 48-8-111 in whole or in part for the purpose or purposes of a water capital
 158 outlay project or projects, a sewer capital outlay project or projects, a water and sewer
 159 capital outlay project or projects, water and sewer projects and costs as defined under
 160 paragraph (4) of Code Section 48-8-200, or any combination thereof and with respect
 161 to which the county has entered into an intergovernmental contract with a municipality,
 162 in which the average waste-water system flow of such municipality is not less than 85
 163 million gallons per day, allocating proceeds to such municipality to be used solely for
 164 water and sewer projects and costs as defined under paragraph (4) of Code
 165 Section 48-8-200. The exception provided for under this subparagraph shall apply only
 166 during the period the tax under such subparagraph (a)(1)(D) is in effect. The exception

167 provided for under this subparagraph shall not apply in any county in which a tax is
 168 being imposed under Article 2A of this chapter;

169 (B) In a county in which the tax levied for purposes of a metropolitan area system of
 170 public transportation is first levied after January 1, 2010, and before November 1, 2016.

171 Such tax shall not apply to the following:

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

179 (ii) The sale of motor vehicles; or

180 (C) In a county in which a tax is levied and collected pursuant to Part 2 of Article 2A
 181 of this chapter;

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

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

187 (5) A sales and use tax levied under Article 5 of this chapter; and

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

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

192 (b) Reserved.

193 (c) Where the exception specified in paragraph (2) of subsection (a) of this Code section
 194 applies, the tax imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 shall not
 195 apply to:

196 ~~(1) Reserved; and~~

197 ~~(2) The the sale of motor vehicles.~~

198 (c.1) Where the exception specified in paragraph (2) of subsection (a) of this Code section
 199 applies, on and after July 1, 2007, the aggregate amount of all excise taxes imposed under
 200 paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall
 201 not exceed 14 percent.

202 (d) Notwithstanding any law or ordinance to the contrary, any tax, charge, or fee levied
 203 by any political subdivision of this state and applicable to mobile telecommunications

204 services, as defined in Section 124(7) of the federal Mobile Telecommunications Sourcing
 205 Act, 4 U.S.C. Section 124(7), shall apply only if the customer's place of primary use is
 206 located within the boundaries of the political subdivision levying such local tax, charge,
 207 or fee. For purposes of this subsection, the provisions of Code Section 48-8-13 shall apply
 208 in the same manner and to the same extent as such provisions apply to the tax levied by
 209 Code Section 48-8-1 on mobile telecommunications services. This subsection shall not be
 210 construed to authorize the imposition of any tax, charge, or fee."

211 SECTION 3-5.

212 Said chapter is further amended by revising Code Section 48-8-82, relating to authorization
 213 of counties and municipalities to impose joint sales and use tax, rate, and applicability to
 214 sales of motor fuels and food and beverages, as follows:

215 "48-8-82.

216 (a) When the imposition of a joint county and municipal sales and use tax is authorized
 217 according to the procedures provided in this article within a special district, the county
 218 whose geographical boundary is conterminous with that of the special district and each
 219 qualified municipality located wholly or partially within the special district shall levy a
 220 joint sales and use tax at the rate of 1 percent, except as provided in subsection (b) of this
 221 Code section. Except as to rate, the joint tax shall correspond to the tax imposed and
 222 administered by Article 1 of this chapter. No item or transaction which is not subject to
 223 taxation by Article 1 of this chapter shall be subject to the tax levied pursuant to this article,
 224 except that the joint tax provided in this article shall be applicable to sales:

225 (1) The sale of motor fuels as prepaid local tax as that term is defined in Code
 226 Section 48-8-2 and shall be applicable to the sale;

227 (2) The sale of food and food ingredients and alcoholic beverages only to the extent
 228 provided for in paragraph (57) of Code Section 48-8-3; and

229 (3) The sale or use of jet fuel as such term is defined in Code Section 48-8-2, to the
 230 extent allowed pursuant to Code Section 48-8-3.5.

231 (b) On or after July 1, 2015, such joint sales and use tax levied on sales of motor fuels as
 232 defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of
 233 the motor fuel which is not more than \$3.00 per gallon; provided, however, that in any
 234 consolidated government levying a joint sales and use tax at 2 percent pursuant to Code
 235 Section 48-8-96, on or after July 1, 2015, any such joint sales and use tax levied on sales
 236 of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 2 percent of the
 237 retail sales price of the motor fuel which is not more than \$3.00 per gallon."

238 **SECTION 3-6.**

239 Said chapter is further amended in Code Section 48-8-241, relating to special districts and
 240 tax rate for the Special District Transportation Sales and Use Tax (TSPLOST), by revising
 241 subsection (d) as follows:

242 "(d) Except as otherwise provided in subsection (e) of this Code section, any tax imposed
 243 under this article shall be at the rate of 1 percent. Except as to rate, a tax imposed under
 244 this article shall correspond to the tax imposed by Article 1 of this chapter. No item or
 245 transaction which is not subject to taxation under Article 1 of this chapter shall be subject
 246 to a tax imposed under this article, ~~except that~~ and a tax imposed under this article shall not
 247 apply to:

248 (1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road
 249 farm or agricultural equipment, or locomotives;

250 (2) The sale or use of jet fuel ~~to or by a qualifying airline at a qualifying airport as such~~
 251 term is defined in Code Section 48-8-2, except to the extent allowed pursuant to Code
 252 Section 48-8-3.5;

253 (3) The sale or use of fuel that is used for propulsion of motor vehicles on the public
 254 highways. For purposes of this paragraph, a motor vehicle means a self-propelled vehicle
 255 designed for operation or required to be licensed for operation upon the public highways;

256 (4) The sale or use of energy used in the manufacturing or processing of tangible goods
 257 primarily for resale; or

258 (5) Motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass
 259 transit.

260 The tax imposed pursuant to this article shall only be levied on the first \$5,000.00 of any
 261 transaction involving the sale or lease of a motor vehicle. The tax imposed pursuant to this
 262 article shall be subject to any sales and use tax exemption which is otherwise imposed by
 263 law; provided, however, that the tax levied by this article shall be applicable to the sale of
 264 food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3."

265 **SECTION 3-7.**

266 Said chapter is further amended by revising Code Section 48-8-269, relating to exemption
 267 from taxation pursuant to the Special District Mass Transportation Sales and Use Tax, as
 268 follows:

269 "48-8-269.

270 (a) Except as to rate, a tax imposed under this part shall correspond to the tax imposed by
 271 Article 1 of this chapter. No item or transaction which is not subject to taxation under
 272 Article 1 of this chapter shall be subject to a tax imposed under this part, ~~except that~~ and
 273 a tax imposed under this part shall not apply to:

- 274 (1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road
 275 farm or agricultural equipment, or locomotives;
- 276 (2) The sale or use of jet fuel ~~to or by a qualifying airline at a qualifying airport~~ as such
 277 term is defined in Code Section 48-8-2, except to the extent allowed pursuant to Code
 278 Section 48-8-3.5;
- 279 (3) The sale or use of fuel that is used for propulsion of motor vehicles on the public
 280 highways;
- 281 (4) The sale or use of energy used in the manufacturing or processing of tangible goods
 282 primarily for resale;
- 283 (5) The sale or use of motor fuel as defined under paragraph (9) of Code Section 48-9-2
 284 for public mass transit; or
- 285 (6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.
- 286 (b) Except as otherwise specifically provided in this part, the tax imposed pursuant to this
 287 part shall be subject to any sales and use tax exemption which is otherwise imposed by law;
 288 provided, however, that the tax levied by this part shall be applicable to the sale of food and
 289 food ingredients as provided for in paragraph (57) of Code Section 48-8-3."

290 **SECTION 3-8.**

291 Said chapter is further amended by revising Code Section 48-8-269.15, relating to a tax
 292 authorized to be imposed in Metropolitan County Special Districts, as follows:

293 "48-8-269.15.

- 294 (a) Except as to rate, a tax imposed under this part shall correspond to the tax imposed by
 295 Article 1 of this chapter. No item or transaction which is not subject to taxation under
 296 Article 1 of this chapter shall be subject to a tax imposed under this part, ~~except that~~ and
 297 a tax imposed under this part shall not apply to:
- 298 (1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road
 299 farm or agricultural equipment, or locomotives;
- 300 (2) The sale or use of jet fuel ~~to or by a qualifying airline at a qualifying airport~~ as such
 301 term is defined in Code Section 48-8-2, except to the extent allowed pursuant to Code
 302 Section 48-8-3.5;
- 303 (3) The sale or use of fuel that is used for propulsion of motor vehicles on the public
 304 highways;
- 305 (4) The sale or use of energy used in the manufacturing or processing of tangible goods
 306 primarily for resale;
- 307 (5) The sale or use of motor fuel as defined under paragraph (9) of Code Section 48-9-2
 308 for public mass transit; or
- 309 (6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.

310 (b) Except as otherwise specifically provided in this part, the tax imposed pursuant to this
 311 part shall be subject to any sales and use tax exemption which is otherwise imposed by law;
 312 provided, however, that the tax levied by this part shall be applicable to the sale of food and
 313 food ingredients as provided for in paragraph (57) of Code Section 48-8-3."

314 **SECTION 3-9.**

315 Said chapter is further amended by revising Code Section 48-8-269.30, relating to a tax
 316 authorized to be imposed in Metropolitan Municipality Special Districts, as follows:

317 "48-8-269.30.

318 (a) Except as to rate, a tax imposed under this part shall correspond to the tax imposed by
 319 Article 1 of this chapter. No item or transaction which is not subject to taxation under
 320 Article 1 of this chapter shall be subject to a tax imposed under this part, ~~except that~~ and
 321 a tax imposed under this part shall not apply to:

322 (1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road
 323 farm or agricultural equipment, or locomotives;

324 (2) The sale or use of jet fuel ~~to or by a qualifying airline at a qualifying airport as such~~
 325 term is defined in Code Section 48-8-2, except to the extent allowed pursuant to Code
 326 Section 48-8-3.5;

327 (3) The sale or use of fuel that is used for propulsion of motor vehicles on the public
 328 highways;

329 (4) The sale or use of energy used in the manufacturing or processing of tangible goods
 330 primarily for resale;

331 (5) The sale or use of motor fuel as defined under paragraph (9) of Code Section 48-9-2
 332 for public mass transit; or

333 (6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.

334 (b) Except as otherwise specifically provided in this part, the tax imposed pursuant to this
 335 part shall be subject to any sales and use tax exemption which is otherwise imposed by law;
 336 provided, however, that the tax levied by this part shall be applicable to the sale of food and
 337 food ingredients as provided for in paragraph (57) of Code Section 48-8-3."

338 **PART IV**

339 **SECTION 4-1.**

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

342 (b) Part III of this Act shall become effective December 1, 2018.

343

SECTION 4-2.

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