

ARTICLE 3  
Capital Project Sales Tax Act

Editor's Note

2002 Act No. 334, Section 22.G, provides as follows:

"A county holding a referendum and adopting an ordinance pursuant to Article 3, Chapter 10, Title 4 of the 1976 Code, before the effective date of this section in which the ordinance provides that the proceeds of the sales tax would be used to repay bonds issued to fund project costs may continue to collect the tax and apply the revenue to the repayment of the bonds while any of these bonds remain outstanding, but in no event may the tax be collected for any period longer than the maximum term of the tax provided in the referendum."

**SECTION 4-10-300.** Short title.

This article may be cited as the "Capital Project Sales Tax Act".

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997.

**SECTION 4-10-310.** Imposition of tax.

Subject to the requirements of this article, the county governing body may impose a one percent sales and use tax by ordinance, subject to a referendum, within the county area for a specific purpose or purposes and for a limited amount of time. The revenues collected pursuant to this article may be used to defray debt service on bonds issued to pay for projects authorized in this article. However, at no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this article, pursuant to Chapter 37, Title 4, or pursuant to any local law enacted by the General Assembly. This limitation does not apply in a county area in which, as of July 1, 2012, a local sales and use tax was imposed pursuant to a local act of the General Assembly, the revenues of which are used to offset the costs of school construction, or other school purposes, or other government expenses, or for any combination of these uses.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997; 2009 Act No. 49, Section 1, eff upon approval (became law without the Governor's signature on June 3, 2009); 2012 Act No. 267, Section 4, eff June 20, 2012.

Effect of Amendment

The 2009 amendment deleted "to collect a limited amount of money" from the end of the first sentence. The 2012 amendment added the last sentence which provides an exception.

**SECTION 4-10-320.** Commission creation; composition.

(A) The governing body of any county is authorized to create a commission subject to the provisions of this section. The commission consists of six members, all of whom must be residents of the county, appointed as follows:

- (1) The governing body of the county must appoint three members of the commission.
- (2) The municipalities in the county must appoint three members, who must be residents of incorporated municipalities within the county, and who are selected according to the following mechanism:
  - (a) The total population of all incorporated municipalities within the county, as determined by the most recent United States census, must be divided by three, the result being an apportionate average.
  - (b) The respective population of each municipality in the county must be divided by the apportionate average to determine an appointive index.
  - (c) Each municipality in the county appoints a number of members to the commission equal to the whole number indicated by their appointive index. However, no single municipality may appoint more than two members to the commission; unless there is only one municipality in the county, and in such case the municipality is entitled to three appointments to the commission.
  - (d) When less than three members are selected to the commission in accordance with the prescribed appointive index method, the remaining member or members must be selected in a joint meeting of the

commission appointees of the municipalities in the county. The member or members must be chosen from among the residents of the municipalities in the county that before this time have not provided a representative for the commission.

(e) In the event no municipality is entitled to appoint a member to the commission pursuant to the formula in subitem (c) of this subsection, the municipality with the highest appointive index must be deemed to have an appointive index of one.

(B) When the governing body of any county creates a commission, it must be created in accordance with the procedures specified in subsection (A) and only upon the request of the governing body of the county. If within the thirty-day period following the adoption of a resolution to create the commission, one or more of the municipalities fails or refuses to appoint their proportionate number of members to the commission, the county governing body must appoint an additional number of members equal to the number that any such municipality is entitled to appoint. A vacancy on the commission must be filled in the manner of the original appointment.

(C) The commission created pursuant to this section must consider proposals for funding capital projects within the county area. The commission then formulates the referendum question that is to appear on the ballot pursuant to Section 4-10-330(D).

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997.

**SECTION 4-10-330.** Contents of ballot question; purpose for which proceeds of tax to be used.

(A) The sales and use tax authorized by this article is imposed by an enacting ordinance of the county governing body containing the ballot question formulated by the commission pursuant to Section 4-10-320(C), subject to referendum approval in the county. The ordinance must specify:

(1) the purpose for which the proceeds of the tax are to be used, which may include projects located within or without, or both within and without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area, and may include the following types of projects:

(a) highways, roads, streets, bridges, and public parking garages and related facilities;

(b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, educational facilities under the direction of an area commission for technical education, or any combination of these projects;

(c) cultural, recreational, or historic facilities, or any combination of these facilities;

(d) water, sewer, or water and sewer projects;

(e) flood control projects and storm water management facilities;

(f) beach access and beach renourishment;

(g) dredging, dewatering, and constructing spoil sites, disposing of spoil materials, and other matters directly related to the act of dredging;

(h) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (a) through (g) of this item;

(i) any combination of the projects described in subitems (a) through (h) of this item;

(2) the maximum time, in two-year increments not to exceed eight years from the date of imposition, or in the case of a reimposed tax, a period ending on April thirtieth, not to exceed seven years, for which the tax may be imposed;

(3)(a) if the county proposes to issue bonds to provide for the payment of any costs of the projects, the maximum amount of bonds to be issued, whether the sales tax proceeds are to be pledged to the payment of the bonds and, if other sources of funds are to be used for the projects, specifying the other sources;

(b) the maximum cost of the project or facilities or portion of the project or portion of the facilities, to be funded from proceeds of the tax or bonds issued as provided in this article and the maximum amount of net proceeds expected to be used to pay the cost or debt service on the bonds, as the case may be; and

(4) any other condition precedent, as determined by the commission, to the imposition of the sales and use tax authorized by this article or condition or restriction on the use of sales and use tax revenue collected pursuant to this article.

(B) When the tax authorized by this article is imposed for more than one purpose, the enacting ordinance must set forth the priority in which the net proceeds are to be expended for the purposes stated. The enacting ordinance may set forth a formula or system by which multiple projects are funded simultaneously.

(C)(1) Upon receipt of the ordinance, the county election commission must conduct a referendum on the question of imposing the sales and use tax in the area of the county that is to be subject to the tax. The referendum for imposition or reimposition of the tax must be held at the time of the general election. Subject to item (2), two weeks before the referendum the election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and the cost of the projects. If the proposed question includes the use of sales taxes to defray debt service on bonds issued to pay the costs of any project, the notice must include a statement indicating that principal amount of the bonds proposed to be issued for the purpose and, if the issuance of the bonds is to be approved as part of the referendum, stating that the referendum includes the authorization of the issuance of bonds in that amount. This notice is in lieu of any other notice otherwise required by law.

(2) If the referendum on the question of imposing sales and use tax is conducted in an odd-numbered year, and it is the only matter being considered at the general election, then six weeks before the referendum, the election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and the cost of the projects.

(D) The referendum question to be on the ballot must read substantially as follows:

"Must a special one percent sales and use tax be imposed in (county) for not more than (time) to raise the amounts specified for the following purposes?"

	(1) \$	for	
	(2) \$	for	
	(3) etc.		
			Yes <input type="checkbox"/>
			No <input type="checkbox"/>

If the referendum includes the issuance of bonds, the question must be revised to include the principal amount of bonds proposed to be authorized by the referendum and the sources of payment of the bonds if the sales tax approved in the referendum is inadequate for the payment of the bonds.

(E) All qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote "yes" and all qualified electors opposed to levying the tax shall vote "no". If a majority of the votes cast are in favor of imposing the tax, then the tax is imposed as provided in this article and the enacting ordinance. A subsequent referendum on this question must be held on the date prescribed in subsection (C). The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than November thirtieth to the county governing body and to the Department of Revenue. Expenses of the referendum must be paid by the governmental entities that would receive the proceeds of the tax in the same proportion that those entities would receive the net proceeds of the tax.

(F) Upon receipt of the returns of the referendum, the county governing body must, by resolution, declare the results thereof. In such event, the results of the referendum, as declared by resolution of the county governing body, are not open to question except by a suit or proceeding instituted within thirty days from the date such resolution is adopted.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997; 1999 Act No. 93, Section 2, eff June 11, 1999; 2002 Act No. 334, Sections 22.A, 22.B and 22.E, eff June 24, 2002; 2004 Act No. 244, Section 2, eff May

24, 2004; 2004 Act No. 292, Section 2, eff August 16, 2004; 2009 Act No. 49, Section 2, eff upon approval (became law without the Governor's signature on June 3, 2009); 2012 Act No. 268, Section 1, eff June 20, 2012; 2014 Act No. 243 (S.809), Section 1, eff June 6, 2014; 2016 Act No. 250 (H.5078), Sections 2, 4, eff June 6, 2016.

#### Editor's Note

2009 Act No. 49 Section 5 provides as follows:

"This act takes effect upon approval by the Governor; provided, that the amendments to Section 4-10-330(A)(1)(b) of the 1976 Code, as contained in Section 2, apply with respect to Capital Project Sales and Use Tax Act taxes imposed or reimposed pursuant to a referendum held after the effective date of this act."

2014 Act No. 243, Section 2, provides as follows:

"SECTION 2. This act takes effect upon approval by the Governor and first applies to a referendum for which a referendum date is not set as of the time of approval."

#### Effect of Amendment

The 1999 amendment changed the election commission certification deadline in subsection (E) from "December thirty-first" to "November thirtieth".

The first 2002 amendment rewrote paragraph (A)(3) and subsection (C); and in subsection (D), added the last undesignated paragraph.

The first 2004 amendment, in paragraph (A)(1), in subparagraph (a) added "and public parking garages and related facilities", added subparagraph (f) relating to beaches, redesignated subparagraphs (f) and (g) as subparagraphs (g) and (h), and made conforming changes throughout.

The second 2004 amendment in subparagraph (A)(1)(a), made identical changes to those made by 2004 act No. 244, Section 2.

The 2009 amendment, in subsection (A), in subparagraph (1)(b) added "educational facilities under the direction of an area commission for technical education," and in subparagraph (2) substituted "in two-year increments" for "stated in terms of calendar or fiscal years or quarters, or a combination thereof," "eight years" for "seven years", and added "or in the case of a reimposed tax, a period ending on April thirtieth of an odd-numbered year, not to exceed seven years"; and, in subsection (C), in the second sentence substituted "imposition or reimposition of the tax" for "this purpose" and "2009" for "2002".

The 2012 amendment in subsection (A)(1), added a new subitem (g) relating to dredging, and redesignated former subitems (g) and (h) as (h) and (i).

2014 Act No. 243, Section 1, rewrote subsection (C), deleting a provision allowing the referendum for imposition or reimposition to be held at a time other than at the time of the general election.

2016 Act No. 250, Sections 2, 4 in (A)(2), deleted "of an odd-numbered year" following "ending on April thirtieth"; in (C), added designator (1); in (C)(1), substituted "Subject to item (2), two" for "Two"; and added (C)(2), relating to particular referendum publication requirements for certain sales and use tax questions.

#### **SECTION 4-10-340.** Tax imposition and termination.

(A) If the sales and use tax is approved in the referendum, the tax is imposed on the first of May following the date of the referendum. If the reimposition of an existing sales and use tax imposed pursuant to this article is approved in the referendum, the new tax is imposed immediately following the termination of the earlier imposed tax and the reimposed tax terminates on the applicable thirtieth of April, not to exceed seven years from the date of reimposition. If the certification is not timely made to the Department of Revenue, the imposition is postponed for twelve months.

(B) The tax terminates the final day of the maximum time period specified for the imposition.

(C)(1) Amounts collected in excess of the required net proceeds must first be applied, if necessary, to complete a project for which the tax was imposed.

(2) If funds still remain after first using the funds as described in item (1) and the tax is reimposed, the remaining funds must be used to fund the projects approved by the voters in the referendum to reimpose the tax, in priority order as the projects appeared on the enacting ordinance.

(3) If funds still remain after first using the funds as described in item (1) and the tax is not reimposed, the remaining funds must be used for the purposes set forth in Section 4-10-330(A)(1). These remaining funds only may be expended for the purposes set forth in Section 4-10-330(A)(1) following an ordinance specifying the authorized purpose or purposes for which the funds will be used.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997; 2002 Act No. 334, Sections 22.C and 22.F, eff June 24, 2002; 2009 Act No. 49, Section 3, eff upon approval (became law without the Governor's signature on June 3, 2009); 2016 Act No. 250 (H.5078), Section 3, eff June 6, 2016.

Effect of Amendment

The 2002 amendment, in subsection (A), added the second sentence relating to the reimposition of an existing sales and use tax; and rewrote paragraph (B)(2).

The 2009 amendment, in subsection (A), in the second sentence added "and the reimposed tax terminates on the thirtieth of April in an odd-numbered year, not to exceed seven years from the date of reimposition"; and rewrote subsections (B) and (C).

2016 Act No. 250, Section 3, in (A), substituted "applicable thirtieth of April" for "thirtieth of April in an odd-numbered year" in the second sentence.

**SECTION 4-10-350.** Department of Revenue to administer and collect local tax.

(A) The tax levied pursuant to this article must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The department may prescribe amounts that may be added to the sales price because of the tax.

(B) The tax authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 are exempt from the tax imposed by this article. Unprepared food items eligible for purchase with United States Department of Agriculture food coupons are exempt from the tax imposed pursuant to this article. The tax imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

(C) A taxpayer required to remit taxes under Article 13, Chapter 36 of Title 12 must identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

(D) A utility is required to report sales in the county in which the consumption of the tangible personal property occurs.

(E) A taxpayer subject to the tax imposed by Section 12-36-920, who owns or manages rental units in more than one county, must report separately in his sales tax return the total gross proceeds from business done in each county.

(F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this article in a county, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided in this article if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition date of the sales and use tax provided for in this article.

(G) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this chapter, with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this article is imposed beginning on the first day of the billing period beginning on or after the imposition date.

HISTORY: 1997 Act No. 138, Section 3, eff July 1, 1997; 1999 Act No. 93, Section 3, eff June 11, 1999; 2009 Act No. 49, Section 4.A, eff upon approval (became law without the Governor's signature on June 3, 2009).

Editor's Note

2009 Act No. 49 Section 4.B, provides as follows:

"Notwithstanding the general effective date of this act, this section takes effect on the approval of this act by the Governor and applies with respect to Capital Project Sales Tax Act taxes imposed or reimposed pursuant to a referendum held after that date."

**Effect of Amendment**

The 1999 amendment deleted provisions relating to municipalities and made grammatical changes in subsections (C) through (E).

The 2009 amendment, in subsection (B), added the third sentence relating to unprepared food items.

**SECTION 4-10-360.** Revenue remitted to State Treasurer and held in a separate fund.

The revenues of the tax collected under this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues quarterly to the county treasurer in the county area in which the tax is imposed and the revenues must be used only for the purposes stated in the imposition ordinance. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of city or county code errors must be corrected prospectively. Within thirty days of the receipt of any quarterly payment, the county treasurer or the county administrator shall certify to the Department of Revenue amounts of net proceeds applied to the costs of each project and the amount of project costs remaining to be paid and, if bonds have been issued that were approved in the referendum, a schedule of payments remaining due on the bonds that are payable from the net proceeds of the sales tax authorized in the referendum.

**HISTORY:** 1997 Act No. 138, Section 3, eff July 1, 1997; 1999 Act No. 93, Section 4, eff June 11, 1999; 2002 Act No. 334, Section 22D, eff June 24, 2002.

**Effect of Amendment**

The 1999 amendment added the last sentence.

The 2002 amendment added the last sentence relating to certification of net proceeds.

**SECTION 4-10-370.** Calculating distributions to counties; confidentiality.

The Department of Revenue shall furnish data to the State Treasurer and to the county treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to counties and municipalities upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240.

**HISTORY:** 1997 Act No. 138, Section 3, eff July 1, 1997.

**SECTION 4-10-380.** Unidentified funds; transfer and supplemental distributions.

Annually, and only in the month of June, funds collected by the department from the local option capital project sales tax, which are not identified as to the governmental unit due the tax, must be transferred, after reasonable effort by the department to determine the appropriate governmental unit, to the State Treasurer's Office. The State Treasurer shall distribute these funds to the county treasurer in the county area in which the tax is imposed and the revenues must be used only for the purposes stated in the imposition ordinance. The State Treasurer shall calculate this supplemental distribution on a proportional basis, based on the current fiscal year's county area revenue collections.

**HISTORY:** 1999 Act No. 93, Section 5, eff June 11, 1999.

**SECTION 4-10-390.** Reimposition of tax.

For any county which began the reimposition of a tax authorized by this article on April 1, 2013, and reimposed the tax at the 2016 General Election:

- (1) the reimposed tax that commenced on April 1, 2013, is extended until April 30, 2020; and
- (2) the commencement of the tax that was reimposed at the 2016 General Election is delayed until May 1, 2020, and expires on April 30, 2027.

HISTORY: 2018 Act No. 155 (S.1038), Section 1, eff April 17, 2018.