

Senate Bill 39

By: Senators Mullis of the 53rd, Stoner of the 6th, Williams of the 19th, Reed of the 35th,
Rogers of the 21st and others

AS PASSED SENATE

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:

86 (A) The affirmative vote of the county governing authority on a resolution for such
87 purpose; and

88 (B) If there are one or more municipalities within the county whose area within the
89 county contains more than 50 percent of the population of the county, the affirmative vote
90 on resolutions for such purpose by the governing authorities of qualified municipalities
91 representing more than 50 percent of the population of the county.

92 Only the vote described in subparagraph (A) of this paragraph shall be required for the
93 opt-out if the county is not described in subparagraph (B) of this paragraph. For a county

94 described in subparagraph (B) of this paragraph, the votes described in subparagraphs (A)
 95 and (B) of this paragraph shall be required for the opt-out. All measurements of population
 96 for purposes of this paragraph shall be according to the United States decennial census of
 97 2000 or any future such census. Notice of the opting out of a county shall be immediately
 98 transmitted by the governing authority of such county to the governing authority of each
 99 other county within the district, to the governing authority of each qualified municipality
 100 within the county, and to the governing authority of each county sharing a border with any
 101 county within the district;

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

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

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

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

125 48-8-223.

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

130 (2) Prior to the issuance of the call for the referendum required by subsection (d) of this
131 Code section, the county or counties that desire to levy a tax under this article within the
132 special transportation district created pursuant to this Code section shall deliver or mail
133 a written notice to the mayor or chief elected official in each municipality located within
134 the district. Such notice shall contain the date, time, place, and purpose of a meeting at
135 which the governing authorities of the county and of each qualified municipality are to
136 meet to discuss possible projects for inclusion in the referendum. The notice shall be
137 delivered or mailed at least ten days prior to the date of the meeting. The meeting shall
138 be held at least 30 days prior to the issuance of the call for the referendum.

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

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

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

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

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

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

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

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

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

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

164 (c)(1) Following the commencement of negotiation, if the parties necessary to an
165 agreement fail to reach an agreement within 60 days, such parties shall submit the dispute
166 to nonbinding arbitration, mediation, or such other means of resolving conflicts in a

167 manner which reflects a good faith effort to resolve the dispute. Any negotiation
168 agreement reached pursuant to this paragraph shall be in accordance with the
169 requirements specified in paragraph (2) of this subsection. If the parties fail to reach an
170 agreement within 60 days of submitting the dispute to nonbinding arbitration, mediation,
171 or such other means of resolving conflicts, any party necessary to an agreement may file
172 a petition in superior court of the county seeking resolution of the items remaining in
173 dispute. Such petition shall be assigned to a judge pursuant to Code Section 15-1-9.1 or
174 15-6-13 who is not a judge in the circuit in which the county is located. The judge
175 selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in
176 another circuit. The county and qualified municipalities representing at least 50 percent
177 of the aggregate municipal population of all qualified municipalities located wholly or
178 partially within the district shall separately submit to the judge and the other parties a
179 written best and final offer as to the distribution of the tax proceeds. There shall be one
180 such offer from the county and one from qualified municipalities representing at least 50
181 percent of the aggregate municipal population of all qualified municipalities located
182 wholly or partially within the district. The offer from the county may be an offer
183 representing the county and any municipalities that are not represented in the offer from
184 the qualified municipalities representing at least 50 percent of the aggregate municipal
185 population of all qualified municipalities located wholly or partially within the district.
186 The visiting or senior judge shall conduct such hearings as the judge deems necessary and
187 shall render a decision based on, but not limited to, the criteria in paragraph (2) of this
188 subsection. The judge's decision on the allocation of the levy proceeds shall adopt the
189 best and final offer of one of the parties but shall also include findings of fact. The judge
190 shall enter a final order containing a distribution certificate and transmit a copy of it to
191 the commissioner of revenue. Appeal shall be by application and the decision of the
192 judge shall be altered only for the judge's disregard of the law, for partiality of the judge,
193 or for corruption, fraud, or misconduct by the judge or a party.

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

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

197 (B) Navigation around metropolitan area congestion;

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

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

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

202 (F) Addressing of major bottlenecks;

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

- 204 (H) Expansion of access to jobs and linkage of labor markets;
 205 (I) Implementation of current transportation plans;
 206 (J) Creation of a high-speed or commuter rail network;
 207 (K) Enhancement of public mass transit operations and capacity;
 208 (L) Maintenance and improvement of existing roads and bridges; and
 209 (M) Each jurisdiction's mileage of public roads and vehicle mileage traveled as
 210 determined by the Georgia Department of Transportation.
- 211 (3) Costs of any conflict resolution under paragraph (1) of this subsection shall be borne
 212 proportionately by the affected political subdivisions in accordance with the final
 213 percentage distributions of the proceeds of the levy as reflected by the renegotiated
 214 certificate or as otherwise ordered by the court.
- 215 (d)(1) As soon as practicable after the meeting between the governing authorities of the
 216 county, counties, and qualified cities and the execution of an intergovernmental
 217 agreement, if applicable, the governing authorities of the counties of the district may by
 218 a majority vote on a resolution offered for such purpose submit the project list and the
 219 question of whether the levy provided for by this article should be approved to electors
 220 of the district in an election called for such purpose and shall notify each county election
 221 superintendent within the district by forwarding to the superintendent a copy of such
 222 resolution calling for the imposition of the levy.
- 223 (2) The resolution authorized by paragraph (1) of this subsection shall describe:
- 224 (A) The specific transportation projects to be funded;
 225 (B) The approximate cost of such projects, which shall also be the maximum amount
 226 of net proceeds to be raised by the levy; and
 227 (C) The maximum period of time, to be stated in calendar years, for which the levy
 228 may be levied and the rate thereof.
- 229 (e) Each county in a district may select one or more district transportation agencies to be
 230 responsible for designing, planning, and contracting for the construction of district projects.
 231
 232 48-8-224.
- 233 (a) Except as otherwise provided in this Code section, the procedures for conducting the
 234 referendum on the question of imposing the levy shall correspond generally to the
 235 procedures provided for by Part 1 of Article 3 of this chapter, except that the project or
 236 proposal list provided for by Code Sections 48-8-222 and 48-8-223, or a digest thereof,
 237 shall be available during regular business hours in the office of the county clerk of each
 238 county that has authorized the levy.

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

242 '() YES Shall a special _____ percent sales and use tax be imposed in the special
 243 transportation district consisting of _____ County (or Counties) for a
 244 () NO period of time not to exceed _____ and for the raising of not more than
 245 an estimated amount of \$ _____ for the purpose of transportation?'

246 (c) The election superintendent shall hold and conduct the election under the same rules
 247 and regulations as govern special elections. The superintendent shall canvass the returns,
 248 declare the result of the election, and certify the result to the Secretary of State and to the
 249 commissioner. The expense of the election shall be paid from county funds. All persons
 250 desiring to vote in favor of imposing the levy shall vote 'Yes' and all persons opposed to
 251 imposing the levy shall vote 'No.' If more than one-half of the votes cast throughout the
 252 entire district are in favor of imposing the levy, then the levy shall be imposed as provided
 253 in this article.

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

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

262 48-8-225.

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

272 48-8-226.

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

279 48-8-227.

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

283 48-8-228.

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

286 48-8-229.

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

290 48-8-230.

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

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

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

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

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

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

303 48-8-231.

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

308 48-8-232.

309 (a) A record of projects on which levy proceeds are used shall be maintained by each
310 county and municipality receiving proceeds from the levy authorized by this article, and
311 a report shall prepared not later than December 31 of each year. Such record and report
312 shall conform to the requirements of Code Section 48-8-122.

313 (b) The Department of Transportation shall conduct continuing studies and monitoring of
314 the status of economic parity throughout the State of Georgia for the contracting of
315 transportation projects with particular emphasis on its procurement practices."

316 **SECTION 2.**

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

323 **SECTION 3.**

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