

The Senate Transportation Committee offered the following substitute to SB 39:

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 an up to 1 percent sales tax to be used to fund  
3 transportation projects in special transportation districts within the state; to provide for the  
4 creation of such districts, the governance thereof, and the development of a list of  
5 transportation projects of the district; to provide that each county may opt out of the district;  
6 to provide for the district to pass a resolution calling for a referendum within the district; to  
7 provide for the tax to be levied by the participating counties; to provide for the funds  
8 collected to be deposited in trust accounts; to provide for contracting and constructing of the  
9 transportation projects on the regional lists; to provide for exemptions; to provide for related  
10 matters; to provide for a conditional effective date; to provide for automatic repeal; to repeal  
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

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

16 "ARTICLE 5

17 48-8-220.

18 As used in this article, the term:

19 (1) 'District' means the metropolitan transportation district and special transportation  
20 districts created in Code Sections 48-8-222 and 48-8-223.

21 (2) 'Levy' means the district-wide sales and use tax authorized by Code Section  
22 48-8-221.

23 (3) 'Qualified municipality' means a qualified municipality as defined in Code Section  
24 48-8-110 situated wholly or partly within a district.

25 (4) 'Transportation agency' means a Georgia department or authority authorized by  
26 general law to engage in activities relating to transportation projects or purposes.

27 (5) 'Transportation project' or 'transportation purpose' means, without limitation, roads  
28 and bridges, freight and passenger rail, airports, public transit, buses, seaports, and all  
29 activities and structures useful and incident to providing, operating, and maintaining the  
30 same; provided, however, that 'transportation project' or 'transportation purpose' shall not  
31 include projects which are inconsistent with any state-wide strategic transportation plan  
32 adopted by the General Assembly.

33 (6) 'Voting officials of the district' means the elected officials representing the county,  
34 counties, or qualified municipalities in a district.

35 48-8-221.

36 (a) In accordance with the provisions of Article IX, Section IV, Paragraph V of the  
37 Constitution, on or after January 1, 2011, a single sales and use tax of up to 1 percent may  
38 be levied as provided in this article to fund transportation projects in a district.

39 (b) A county shall be wholly within one transportation district. No county shall be divided  
40 among more than one district. The boundaries of the districts shall be otherwise as  
41 determined by the constituent counties.

42 (c) After the formation of a special transportation district, but prior to the passage of the  
43 resolution calling for imposition of the tax authorized by this article, the governing  
44 authority of any county sharing a boundary with any county within a district may by  
45 resolution opt into such district. Prior to the county governing authority's vote to opt into  
46 the district, the county shall follow the procedures of paragraph (2) of subsection (a) of  
47 Code Section 48-8-223 for meeting with all of the qualified municipalities. In order to add  
48 the county to the district, the governing authorities of the counties within the district must  
49 concur. Not less than ten days prior to a vote on a resolution for such purpose, notice of  
50 the intention of a county to opt into the district shall be transmitted by the governing  
51 authority of such county to the metropolitan transportation district board if created pursuant  
52 to Code Section 48-8-222, to the governing authority of each qualified municipality within  
53 the county proposing to opt into the district, and to the governing authority of each other  
54 county within such district.

55 (d) District projects undertaken pursuant to this article shall not be subject to review or  
56 approval by the Georgia Regional Transportation Authority.

57 48-8-222.

58 (a) There is created within this state a metropolitan transportation district encompassing  
59 and being coterminous with the geographical area on January 1, 2009, of each metropolitan  
60 area planning and development commission that was activated prior to January 1, 1972,  
61 pursuant to Article 4 of Chapter 8 of Title 50. The management and supervision of such  
62 district shall be vested in a district board to consist of those members of the council of the  
63 metropolitan area planning and development commission as provided for by Code Section  
64 50-8-84 holding elective public office, to serve during their service as members of the  
65 commission and until their successors are duly elected and qualified.

66 (b) Each county in a district may select one or more district transportation agencies to be  
67 responsible for designing, planning, and contracting for the construction of district projects.

68 (c) The metropolitan transportation district may authorize the levy provided for by this  
69 article as follows:

70 (1) The district, in cooperation with its constituent counties and qualified municipalities  
71 and its designated transportation agency or agencies, shall propound by resolution a list  
72 of transportation projects to be funded by a district levy. Approval of such resolution  
73 shall require the affirmative vote of a majority of the voting members of the district.  
74 Such resolution shall include:

75 (A) A list of the specific transportation projects to be funded;

76 (B) The approximate cost of such projects, which shall also be the maximum amount  
77 of net proceeds to be raised by the levy;

78 (C) The rate of the levy; and

79 (D) The maximum period of time, to be stated in calendar years, for which the levy  
80 may be imposed;

81 (2) The district resolution provided for by paragraph (1) of this subsection shall be  
82 immediately transmitted to the governing authority of each county and qualified  
83 municipality within the district. Each such governing authority shall thereafter have 45  
84 days from the date of such submission to vote to opt the county out of such district. A  
85 county shall opt out of the district upon the affirmative vote of the county governing  
86 authority on a resolution for such purpose and upon the affirmative vote on resolutions  
87 for such purpose by a majority of the governing authorities of qualified municipalities  
88 representing more than 50 percent of the municipal population of such county according  
89 to the United States decennial census of 2000 or any future such census. Notice of the  
90 opting out of a county shall be immediately transmitted by the governing authority of  
91 such county to the governing authority of each other county within the district, to the  
92 governing authority of each qualified municipality within the county, and to the  
93 governing authority of each county sharing a border with any county within the district;

94 (3) Upon any county opting out of a district pursuant to paragraph (2) of this subsection,  
 95 any remaining constituent county shall have 30 days from the expiration of the 45 day  
 96 period provided for in paragraph (2) of this subsection to opt out of such district by the  
 97 same mechanism and with the same notice provided for in paragraph (2) of this  
 98 subsection;

99 (4) Those counties that do not opt out of a district within the time limits prescribed in this  
 100 subsection and those which opt in pursuant to the provisions subsection (c) of Code  
 101 Section 48-8-221 shall thereafter constitute the special transportation district. The voting  
 102 officials of the district shall be reconstituted to include, pursuant to subsection (c) of  
 103 Code Section 48-8-221, only the elected officials of those counties and qualified  
 104 municipalities included in the special transportation district;

105 (5) The voting officials of the district as reconstituted pursuant to paragraph (4) of this  
 106 subsection shall meet as soon as practicable after the reconstitution of the district. The  
 107 district in cooperation with its constituent counties and qualified municipalities and the  
 108 designated transportation agency or agencies may revise by resolution the list of  
 109 transportation projects, if necessary or advisable, to remove or amend any project planned  
 110 for an area no longer within the district and to add or amend any project for an area that  
 111 was added to the district; and

112 (6) As soon as practicable after the expiration of the time for removal of counties from  
 113 a district and after any revision of such resolution after the removal of any counties from  
 114 the district, the voting officials of the district may by a majority vote submit to electors  
 115 of the district the transportation project list and the question of whether the levy provided  
 116 for by this article should be approved.

117 48-8-223.

118 (a)(1) Special transportation districts not encompassing any part of the metropolitan  
 119 transportation district created pursuant to Code Section 48-8-222 may be created by the  
 120 governing authorities of two or more contiguous counties or by the governing authority  
 121 of a single county.

122 (2) Prior to the issuance of the call for the referendum required by subsection (d) of this  
 123 Code section, the county or counties that desire to levy a tax under this article within the  
 124 special transportation district created pursuant to this Code section shall deliver or mail  
 125 a written notice to the mayor or chief elected official in each municipality located within  
 126 the district. Such notice shall contain the date, time, place, and purpose of a meeting at  
 127 which the governing authorities of the county and of each qualified municipality are to  
 128 meet to discuss possible projects for inclusion in the referendum. The notice shall be

129 delivered or mailed at least ten days prior to the date of the meeting. The meeting shall  
130 be held at least 30 days prior to the issuance of the call for the referendum.

131 (b)(1) Following the meeting required by paragraph (2) of subsection (a) of this Code  
132 section, the governing authority or authorities of the county or counties within the district  
133 may enter into an intergovernmental agreement with each other and with one or more  
134 qualified municipalities within the district containing a combined total of no less than 50  
135 percent of the aggregate municipal population located within the district.

136 (2) At a minimum, the intergovernmental agreement authorized by paragraph (1) of this  
137 subsection shall include the following:

138 (A) A list of the projects and proposals qualifying as transportation purposes proposed  
139 to be funded from the levy;

140 (B) The estimated or projected dollar amounts allocated for each project from proceeds  
141 from the levy authorized by this article;

142 (C) The procedures for distributing proceeds from the levy authorized by this article  
143 to qualified municipalities;

144 (D) A schedule for distributing proceeds from the levy authorized by this article to  
145 qualified municipalities which shall include the priority or order in which projects will  
146 be fully or partially funded;

147 (E) A provision that all transportation projects included in the agreement shall be  
148 funded from proceeds from the levy authorized by this article except as otherwise  
149 agreed;

150 (F) A provision that proceeds from the levy authorized by this article shall be  
151 maintained in separate accounts and utilized exclusively for the specified purposes;

152 (G) Record-keeping and audit procedures necessary to carry out the purposes of this  
153 article; and

154 (H) Such other provisions as the county, counties, and participating municipalities  
155 choose to address.

156 (c)(1) Following the commencement of negotiation, if the parties necessary to an  
157 agreement fail to reach an agreement within 60 days, such parties shall submit the dispute  
158 to nonbinding arbitration, mediation, or such other means of resolving conflicts in a  
159 manner which reflects a good faith effort to resolve the dispute. Any negotiation  
160 agreement reached pursuant to this paragraph shall be in accordance with the  
161 requirements specified in paragraph (2) of this subsection. If the parties fail to reach an  
162 agreement within 60 days of submitting the dispute to nonbinding arbitration, mediation,  
163 or such other means of resolving conflicts, any party necessary to an agreement may file  
164 a petition in superior court of the county seeking resolution of the items remaining in  
165 dispute. Such petition shall be assigned to a judge pursuant to Code Section 15-1-9.1 or

166 15-6-13 who is not a judge in the circuit in which the county is located. The judge  
167 selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in  
168 another circuit. The county and qualified municipalities representing at least 50 percent  
169 of the aggregate municipal population of all qualified municipalities located wholly or  
170 partially within the district shall separately submit to the judge and the other parties a  
171 written best and final offer as to the distribution of the tax proceeds. There shall be one  
172 such offer from the county and one from qualified municipalities representing at least 50  
173 percent of the aggregate municipal population of all qualified municipalities located  
174 wholly or partially within the district. The offer from the county may be an offer  
175 representing the county and any municipalities that are not represented in the offer from  
176 the qualified municipalities representing at least 50 percent of the aggregate municipal  
177 population of all qualified municipalities located wholly or partially within the district.  
178 The visiting or senior judge shall conduct such hearings as the judge deems necessary and  
179 shall render a decision based on, but not limited to, the criteria in paragraph (2) of this  
180 subsection. The judge's decision on the allocation of the levy proceeds shall adopt the  
181 best and final offer of one of the parties but shall also include findings of fact. The judge  
182 shall enter a final order containing a distribution certificate and transmit a copy of it to  
183 the commissioner of revenue. Appeal shall be by application and the decision of the  
184 judge shall be altered only for the judge's disregard of the law, for partiality of the judge,  
185 or for corruption, fraud, or misconduct by the judge or a party.

186 (2) The judge's decision on the allocation of the levy proceeds shall be based upon, but  
187 not be limited to, the following criteria:

188 (A) Assurance of future trip reliability and competitive travel times;

189 (B) Navigation around metropolitan area congestion;

190 (C) Connection of major freight origins and destinations;

191 (D) Creation of limited access facilities for trucks connecting other origins and  
192 destinations;

193 (E) Creation of new capacity for freight rail;

194 (F) Addressing of major bottlenecks;

195 (G) Improvement or grade separation of major at-grade rail crossings;

196 (H) Expansion of access to jobs and linkage of labor markets;

197 (I) Implementation of current transportation plans;

198 (J) Creation of a high-speed or commuter rail network;

199 (K) Enhancement of public mass transit operations and capacity;

200 (L) Maintenance and improvement of existing roads and bridges; and

201 (M) Each jurisdiction's mileage of public roads and vehicle mileage traveled as  
202 determined by the Georgia Department of Transportation.

203 (3) Costs of any conflict resolution under paragraph (1) of this subsection shall be borne  
 204 proportionately by the affected political subdivisions in accordance with the final  
 205 percentage distributions of the proceeds of the levy as reflected by the renegotiated  
 206 certificate or as otherwise ordered by the court.

207 (d)(1) As soon as practicable after the meeting between the governing authorities of the  
 208 county, counties, and qualified cities and the execution of an intergovernmental  
 209 agreement, if applicable, the governing authorities of the counties of the district may by  
 210 a majority vote on a resolution offered for such purpose submit the project list and the  
 211 question of whether the levy provided for by this article should be approved to electors  
 212 of the district in an election called for such purpose and shall notify each county election  
 213 superintendent within the district by forwarding to the superintendent a copy of such  
 214 resolution calling for the imposition of the levy.

215 (2) The resolution authorized by paragraph (1) of this subsection shall describe:

216 (A) The specific transportation projects to be funded;

217 (B) The approximate cost of such projects, which shall also be the maximum amount  
 218 of net proceeds to be raised by the levy; and

219 (C) The maximum period of time, to be stated in calendar years, for which the levy  
 220 may be levied and the rate thereof.

221 (e) Each county in a district may select one or more district transportation agencies to be  
 222 responsible for designing, planning, and contracting for the construction of district projects.

223

224 48-8-224.

225 (a) Except as otherwise provided in this Code section, the procedures for conducting the  
 226 referendum on the question of imposing the levy shall correspond generally to the  
 227 procedures provided for by Part 1 of Article 3 of this chapter, except that the project or  
 228 proposal list provided for by Code Sections 48-8-222 and 48-8-223, or a digest thereof,  
 229 shall be available during regular business hours in the office of the county clerk of each  
 230 county that has authorized the levy.

231 (b) The ballot submitting the question of the imposition of the levy authorized by this  
 232 article to the voters within the special district shall have written or printed thereon the  
 233 following:

234 '( ) YES Shall a special \_\_\_\_\_ percent sales and use tax be imposed in the special  
 235 transportation district consisting of \_\_\_\_\_ County (or Counties) for a

236 ( ) NO period of time not to exceed \_\_\_\_\_ and for the raising of not more than  
 237 an estimated amount of \$ \_\_\_\_\_ for the purpose of transportation?'

238 (c) The election superintendent shall hold and conduct the election under the same rules  
 239 and regulations as govern special elections. The superintendent shall canvass the returns,

240 declare the result of the election, and certify the result to the Secretary of State and to the  
241 commissioner. The expense of the election shall be paid from county funds. All persons  
242 desiring to vote in favor of imposing the levy shall vote 'Yes' and all persons opposed to  
243 imposing the levy shall vote 'No.' If more than one-half of the votes cast throughout the  
244 entire district are in favor of imposing the levy, then the levy shall be imposed as provided  
245 in this article.

246 (d) Where such question is not approved by the voters, the county or counties of the  
247 district may resubmit such question from time to time and may amend such project or  
248 proposal list or digest thereof. Proceedings for the reimposition of such levy shall be in the  
249 same manner as proceedings for the initial imposition of the levy, but the newly authorized  
250 levy shall not be imposed until the expiration of the levy then in effect.

251 (e) Whenever the levy is authorized pursuant to the provisions of this article, the counties  
252 within the approving district shall levy a sales and use tax as provided for by this article,  
253 to be collected as provided by law.

254 48-8-225.

255 The proceeds of a levy authorized by this article shall be transferred to a trust fund  
256 maintained on behalf of the district by the metropolitan district board if created pursuant  
257 to Code Section 48-8-222 or by one of the counties that created the district, a regional  
258 commission, or some other public body agreed to by the county or counties that created the  
259 district if the district was created pursuant to Code Section 48-8-223. Such proceeds are to  
260 be expended as provided for by this article and shall be used exclusively for the purpose  
261 or purposes specified in the resolution calling for imposition of the levy and shall not be  
262 commingled in any manner with any other funds held or received by any county,  
263 municipality, or metropolitan district board.

264 48-8-226.

265 Upon request of the metropolitan district board, if the district was created pursuant to Code  
266 Section 48-8-222, or upon request of the county or counties that created the district, if the  
267 district was created pursuant to Code Section 48-8-223, the district transportation agency  
268 or agencies and the Department of Community Affairs shall cooperate with the district and  
269 its constituent counties and qualifying municipalities, and upon request of such parties shall  
270 be responsible for designing, planning, and contracting for the construction of the projects.

271 48-8-227.

272 Nothing in this article shall be construed to prohibit counties and municipalities located in  
273 a district from imposing as additional taxes local sales and use taxes otherwise authorized  
274 by general law.

275 48-8-228.

276 The levy authorized by this article shall not be imposed in any jurisdiction the electors of  
277 which were not eligible to vote in an election called to approve such levy.

278 48-8-229.

279 The levy authorized by this article shall not be subject to any allocation or balancing of  
280 state and federal funds provided for by general law, nor may such proceeds be considered  
281 or taken into account in any such allocation or balancing.

282 48-8-230.

283 (a) The levy provided for by this article shall only be levied on the first \$5,000.00 of any  
284 transaction regarding a motor vehicle, watercraft, or aircraft.

285 (b) The levy provided for by this article shall not apply to and shall not be levied on:

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

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

291 (3) The sale or use of tangible personal property used in the production or generation of  
292 energy; or

293 (4) The sale or use of energy used in the manufacturing or processing of tangible goods  
294 primarily for resale.

295 48-8-231.

296 Except as otherwise specifically provided in this article, the levy authorized by this article  
297 shall be subject to any sales and use tax exemption which is otherwise imposed by general  
298 law; provided, however, that such levy shall be levied on the sale of food or beverages as  
299 provided for in paragraph (57) of Code Section 48-8-3.

300 48-8-232.

301 A record of projects on which levy proceeds are used shall be maintained by each county  
302 and municipality receiving proceeds from the levy authorized by this article, and a report

303 shall prepared not later than December 31 of each year. Such record and report shall  
304 conform to the requirements of Code Section 48-8-122."

305 **SECTION 2.**

306 This Act shall become effective on January 1, 2011; provided, however, that this Act shall  
307 only become effective on January 1, 2011, upon the ratification of a resolution at the  
308 November, 2010, state-wide general election, which resolution amends the Constitution so  
309 as to authorize regional funding sources for transportation purposes. If such resolution is not  
310 so ratified, this Act shall not become effective and shall stand repealed in its entirety on  
311 January 1, 2011.

312 **SECTION 3.**

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