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## REVENUE AND TAXATION State and Local Taxation, Financing, and Service Delivery Revision Act of 2004: Provide for the Comprehensive Revision of Provisions Relating to State and Local Taxation, Financing, and Service Delivery; Change Certain Provisions Regarding the Function of the Georgia Commission on Interstate Cooperation; Change Certain Provisions Regarding the Status of the Council of State Governments and Certain Related Organizations; Change Certain Provisions Regarding the Homestead Exemption by Qualified Disabled Veterans, Filing Requirements, Periodic Substantiation of Eligibility, and Persons Eligible

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Without Application; Change Certain Provisions Regarding Limitations with Respect to Local Sales and Use Taxes; Provide for Certain Exemptions; Change Certain Provisions Regarding the Joint County and Municipal Sales Tax and Provide for an Optional Rate Increase to Two Percent with Respect to Imposition by Certain Consolidated Governments; Provide for Imposition of This Tax at the Rate of Two Percent by Consolidated Governments; Provide for Additional Procedures, Conditions, and Limitations with Respect to Certain Water and Sewer Projects or Costs with Respect to the Special County One Percent Sales and Use Tax; Provide for the Levy and Collection of a Municipal Water and Sewer Projects or Costs Sales and Use Tax; Provide for Powers, Duties, and Authority of Municipal Governing Authorities with Respect to This Tax; Provide for Powers, Duties and Authority of the State Revenue Commissioner with Respect to this Tax; Provide for a Discontinuation of This Tax; Provide for Comprehensive Provisions to Provide Funding to Local Governments for Service Delivery Costs Through Certain Sales and Use Taxation; Provide for Comprehensive Provisions to Address Changes

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in Land Use Classification that Increase Service Delivery and Infrastructure Costs to Local Governments; Provide for Creation of Special Districts; Provide a Special District Sales and Use Tax; Provide for the Rate and Manner of Imposition of This Tax; Provide for Collection and Administration of This Tax; Provide for Returns; Provide for Distribution and Expenditure of Proceeds; Change Certain Provisions Regarding Annexation; Change Certain Provisions Regarding Land Use Classification Objections; Require Annual Publication of Certain Information Regarding Collection and Expenditure of the Proceeds of the Special Purpose One Percent Sales and Use Tax; Exempt from Ad Valorem Taxation Certain Motor Vehicles Owned by Persons Who Have Been Awarded the Medal of Honor; and for Other Purposes

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## REVENUE AND TAXATION

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***Provisions Regarding Land Use Classification Objections; Require Annual Publication of Certain Information Regarding Collection and Expenditure of the Proceeds of the Special Purpose One Percent Sales and Use Tax; Exempt from Ad Valorem Taxation Certain Motor Vehicles Owned by Persons Who Have Been Awarded the Medal of Honor; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 28-6-3, -7, 36-36-2, -6, -11, 36-66-4, 36-70-24, 48-5-48 (amended), -478.3 (new), 48-8-6 (amended), -96 (new), -110, -111, -111.1, -112, -113, -115, -120, -121 (amended), -122 (new), 48-8-200 to -212 (new)
BILL NUMBER:	HB 709
ACT NUMBER:	443
GEORGIA LAWS:	2004 Ga. Laws 4125
SUMMARY:	The Act provides authority for Fulton County to call a referendum on a special purpose local option sales tax increase to eight percent for the County to use to pay for water, sewer projects, and associated costs. If Fulton County does not call a referendum within ten days of the grant of authority, or if the referendum fails to pass, the Act provides authority for the City of Atlanta to call a referendum on a one percent special purpose local option sales tax increase for the City to use to pay for water and sewer projects and associated costs. The Act also provides the authority for a consolidated government, with a freeze on property tax assessments in place, to call a referendum on a one percent special purpose local option sales tax increase that the government entity may use to pay for governmental operations. The

Act also affects areas beyond the scope of this legislative review, which focuses on the Act's amendments for local option sales taxes.

**EFFECTIVE DATES:**

O.C.G.A. §§ 28-6-3, -7, 48-5-478.3, 48-8-6, -96, -200 to -212, April 23, 2004,<sup>1</sup> O.C.G.A. §§ 36-36-2, -6, -11, 36-66-4, 36-70-24, 48-5-48, -478.3, 48-8-110, -111, -111.1, -112, -113, -115, -120 to -122, July 1, 2004

*History*

In 1998 and 1999, the City of Atlanta entered into two consent agreements to settle a federal lawsuit brought by the state Environmental Protection Division, clean water advocates, and the federal Environmental Protection Agency.<sup>2</sup> The consent agreements compel the City to clean up its sewers and to limit the amount of untreated wastewater allowed to enter its rivers.<sup>3</sup> To comply, the City developed a five-year, three-billion dollar plan to repair the sewer system; the plan involves constructing subterranean viaducts to store runoff and sewage that the City can then pump to treatment facilities, thereby decreasing the "frequency and severity of untreated sewage."<sup>4</sup> To finance the project, Mayor Shirley Franklin proposed an increase in the City's residential water and sewer rates of forty-five percent, three times the then-current rates.<sup>5</sup> In December 2003, the Atlanta City Council rejected Mayor Franklin's plan, passing a one percent rate increase for one year and eliminating it for subsequent years.<sup>6</sup> Mayor Franklin subsequently vetoed the rates

1. See 2004 Ga. Laws 443, § 23, at 102. The Act became effective upon approval by the Governor. *See id.*

2. See Ty Tagami, *City Council Guts Sewer Rate Plan*, ATLANTA J. CONST., Dec. 2, 2003, at A1, available at 2003 WL 68976215 [hereinafter *City Council*]; Editorial, *Our Opinions: It Stinks That City Must Fix Its Sewers Without Help*, ATLANTA J. CONST., Oct. 15, 2003, at A14, available at 2003 WL 64044562 [hereinafter *It Stinks*].

3. See *City Council*, *supra* note 2.

4. *It Stinks*, *supra* note 2.

5. See *id.*; *City Council*, *supra* note 2; E-mail from Sen. Kasim Reed, Senate District No. 35, to Jeff Rickman, Editor-in-Chief, Georgia State University Law Review (Dec. 1, 2004 09:26:00 EST) [hereinafter *Reed E-mail*] (on file with the Georgia State University Law Review).

6. See *City Council*, *supra* note 2; *Reed E-mail*, *supra* note 5.

adopted by the City Council because they were not large enough to meet the financial requirements of the sewer overhaul plan.<sup>7</sup>

This standoff created a problem for the City of Atlanta because of the serious economic harm that could result.<sup>8</sup> Failure to abide by the consent decrees could lead to sanctions, including a moratorium on additional water and sewer growth that might cause a decrease in Atlanta's future economic development.<sup>9</sup> To further complicate the matter, the City needed to sell bonds to finance the sewer overhaul but the City Council's rate proposal would not provide sufficient revenue to make the required bond payments.<sup>10</sup>

Late in December 2003, Governor Sonny Perdue announced a proposal to assist the City of Atlanta by making a \$50 million annual low-interest loan available over the next ten years.<sup>11</sup> Although this assistance was welcome, it would not have made a significant dent in the amount of money the overhaul required.<sup>12</sup> However, in addition to the proposal by Governor Perdue, Senate President Pro Tem Eric Johnson of the 1st district proposed the introduction of legislation for a referendum on a city-wide sales tax increase that could raise another \$350 to \$500 million over five years.<sup>13</sup>

Along with Atlanta, the City of Columbus was also trying to address financial problems and sought help from the General Assembly.<sup>14</sup> Columbus was already pushing the limits on raising money from property taxes for operations and had, for more than ten years, sought permission to levy an additional one percent sales tax.<sup>15</sup>

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7. See Ty Tagami, *Mayor's Veto Puts Sewer Rate in Limbo*, ATLANTA J. CONST., Dec. 10, 2003, at A1, available at 2003 WL 68977294 [hereinafter *Mayor's Veto*].

8. See *id.*

9. See *id.*

10. See *id.*

11. See Ty Tagami & Jim Tharpe, *Perdue Offers Sewer Money*, ATLANTA J. CONST., Dec. 24, 2003, at A1, available at 2003 WL 68979069.

12. See *id.*

13. See *id.*

14. See Jim Houston, *And They're Off: Area Delegation Tries Creative Ways to Revive Bill for Local Sales Tax Vote*, COLUMBUS LEDGER-ENQUIRER, Jan. 13, 2004, available at 2004 WL 57206277.

15. See *id.*

*Bill Tracking of HB 709**Subjects Not Explored in This Legislative Review*

HB 709 addresses other revenue and taxation issues that are not the focus of this legislative review.<sup>16</sup> Other areas addressed in HB 709 include the following: (1) providing property tax relief for the Southern Legislative Conference; (2) increasing homestead exemptions for disabled veterans; (3) exempting cars driven by Medal of Honor recipients from tax; and (4) resolving an annexation dispute between cities and counties.<sup>17</sup>

*HB 709, As Introduced*

Representatives Kathy Ashe, Bob Holmes, JoAnn McClinton, and Calvin Smyre of the 42nd, 48th, 59th, and 111th districts, respectively, sponsored HB 709.<sup>18</sup> The bill's authors engaged in "extensive conversations with Mayor Franklin."<sup>19</sup> The House first read HB 709 on March 6, 2003.<sup>20</sup> The House read the bill a second time on March 24, 2003.<sup>21</sup> The Speaker assigned the bill to the House Committee on Ways and Means that same day.<sup>22</sup> The House Committee favorably reported on the bill, as introduced, on March 27, 2003.<sup>23</sup>

HB 709, as introduced, would have revised Code subsection 48-8-6(b)(2), removing the requirement that a jointly owned city-county water authority administer the Special Purpose Local Option Sales

16. See HB 709 (CCS), 2003 Ga. Gen. Assem.

17. See *id.*; Audio Recording of House Proceedings, Apr. 8, 2003 (remarks by Rep. Richard Royal), at [http://www.georgia.gov/00/channel\\_title/0,2094,4802\\_6107103,00.html](http://www.georgia.gov/00/channel_title/0,2094,4802_6107103,00.html) [hereinafter House Audio].

18. HB 709, as introduced, 2003 Ga. Gen. Assem.

19. Reed E-mail, *supra* note 5. Mayor Franklin communicated with the bill's authors, noting that issues such as rollback flexibility would be central to the bill's passage. *Id.*; see also Audio Recording of Senate Proceedings, Feb. 9, 2004 (remarks by Sen. Kasim Reed), at [http://www.georgia.gov/00/channel\\_title/0,2094,4802\\_6107103,00.html](http://www.georgia.gov/00/channel_title/0,2094,4802_6107103,00.html) [hereinafter Senate Audio] (noting that the process of developing the legislation involved many parties, including Mayor Franklin, over the previous two years).

20. State of Georgia Final Composite Status Sheet, HB 709, Mar. 6, 2003 (May 19, 2004).

21. State of Georgia Final Composite Status Sheet, HB 709, Mar. 24, 2003 (May 19, 2004).

22. *Id.*

23. State of Georgia Final Composite Status Sheet, HB 709, Mar. 27, 2003 (May 19, 2004).



Tax (“SPLOST”) law.<sup>24</sup> Representative Ashe characterized the bill as a correction for a “tiny problem” created the year before.<sup>25</sup> There was no further debate on the bill in the House in 2003.<sup>26</sup>

### *Passage by the House*

By a 166 to 0 vote, the House passed HB 709 on April 8, 2003.<sup>27</sup> The House immediately transmitted HB 709 to the Senate for consideration.<sup>28</sup>

### *The Senate Finance Committee Substitute to HB 709*

The Senate read HB 709 for the first time on April 8, 2003, and the Senate President assigned it to the Senate Finance Committee.<sup>29</sup> The Committee favorably reported the bill, by substitute, on April 17, 2003, but the bill did not pass during the 2003 legislative session.<sup>30</sup> The Senate recommitted the bill on January 12, 2004, and the Senate Committee again favorably reported the bill, by substitute, on February 5, 2004.<sup>31</sup> Senator Vincent Fort of the 39th district introduced two floor amendments on February 9, 2004, but both amendments failed to pass.<sup>32</sup> Senator Fort proposed amendment 1 to remove an exemption in the bill for automobile dealerships within the city limits of Atlanta.<sup>33</sup> Amendment 2 proposed a specific rollback provision of the City’s residential water and sewer rates for every dollar of revenue received from the new tax.<sup>34</sup> Amendment 1 failed by a vote of 5 to 48.<sup>35</sup> Amendment 2 failed by a vote of 9 to 47.<sup>36</sup>

24. See HB 709, as introduced, 2003 Ga. Gen. Assem.; House Audio, *supra* note 17 (remarks by Rep. Richard Royal).

25. See House Audio, *supra* note 17 (remarks by Rep. Kathy Ashe).

26. See *id.*

27. Georgia House of Representatives Voting Record, HB 709 (Apr. 8, 2003).

28. State of Georgia Final Composite Status Sheet, HB 709, Apr. 8, 2003 (May 19, 2004).

29. See *id.*

30. See State of Georgia Final Composite Status Sheet, HB 709, Apr. 17, 2003 (May 19, 2004).

31. State of Georgia Final Composite Status Sheet, HB 709, Jan. 12, 2004 (May 19, 2004); State of Georgia Final Composite Status Sheet, HB 709, Feb. 5, 2004 (May 19, 2004).

32. See Failed Senate Floor Amendments to HB 709, introduced by Sen. Vincent Fort, Feb. 9, 2004; Senate Information Report for Monday, February 9, 2004 at [http://www.legis.state.ga.us/legis/2003\\_04/sinfo/daily14b.htm](http://www.legis.state.ga.us/legis/2003_04/sinfo/daily14b.htm).

33. See *id.*

34. See *id.*

35. Senate Information Report for Monday, February 9, 2004 at [http://www.legis.state.ga.us/legis/2003\\_04/sinfo/daily14b.htm](http://www.legis.state.ga.us/legis/2003_04/sinfo/daily14b.htm).

The Senate subsequently adopted the Committee substitute and passed HB 709 on February 9, 2004 by a vote of 49 to 6.<sup>37</sup> The Senate Committee substitute allowed municipalities, like the City of Atlanta, to call a referendum on a one percent sales tax increase to generate revenue to pay for “court ordered storm-water and waste-water systems capital outlay or repair projects.”<sup>38</sup> The substitute also included a provision permitting a consolidated government with a freeze on property tax assessments in place to call a referendum for up to a two percent sales tax increase for government operations.<sup>39</sup> Senator Kasim Reed of the 35th district spoke for the part of the bill that focused on the City of Atlanta.<sup>40</sup> The Senator explained and reviewed the bill section by section and fielded questions.<sup>41</sup> Senator Seth Harp of the 16th district spoke for the part of the bill that focused on the City of Columbus.<sup>42</sup>

*The House Amendment to the Senate Committee Substitute to HB 709*

The House amended the Senate Committee substitute to HB 709 by removing all language relating to a sales tax referendum for water and sewer projects by municipalities.<sup>43</sup> The House subsequently adopted the amendment and passed HB 709 on March 15, 2004 by a vote of 140 to 16.<sup>44</sup>

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36. *Id.* Of course, if the City Council or County Commission does not exercise its oversight responsibilities properly, the General Assembly can always revisit the issue and amend the Act to insert a rollback provision. See Reed E-mail, *supra* note 5. At the time the amendment was debated, however, Sen. Reed, among others, felt that due to the technical elements of the bill it would have been careless to insert a rollback provision without approval by the Office of Legislative Counsel. *Id.* Further, Sen. Reed believed the City’s ability to secure debt could have been limited by the inclusion of a rollback provision if there was uncertainty over the incoming revenue available to secure bonds. See Senate Audio, *supra* note 19.

37. *Id.*

38. HB 709 (SCS), 2004 Ga. Gen. Assem.

39. See *id.* The City of Columbus was the only city that met the requirement when the General Assembly debated HB 709. See Tom Baxter & Jim Galloway, *Now That It’s Among Democratic Friends, Expect Atlanta’s Save-Our-Sewers Bill to Get Picked Apart*, ATLANTA J. CONST., Feb. 10, 2004, at B4, available at <http://www.ajc.com/metro/content/metro/insider/0204a/021004.html>.

40. See Senate Audio, *supra* note 19.

41. Reed E-mail, *supra* note 5.

42. See Senate Audio, *supra* note 19.

43. Compare HB 709 (HFA), 2003 Ga. Gen. Assem., with HB 709 (SCS), 2003 Ga. Gen. Assem.

44. State of Georgia Final Composite Status Sheet, HB 709, Mar. 15, 2004 (May 19, 2004); Georgia House of Representatives Voting Record, HB 709 (Mar. 15, 2004).

*The Conference Committee Report on HB 709*

The Senate disagreed with the House amendment to the bill on March 22, 2004.<sup>45</sup> On March 25, 2004, the House insisted on its position.<sup>46</sup> Later that same day, both the House and the Senate appointed a Conference Committee to consider HB 709.<sup>47</sup> The House Conference Committee members were Representatives Kathy Ashe, LaNett Stanley-Turner, and Richard Royal of the 42nd, 43rd, and 140th districts, respectively.<sup>48</sup> The Senate Conference Committee members were Senators Casey Cagle, Eric Johnson, and Kasim Reed of the 49th, 1st, and 35th districts, respectively.<sup>49</sup> The Conference Committee reported its version of the bill on April 7, 2004 and recommended “that both the Senate and the House of Representatives recede from their positions” and adopt the Conference Committee substitute to HB 709.<sup>50</sup> On April 7, 2004, the final day of the 2004 legislative session, both the Senate and the House of Representatives adopted the Conference Committee report and passed the bill, a 40 page document, by votes of 40 to 8 and 127 to 34, respectively.<sup>51</sup> On April 16, 2004, the General Assembly forwarded the bill to Governor Perdue, who signed the bill on April 23, 2004.<sup>52</sup>

*The Act*

The Act amends Code section 48-8-6 to except those municipalities with an average wastewater system flow of more than 85 million gallons per day from the limitation on sales and use taxes for water or sewer capital projects.<sup>53</sup> The Act further amends Chapter 8 of Title 48 to add a new article—Article 4—that provides

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45. State of Georgia Final Composite Status Sheet, HB 709, Mar. 22, 2004 (May 19, 2004).

46. State of Georgia Final Composite Status Sheet, HB 709, Mar. 25, 2004 (May 19, 2004).

47. *Id.*

48. HB 709 (CCS), 2004 Ga. Gen. Assem.

49. *Id.*

50. *Id.*; State of Georgia Final Composite Status Sheet, HB 709, Apr. 7, 2004 (May 19, 2004).

51. State of Georgia Final Composite Status Sheet, HB 709, Apr. 7, 2004 (May 19, 2004); Georgia Senate Voting Record, HB 709 (Apr. 7, 2004); Georgia House of Representatives Voting Record, HB 709 (Apr. 7, 2004).

52. State of Georgia Final Composite Status Sheet, HB 709, Apr. 16, 2004 (May 19, 2004); State of Georgia Final Composite Status Sheet, HB 709, Apr. 23, 2004 (May 19, 2004).

53. Compare O.C.G.A. § 48-8-6 (Supp. 2004), with 2003 Ga. Laws 343, § 13, at 686 (formerly found at O.C.G.A. § 48-8-6 (2003)).

definitions, conditions, limitations, and the mechanism for a municipality to hold a referendum on the tax, as well as the conditions, limitations, and procedures for imposing the tax if the voters approve it.<sup>54</sup> The Act further amends Code sections 48-8-110, -111 to -113, -115, -120, and -121 to provide definitions, conditions, limitations, and the mechanism for a county to hold a referendum on the tax and to provide the conditions, limitations, and procedures for imposition of the tax if the voters approve it.<sup>55</sup> The Act further amends Code section 48-8-122 to provide for public reporting and publication annually by the county or municipality to show the projects to which the government applied the tax revenue and to show additional financial information.<sup>56</sup>

The Act also adds a new Code section—48-8-96—to provide for an increase in the sales and use tax of one percent by a “consolidated government created by the consolidation of a county and one or more municipalities in which consolidated government homestead property . . . is valued . . . according to a . . . value which does not change.”<sup>57</sup> Code section 48-8-96 provides definitions, conditions, limitations, and the mechanism for a consolidated government to hold a referendum on the tax and provides the conditions, limitations, and procedures for imposition of the tax if the voters approve it.<sup>58</sup>

### *Analysis*

The Act immediately provided the City of Atlanta with two opportunities to have a tax referendum that could provide revenue to pay for the sewer repairs and upgrades.<sup>59</sup> The first opportunity was for Fulton County to place the referendum on the ballot.<sup>60</sup> Prior to passage of the Act, previous efforts by the City to persuade the County to call a vote had failed, and it was considered unlikely that

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54. O.C.G.A. §§ 48-8-200 to -212 (Supp. 2004).

55. See O.C.G.A. §§ 48-8-110, -111 to -113, -115, -120, -121 (Supp. 2004).

56. See O.C.G.A. § 48-8-122 (Supp. 2004).

57. O.C.G.A. § 48-8-96 (Supp. 2004).

58. See *id.*

59. See Ernie Suggs, *Atlanta Gets Right to Call Sewer Vote*, ATLANTA J. CONST., Apr. 8, 2004, available at <http://www.ajc.com/metro/content/metro/legislature/0404/08legsewer.html> [hereinafter *Atlanta Gets Right*].

60. See *id.*

the County would change its position.<sup>61</sup> However, if Fulton County refused to call a referendum vote or if a county referendum failed, the Act provided the City with a second opportunity by permitting it to place a city-only referendum on the ballot.<sup>62</sup>

After passage of the Act, the Fulton County Commission once again considered a request from the City of Atlanta to place the tax referendum on the ballot, but on May 5, 2004 a motion to approve a resolution to impose a vote on the tax failed.<sup>63</sup> Alternatively, the Fulton County Commission approved a substitute resolution that formally denied the request in order to allow the City additional time to place a referendum on the ballot.<sup>64</sup>

On May 7, 2004, the Atlanta City Council “unanimously approved an ordinance . . . allowing for a one percent Municipal Option Sales Tax referendum on the July 20th Special Election Ballot.”<sup>65</sup> Subsequently, on July 20, 2004, 74.70% of the residents of the City of Atlanta who voted approved the special one percent sales and use tax referendum, with only 25.30% of voters rejecting it.<sup>66</sup> With the referendum’s approval, collection of the additional tax began October 1, 2004, with the City’s first receipts expected by early December.<sup>67</sup>

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61. See *id.*; Ernie Suggs, *Perdue Boosts Sewer Plan*, ATLANTA J. CONST., Apr. 28, 2004, at B1, available at 2004 WL 77159761 [hereinafter *Perdue Boosts*].

62. See *Atlanta Gets Right*, *supra* note 59.

63. See Fulton County Commission Minutes of Regular Meeting 191-94 (May 5, 2004), at <http://mm1.co.fulton.ga.us/repository/00000/669/RM/040505JB.pdf> (recording the version of resolution 04-0525 to impose a sales tax failed by a vote of 2 -3-0) [hereinafter *Fulton Minutes*].

64. See *Fulton Minutes supra* note 63, at 194-95 (recording the follow-on version of resolution 04-0525 to deny the City of Atlanta’s request for the Commission to impose a sales tax carried by a vote of 5-0-0). The Commission had the option to do nothing in regards to the City’s request and after 10 days from receipt of notice, the City could have acted on its own. See *Fulton Minutes supra* note 63, at 194; Press Release, Atlanta City Council, Schedule for Electing Permanent Replacement and Temporary Representative for Vacated Atlanta City Council District 12 Seat and Placing Sales Tax Referendum on Election Ballot (May 4, 2004), at <http://apps.atlantaga.gov/citycoul/press/98.htm> (providing election timeline and process for placing sales tax referendum on the July 20, 2004 Special Election ballot if Fulton County Commission refused to call for referendum or did not act). By passing a resolution to formally deny the City’s request before the 10 day period was exhausted, the Commission’s intent was to provide the City with more time to attempt to place the Municipal Option Sales Tax referendum on the July 20, 2004 ballot. See *Fulton Minutes, supra* note 63, at 194-95.

65. Atlanta City Council press release, *Atlanta City Council Approves Ordinance Allowing 1 Percent Sales Tax Referendum on July 20th Special Election Ballot* (May 7, 2004), at <http://apps.atlantaga.gov/citycoul/press/99.htm> (noting ordinance 04-R-0884 was “approved . . . by a vote of 9 to 0 . . .”).

66. Memorandum from City of Atlanta Office of Municipal Clerk to the Council President and All Members of the Council, *Re: Official Election Results City of Atlanta July 20, 2004 Election* (Aug. 16, 2004), at <http://apps.atlantaga.gov/citycoul/2004/IMAGES/adopted/0816/04C1465.pdf>.

67. See Ty Tagami, *8-Cent Sales Tax Takes Effect Today Extra Penny to Help Atlanta Fix Sewer Woes*, ATLANTA J. CONST., Oct. 1, 2004, at E1, available at 2004 WL 94293838 [hereinafter *Sales Tax Takes Effect*].

Once the voters approved the City referendum, the tax rate in that jurisdiction became the highest in the State at eight percent.<sup>68</sup> However, the rate increase could “generate as much as \$100 million annually and help pay for \$3.2 billion in repairs and upgrades . . . . [It will] ensure that future generations have clean water.”<sup>69</sup>

Because the Act only provided Fulton County or the City of Atlanta with permission to call a referendum, there are few, if any, unintended consequences as a result of the bill.<sup>70</sup> Atlanta Mayor Shirley Franklin’s administration has expressed its intent to utilize revenue generated by a sales tax increase to permit a reduction in the City’s water and sewer rates.<sup>71</sup> However, because the Act provides for the potential extension of the sales tax for up to 12 years, the lack of a binding obligation on the City to offset water and sewer rates is a proper concern and will require the City Council of Atlanta to maintain proper and vigilant supervision of the tax revenue application.<sup>72</sup> Additionally, the wastewater flow gallon requirement

68. See *Perdue Boosts*, *supra* note 61; *Sales Tax Takes Effect*, *supra* note 67.

69. *Atlanta Gets Right*, *supra* note 59 (quoting Atlanta Mayor Shirley Franklin). Most estimates put the revenue amount closer to \$70 million annually, with a Georgia State University report projecting \$85 million in revenue in 2005. See Tedra DeSue, *Georgia: Tax Eases Rate Hikes*, THE BOND BUYER, Oct. 28, 2004, at 31, available at 2004 WL 97039050; *Sales Tax Takes Effect*, *supra* note 67. It is also notable that the referendum approval was an important factor in an improved outlook on the city’s wastewater bond debt by the rating agencies. See Tedra DeSue, *At Long Last, Atlanta on Verge of \$865M Water-Sewer Deal*, THE BOND BUYER, Sep. 9, 2004, at 1, available at 2004 WL 79893070 (noting one agency’s rating upgrade and the outlook change of other agencies from negative to positive “reflect[ed] the approval of Atlanta voters in July of a one-cent . . . sales tax”).

70. See Telephone Interview with Sen. Kasim Reed, Senate District No. 35 (May 26, 2004) [hereinafter Reed Interview]; Telephone Interview with Sen. Vincent Fort, Senate District No. 39 (June 29, 2004).

71. See *Perdue Boosts*, *supra* note 61; see also Reed Interview, *supra* note 70. City projections are that the water and sewer rate increase will only be 9% with the tax, as opposed to 45% without the tax. See John Sherman, *Atlanta Should Cut Costs Rather Than Raise Sales Tax*, ATLANTA J. CONST., June 11, 2004, at A15, available at 2004 WL 81363198.

72. See Reed Interview, *supra* note 70. It is notable that, prior to any referendum vote, “[t]he Atlanta City Council . . . passed an ordinance ordering that every dollar collected from a penny sales tax . . . must be used to roll back water and sewer rates.” Editorial, *Cast a Vote for Relief: Atlanta Residents Should Approve an Extra Penny Sales Tax to Help with Rebuilding the Sewer System*, ATLANTA J. CONST., June 11, 2004, A14, available at 2004 WL 81363195. However, the ordinance does not provide specifics on how the rates will be rolled back, so the Council may consider alternative ways to alter the rate structure, which could “benefit some ratepayers at the expense of others.” Ty Tagami, *Council Tweaks Sewer Rate Breaks*, ATLANTA J. CONST., July 28, 2004, at B1, available at 2004 WL 85898435; see also *Sales Tax Takes Effect*, *supra* note 67. On November 15, 2004, the Atlanta City Council adopted an ordinance that established a new water rate structure. See City of Atlanta ordinance 04-O-1946 (Nov. 15, 2004), at <http://apps.atlantaga.gov/citycoul/2004/IMAGES/adopted/1115/04O1946.pdf>. The ordinance also included an obligation for the City of Atlanta to review and revise the water and sewer rates annually to “reduce the rates for all . . . customers in appropriate proportion . . . [and included a near term obligation] that, where possible, the rates . . . [would] be adjusted further according to [the sales tax revenue] projection.” *Id.*

in the Act is sufficiently high to preclude all other municipalities in the State from being able to utilize the provision and call for a tax referendum.<sup>73</sup> Finally, it is not expected that any cities will grow to surpass this threshold within the potential lifetime of the sales tax increase.<sup>74</sup>

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73. See Reed Interview, *supra* note 70.

74. See *id.*