

The House Committee on Ways and Means offers the following substitute to HB 361:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges,  
2 and ferries, and Title 48 of the Official Code of Georgia Annotated, relating to revenue and  
3 taxation, so as to change certain provisions regarding collections, expenditures, and  
4 exemptions with respect to certain revenue regarding roads; to change certain provisions  
5 regarding priority of expenditures from the State Public Transportation Fund; to change  
6 certain provisions regarding applicability of sales and use tax to motor fuel sales; to change  
7 certain provisions regarding the second motor fuel tax; to provide for related matters; to  
8 provide for effective dates; to provide for automatic repeal; to repeal conflicting laws; and  
9 for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1.

13 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,  
14 is amended by striking Code Section 32-5-21, relating to the priority of expenditures from  
15 the State Public Transportation Fund, and inserting in its place a new Code Section 32-5-21  
16 to read as follows:

17 "32-5-21.

18 Subject to the restrictions on expenditures imposed by Code Section 32-5-23, the State  
19 Public Transportation Fund shall be expended by the department in the following order;  
20 provided, however, that 25 percent of the total amount of taxes collected at the rate of 4  
21 percent under paragraph (1) of subsection (b) of Code Section 48-9-14 shall be expended  
22 in accordance with paragraph (6) of this Code section:

23 (1) To pay the rentals on lease contracts entered into pursuant to the authority of the  
24 Constitution of Georgia;

1 (2) To pay into the State of Georgia Guaranteed Revenue Debt Common Reserve Fund  
 2 the amount of the highest annual debt service requirements for an issue of guaranteed  
 3 revenue debt for public road projects initiated pursuant to Code Section 32-10-67, upon  
 4 its issuance, when the guarantee of the specific issue has been authorized by an  
 5 appropriation of moneys governed by Article III, Section IX, Paragraph VI(b) of the  
 6 Constitution and the appropriation meets the requirements for such debt as provided by  
 7 Article VII, Section IV, Paragraph III(b) of the Constitution;

8 (3) To pay the costs of operating the department and for any emergencies or unusual  
 9 situations;

10 (4) To pay the costs necessary to comply with the conditions of federal-aid  
 11 apportionments to the state for the planning, surveying, constructing, paving, and  
 12 improving of the public roads in Georgia;

13 (5) Next, a sum equal to at least 15 percent of the State Public Transportation Fund, said  
 14 sum to be used as follows:

15 (A) One-third to pay all or part of the costs of the planning, surveying, constructing,  
 16 improving, paving, and completing public roads not on the state highway system;

17 (B) One-third to pay all or part of the costs of planning, surveying, constructing,  
 18 improving, and paving public roads on the state highway system; and

19 (C) The remaining one-third to pay all or part of the costs of planning, surveying,  
 20 constructing, reconstructing, paving, and improving the public roads of Georgia  
 21 determined by the department to be most in need of such work; and

22 (6) A sum equal to 25 percent of the total amount of taxes collected at the rate of 4  
 23 percent under paragraph (1) of subsection (b) of Code Section 48-9-14 shall be expended  
 24 on the costs of planning, surveying, constructing, reconstructing, paving, and improving  
 25 the public roads of Georgia as determined by the department to be eligible under the  
 26 department's Local Assistance Road Program; and

27 ~~(6)~~(7) After the requirements set out in the foregoing provisions of this Code section  
 28 have been met, the remainder of the State Public Transportation Fund to be expended to  
 29 pay the costs of maintaining, improving, constructing, and reconstructing the public roads  
 30 of the state highway system, for maintaining roads within and leading to state parks, and  
 31 for constructing public roads by department forces."

## 32 SECTION 2.

33 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
 34 amended by striking Code Section 48-8-3.1, relating to the applicability of sales and use tax  
 35 to motor fuel sales, and inserting in its place a new Code Section 48-8-3.1. to read as follows:

1 "48-8-3.1.

2 (a) Except as provided in subsection (b) of this Code section, sales of motor fuels as  
3 defined in paragraph (9) of Code Section 48-9-2 shall be exempt from the first ~~3~~ 4 percent  
4 of the sales and use taxes tax levied or imposed by this article ~~and shall be subject to the~~  
5 ~~remaining 1 percent of the sales and use taxes levied or imposed by this article.~~

6 (b) Sales of motor fuel other than gasoline which motor fuel other than gasoline is  
7 purchased for purposes other than propelling motor vehicles on public highways as defined  
8 in Article 1 of Chapter 9 of this title shall be fully subject to the 4 percent sales and use  
9 taxes levied or imposed by this article unless otherwise specifically exempted by this  
10 article.

11 (c) It is specifically declared to be the intent of the General Assembly that taxation  
12 imposed on sales of motor fuel ~~wholly or partially~~ subject to taxation under subsection (b)  
13 of this Code section shall not constitute motor fuel taxes for purposes of any provision of  
14 the Constitution providing for the automatic or mandatory appropriation of any amount of  
15 funds equal to funds derived from motor fuel taxes."

16 **SECTION 3.**

17 Said title is further amended by striking Code Section 48-9-14, relating to the second motor  
18 fuel tax, and inserting in its place a new Code Section 48-9-14 to read as follows:

19 "48-9-14.

20 (a) In addition to the motor fuel tax imposed by Code Section 48-9-3, there is imposed a  
21 second motor fuel tax.

22 (b)(1) The motor fuel tax imposed by this Code section is levied at the rate of ~~3~~ 4 percent  
23 of the retail sale price less the tax imposed by Code Section 48-9-3 upon the sale, use, or  
24 consumption, as defined in Code Section 48-8-2, of motor fuel in this state. This tax shall  
25 be subject only to the exemptions provided in Code Section 48-9-3.

26 (2)(A) As used in this paragraph, the term 'prepaid state tax' shall have the same  
27 meaning as provided in paragraph (5.1) of Code Section 48-8-2.

28 (B) At the time the tax imposed by Code Section 48-9-3 attaches to a sale or transfer  
29 of motor fuels, a prepaid state tax shall be collected. The same person remitting the tax  
30 imposed under Code Section 48-9-3, but on a separate schedule, shall remit the prepaid  
31 state tax to the state. The tax shall be separately invoiced throughout the chain of  
32 distribution until it reaches the dealer who makes the retail sale. The commissioner  
33 shall issue the rate of prepaid state tax on a semiannual basis, rounded to the nearest  
34 \$.001 per gallon for use in the following semiannual period. The rate shall be  
35 calculated at 4 percent of the state-wide average retail price by motor fuel type as  
36 compiled by the Energy Information Agency of the United States Department of

1 Energy, the Oil Pricing Information Service, or a similar reliable published index less  
 2 taxes imposed under Code Section 48-9-3, this subsection, and all local sales and use  
 3 taxes. In the event that the retail price changes by 25 percent or more within a  
 4 semiannual period, the commissioner shall issue a revised prepaid state tax rate for the  
 5 remainder of that period.

6 (c)(1) Except as otherwise provided in paragraph (2) of this subsection, in all other  
 7 respects, the tax imposed by this Code section shall be administered and collected and  
 8 penalties and interest shall be imposed in the same manner as the sales and use tax  
 9 collected pursuant to Article 1 of Chapter 8 of this title.

10 (2) Dealers shall be allowed a percentage of the amount of the tax due and accounted for  
 11 and shall be reimbursed in the form of a deduction in submitting, reporting, and paying  
 12 the amount due. The deduction shall be at the rate and subject to the requirements  
 13 specified under subsections (b) through (f) of Code Section 48-8-50."

14 PART II

15 SECTION 4.

16 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,  
 17 is amended by striking Code Section 32-5-21, relating to the priority of expenditures from  
 18 the State Public Transportation Fund, and inserting in its place a new Code Section 32-5-21  
 19 to read as follows:

20 "32-5-21.

21 Subject to the restrictions on expenditures imposed by Code Section 32-5-23, the State  
 22 Public Transportation Fund shall be expended by the department in the following order:

23 (1) To pay the rentals on lease contracts entered into pursuant to the authority of the  
 24 Constitution of Georgia;

25 (2) To pay into the State of Georgia Guaranteed Revenue Debt Common Reserve Fund  
 26 the amount of the highest annual debt service requirements for an issue of guaranteed  
 27 revenue debt for public road projects initiated pursuant to Code Section 32-10-67, upon  
 28 its issuance, when the guarantee of the specific issue has been authorized by an  
 29 appropriation of moneys governed by Article III, Section IX, Paragraph VI(b) of the  
 30 Constitution and the appropriation meets the requirements for such debt as provided by  
 31 Article VII, Section IV, Paragraph III(b) of the Constitution;

32 (3) To pay the costs of operating the department and for any emergencies or unusual  
 33 situations;

1 (4) To pay the costs necessary to comply with the conditions of federal-aid  
 2 apportionments to the state for the planning, surveying, constructing, paving, and  
 3 improving of the public roads in Georgia;

4 (5) Next, a sum equal to at least 15 percent of the State Public Transportation Fund, said  
 5 sum to be used as follows:

6 (A) One-third to pay all or part of the costs of the planning, surveying, constructing,  
 7 improving, paving, and completing public roads not on the state highway system;

8 (B) One-third to pay all or part of the costs of planning, surveying, constructing,  
 9 improving, and paving public roads on the state highway system; and

10 (C) The remaining one-third to pay all or part of the costs of planning, surveying,  
 11 constructing, reconstructing, paving, and improving the public roads of Georgia  
 12 determined by the department to be most in need of such work; and

13 (6) After the requirements set out in the foregoing provisions of this Code section have  
 14 been met, the remainder of the State Public Transportation Fund to be expended to pay  
 15 the costs of maintaining, improving, constructing, and reconstructing the public roads of  
 16 the state highway system, for maintaining roads within and leading to state parks, and for  
 17 constructing public roads by department forces."

#### 18 **SECTION 5.**

19 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
 20 amended by striking Code Section 48-8-3.1, relating to the applicability of sales and use tax  
 21 to motor fuel sales, and inserting in its place a new Code Section 48-8-3.1. to read as follows:

22 "48-8-3.1.

23 (a) Except as provided in subsection (b) of this Code section, sales of motor fuels as  
 24 defined in paragraph (9) of Code Section 48-9-2 shall be exempt from the first 3 percent  
 25 of the sales and use taxes levied or imposed by this article and shall be subject to the  
 26 remaining 1 percent of the sales and use taxes levied or imposed by this article.

27 (b) Sales of motor fuel other than gasoline which motor fuel other than gasoline is  
 28 purchased for purposes other than propelling motor vehicles on public highways as defined  
 29 in Article 1 of Chapter 9 of this title shall be fully subject to the 4 percent sales and use  
 30 taxes levied or imposed by this article unless otherwise specifically exempted by this  
 31 article.

32 (c) It is specifically declared to be the intent of the General Assembly that taxation  
 33 imposed on sales of motor fuel wholly or partially subject to taxation under this Code  
 34 section shall not constitute motor fuel taxes for purposes of any provision of the  
 35 Constitution providing for the automatic or mandatory appropriation of any amount of  
 36 funds equal to funds derived from motor fuel taxes."

**SECTION 6.**

Said title is further amended by striking Code Section 48-9-14, relating to the second motor fuel tax, and inserting in its place a new Code Section 48-9-14 to read as follows:

"48-9-14.

(a) In addition to the motor fuel tax imposed by Code Section 48-9-3, there is imposed a second motor fuel tax.

(b)(1) The motor fuel tax imposed by this Code section is levied at the rate of 3 percent of the retail sale price less the tax imposed by Code Section 48-9-3 upon the sale, use, or consumption, as defined in Code Section 48-8-2, of motor fuel in this state. This tax shall be subject only to the exemptions provided in Code Section 48-9-3.

(2)(A) As used in this paragraph, the term 'prepaid state tax' shall have the same meaning as provided in paragraph (5.1) of Code Section 48-8-2.

(B) At the time the tax imposed by Code Section 48-9-3 attaches to a sale or transfer of motor fuels, a prepaid state tax shall be collected. The same person remitting the tax imposed under Code Section 48-9-3, but on a separate schedule, shall remit the prepaid state tax to the state. The tax shall be separately invoiced throughout the chain of distribution until it reaches the dealer who makes the retail sale. The commissioner shall issue the rate of prepaid state tax on a semiannual basis, rounded to the nearest \$.001 per gallon for use in the following semiannual period. The rate shall be calculated at 4 percent of the state-wide average retail price by motor fuel type as compiled by the Energy Information Agency of the United States Department of Energy, the Oil Pricing Information Service, or a similar reliable published index less taxes imposed under Code Section 48-9-3, this subsection, and all local sales and use taxes. In the event that the retail price changes by 25 percent or more within a semiannual period, the commissioner shall issue a revised prepaid state tax rate for the remainder of that period.

(c)(1) Except as otherwise provided in paragraph (2) of this subsection, in all other respects, the tax imposed by this Code section shall be administered and collected and penalties and interest shall be imposed in the same manner as the sales and use tax collected pursuant to Article 1 of Chapter 8 of this title.

(2) Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50."

