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TRANSPORTATION FUNDING

Transportation Funding: Proposing an Amendment to the Constitution so as to Provide for State-Wide and Regional Funding Mechanisms for Transportation Purposes; Provide That an Amount Equal to the State Sales and Use Tax Collected on Sales of Motor Fuels Not Otherwise Exempted by General Law Shall be Appropriated for Any or All Transportation Purposes; Authorize the General Assembly to Allocate and Specify and Direct the Use of Such Funds by General Law; Provide for a 1 Percent Regional Local Option Sales and Use Tax for a Specified Period of Time to

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Fund Specific Transportation Purposes on a Regional Basis; Provide for Procedures, Conditions, and Limitations; Provide for the Submission of This Amendment for Ratification or Rejection; and for Other Purposes

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Bill Number:

SR 845

Summary:

This resolution would have amended the Constitution making it legal for special transportation districts to impose a 1 percent local option sales and use tax for various transportation projects. Voters in these regional districts would have had the authority to vote to impose such a tax. SR 845 did not pass. While the resolution's enabling legislation did pass, it remains ineffective because of SR 845's failure to pass.

Effective Date:

N/A

History

Georgia transportation projects currently suffer from a severe lack of funding.¹ As a result, various departments are forced to delay or

1. Interview with Senator Jeff Mullis (R-53rd) (Apr. 8, 2008) (on file with the Georgia State

cancel numerous capital improvement projects.² The Georgia Department of Transportation (DOT), for instance, “recently announced that it had removed 510 projects from its six-year project list.”³ Similarly, the Atlanta Regional Commission stated “it is currently expecting to cut anywhere from \$4.4 billion to \$7 billion in projects from its 25-year Atlanta Regional Transportation Plan.”⁴ Meanwhile, citizens now face some of the worst traffic in the state’s history.⁵

A recent study performed by the Texas Transportation Institute ranked Atlanta as the second-worst city in the nation in terms of traffic delay.⁶ House Speaker, Glenn Richardson (R-19th),⁷ translated the issue into economic terms in his latest floor address, asking “[h]ow much money is [traffic] costing us in lost productivity?”⁸ The problem has risen to such a level that a number of interested organizations have independently submitted several alternative proposals seeking to begin a remedial process.⁹ Senate Resolution 845, introduced by Senator Jeff Mullis (R-53rd), is among these proposals, and is colloquially referred to as “the transportation special purpose local option sales tax,” or TSPLOST.¹⁰

University Law Review) [hereinafter Mullis Interview].

2. DAVID SJOQUIST ET AL., TRANSPORTATION FUNDING ALTERNATIVES: A PRELIMINARY ANALYSIS, FISCAL RESEARCH CENTER REPORT NO. 138, Transportation, at ii, 1 (Jan. 2007).

3. *Id.* at 1.

4. *Id.*

5. See generally DAVID SCHRANK & TIM LOMAX, TEXAS TRANSPORTATION INSTITUTE, 2007 URBAN MOBILITY REP. at 32, Table 1 (Sept. 2007), available at <http://mobility.tamu.edu> (indicating Atlanta’s progression to second-most traffic delayed city in country.)

6. *Id.*

7. Speaker Glen Richardson is an alumnus of the Georgia State University College of Law.

8. Jim Wooten, *Road to Traffic Relief Isn’t Paved with These Pennies*, ATLANTA J.-CONST., Apr. 1, 2008, available at http://www.ajc.com/opinion/content/shared-blogs/ajc/thinkingright/entries/2008/04/01/road_to_traffic_relief_not_pav.html.

9. See SJOQUIST ET AL., *supra* note 2, at 1.

10. See, e.g., Lori Yount, *Sales Tax for Roads*, CHATTANOOGA TIMES FREE PRESS, Mar. 13, 2008, available at <http://www.timesfreepress.com/news/2008/mar/13/sales-tax-roads/?print>.

*Bill Tracking of SR 845**Consideration by the Senate*

Senators Jeff Mullis (R-53rd), Doug Stoner (D-6th), Tommie Williams (R-19th), Kasim Reed (D-35th), John Wiles (R-37th), Judson Hill (32rd), among others, sponsored SR 845.¹¹ On February 8, 2008, SR 845 was read for the first time in the Senate where it was then referred to the Transportation Committee.¹² The committee proposed a substitute version that was favorably reported on the 14th of February.¹³ It was read the second time on February 19th, and then adopted by the Senate on the 20th of February.¹⁴ After an amended version was adopted by the House, the resolution was returned to the Transportation committee on March 27, 2008.¹⁵ The Conference Committee adopted a substitute version on April 4, 2008, but failed to receive the supermajority approval necessary to amend the Constitution.¹⁶

The Bill, As Introduced

As introduced, the resolution would have amended the Constitution by adding a new Paragraph V at the end of Article IX, Section IV.¹⁷ The updated Paragraph V would have enabled county governments to propose for voter approval “a 1 percent sales and use tax to fund the construction of transportation projects.”¹⁸ To solicit such a vote, however, the paragraph first required county officials to provide voters general information regarding the potential project or projects.¹⁹ Specifically, voters must have been apprised of three relevant characteristics: “[t]he specific transportation projects to be funded” by the tax increase, “the maximum cost of such project or

11. See SR 845, as introduced, 2008 Ga. Gen. Assem.

12. See State of Georgia Final Composite Status Sheet, SR 845, Feb. 8, 2008 (Apr. 4, 2008).

13. See *id.* at Feb. 14, 2008.

14. See *id.* at Feb. 19–20, 2008.

15. See *id.* at Mar. 27, 2008.

16. See *id.* at Apr. 4, 2008.

17. SR 845, § 1, p. 1, ln. 15, as introduced, 2008 Ga. Gen. Assem.

18. *Id.* at p. 1, ln. 2.

19. *Id.* at § 1, p. 2, ln. 12–17.

projects,” and “the maximum period of time . . . the tax may be levied.”²⁰ According to Senator Jeff Mullis (R-53rd), leaving the decision whether to increase taxes in the hands of the taxpayers was the most appropriate way to handle the issue.²¹ That way, the citizens themselves would determine whether the project was worthy of their money.²² Further, it would also enable the counties to avoid being forced into larger regional projects unsupported by local residents.²³ Representative Tom Graves (R-12th) agreed, stating that leaving the vote to the individual counties was a mechanism to “make sure everyone is protected and everyone has a voice.”²⁴

In addition to the county-by-county voting approach, the resolution also required that 80 percent of the amount raised by the levy be kept by the participating counties for use on the proposed project.²⁵ The remaining 20 percent was to be turned over to the state, and no less than 10 percent of this remainder would have been “spent by the state for the purpose of constructing, operating, and maintaining multicounty or regional mass transit networks.”²⁶ According to Senator Mullis, requiring 10 percent to be remitted to the state would assist in curing the under funding of metro-area mass transit programs.²⁷

Senate Committee Substitute

The Senate adopted a substitute version of SR 845 that contained a number of technical and substantive alterations.²⁸ Among the technical modifications, the substitute draft replaced numerous references to “April 1 of the year following the year of ratification of the amendment which added this Paragraph”²⁹ with the actual expected date, “April 1, 2009.”³⁰ The substitute version also changed

20. *Id.*

21. See Mullis Interview, *supra* note 1.

22. *Id.*

23. *Id.*

24. See, e.g., Yount, *supra* note 10.

25. SR 845, § 1, p. 2, ln. 32–34, as introduced, 2008 Ga. Gen. Assem.

26. SR 845, § 1, p. 2, ln. 34–36, as introduced, 2008 Ga. Gen. Assem.

27. See Mullis Interview, *supra* note 1.

28. SR 845 (SCS), 2008 Ga. Gen. Assem.

29. SR 845, p. 1, ln. 5–6, p. 3, ln. 1–2, as introduced, 2008 Ga. Gen. Assem.

30. SR 845 (SCS), § 1, p. 3, ln. 6, 2008 Ga. Gen. Assem.

the multiple use of the General Assembly's directive to "enact a statutory framework" in favor of the more specific instruction to "provide by general law."³¹ Of the substantive alterations, perhaps the most noticeable was the inclusion of a new Section (h).³²

As substituted, section (h) would have constitutionally exempted energy generation by manufacturing companies from any increases in county sales tax.³³ Specifically, the substituted resolution stated,

"(h) The sales and use tax imposed under this Paragraph shall not apply to:

- (1) The sale or use of tangible personal property used in the production or generation of energy; or
- (2) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale."³⁴

The purpose for the exemptions was two-fold. First, the state recognized the difficulties foreign competition was putting on domestic manufacturing companies and that burdening this already struggling industry with additional tax would only exacerbate the problem.³⁵ Second, Congress understood that a tax increase of this nature may discourage new business from moving to the state, thus potentially resulting in a long-term reduction in the number of state jobs.³⁶ Consequently, all power generation by manufacturing companies was to be constitutionally exempted from the local sales and use tax.³⁷ With the inclusion of the new section (h), the remaining sections were renumbered.³⁸

The Committee also made two material changes to the former section (h). Although the 80 percent return to the participating counties remained intact, the revision clarified that the 20 percent was to "be remitted to the Department of Transportation on a

31. Compare SR 845, § 1, p. 3, ln. 2-3, as introduced, 2008 Ga. Gen. Assem., with SR 845 (SCS), § 1, p. 3, ln. 6-7, 2008 Ga. Gen. Assem.

32. SR 845 (SCS), § 1, p. 2, ln. 35, 2008 Ga. Gen. Assem.

33. *See id.* at § 1, p. 3, ln. 1.

34. SR 845 (SCS), § 1, p. 2, ln. 35, 2008 Ga. Gen. Assem.

35. *See Mullis Interview, supra* note 1.

36. *Id.*

37. SR 845 (SCS), § 1, p. 3, ln. 1, 2008 Ga. Gen. Assem.

38. *Id.* at § 1, p. 3.

monthly basis.”³⁹ Of this amount, the referendum preserved the 10% originally allocated to regional mass transit networks, and provided additional guidance for the remaining 10 percent.⁴⁰ The alteration demands the remaining balance be deposited into the state’s general fund, but “shall be available solely for general transportation purposes as specified by general law.”⁴¹ This clarification responded to the concern that proceeds enacted for the purpose of road improvement would be used for other, non-transportation purposes.⁴² Additionally, reserving 10 percent for general transportation needs guaranteed to Congress that less affluent counties would still be afforded at least minimal funding.⁴³

Finally, the Transportation Committee made a technical replacement of the previous county-by-county nomenclature in favor of an approach that split the state into “159 special transportation districts.”⁴⁴ The districts would have been coterminous with the counties, and were created to allow each district to join together to form a “regional development special district.”⁴⁵ Representatives from each district would work to create a list of projects to propose, and upon county voter acceptance, a larger region would be created to impose the tax.⁴⁶ Essentially, this would “help counties and cities work together with a seat at the table to make suggestions for projects to be put on the list.”⁴⁷ Furthermore, the substituted language mirrored language in Title 48, Chapter 8, Article 102, of the Official Code of Georgia, which created 159 special districts for the purpose of levying a special purpose local option sales tax (SPLOST).⁴⁸ Using this particular wording made it more convincing that the resolution in

39. *Id.* at § 1, p. 3, ln. 11–12.

40. *Id.* at § 1, p. 3, ln. 12–15.

41. SR 845 (SCS), § 1, p. 3, ln. 15–18, 2008 Ga. Gen. Assem.

42. See Mullis Interview, *supra* note 1.

43. *Id.*

44. Compare SR 845, as introduced, 2008 Ga. Gen. Assem. with SR 845 (SCS), 2008 Ga. Gen. Assem.

45. SR 845 (SCS), § 1, p. 1, ln. 15–16, p. 3, ln. 24–24, 2008 Ga. Gen. Assem.

46. *Id.* at § 1, p. 1, ln. 20–26.

47. Video Recording of Senate Proceedings, Feb. 20, 2008 at 1 hr., 21 min., 35 sec. (remarks by Sen. Jeff Mullis (R-53rd)), available at <http://media.legis.ga.gov/hav/08/comm/trans/trans022008.wmv> [hereinafter Senate Video].

48. O.C.G.A § 48-8-102 (Supp. 2008).

fact sought to create a SPLOST, which is temporary in nature, as opposed to a permanent tax increase.⁴⁹

Floor Debate and Amendments

Upon debate on the floor, the Senate adopted two amendments to the Transportation Committee's substitute version.⁵⁰ Senator Jeff Mullis proposed the first.⁵¹ There he sought to strike lines 7 and 8 of page 3 and insert in their place a deadline of April 1, 2009 for the General Assembly to provide the resolution's enabling legislation.⁵² Furthermore, the amendment left to the legislature's discretion whether additional activities should be granted exemptions from the heightened sales or use taxes.⁵³ This change clarified that the manufacturing exceptions and the food and beverage exceptions set forth in paragraphs (g) and (h) were not meant to represent an exhaustive list of exceptions.⁵⁴ In fact, in his floor explanation of the amendment, Senator Jeff Mullis indicated that further "fine tuning" would "involve the details of any other exemptions," and the inclusion of this modification simply guaranteed Congress' ability to make such changes at a later date.⁵⁵

Senator Steve Thompson (D-33rd) raised the only objection to the amendment.⁵⁶ He questioned why certain exemptions were included in the constitutional amendment (paragraphs (g) and (h)), while "other major items . . . such as jet fuel" would have to be exempted statutorily.⁵⁷ The Senator's concern relates to the voting requirements needed to make subsequent modifications to the legislation.⁵⁸ Whereas the enabling statute could be modified with a simple

49. See Mullis Interview, *supra* note 1.

50. See Senate Video, *supra* note 47, at 1 hr. 28. min., 27 sec. (remarks by Lt. Gov. Casey Cagle (R)).

51. See *id.*

52. SR 845, amendment (08 AM 18 1433), 2008 Ga. Gen. Assem.

53. *Id.*

54. See *id.* (referencing paragraphs (g) and (h) which relate to exemptions granted to all foods and beverages as well as the manufacturing exemption.)

55. Senate Video, *supra* note 47, at 1 hr., 29 min., 26 sec. (remarks by Sen. Jeff Mullis (R-53rd)).

56. *Id.* at 1 hr., 33 min., 13 sec. (remarks by Sen. Steve Thompson (R-33rd)).

57. *Id.*

58. See Mullis Interview, *supra* note 1.

majority vote, changing the Constitution required consent of two-thirds of the Senate.⁵⁹

The second amendment, proposed by Senator Doug Stoner (D-6th), added the phrase “within the special district” to require that the 10 percent of tax proceeds dedicated to regional mass transit were to be used exclusively within the regional districts in which they were collected.⁶⁰ This clarification was intended to appease any fears that money collected would be used to benefit other, non-voting counties.⁶¹

The final version of SR 845⁶² passed the Senate with 51 yeas, and only 4 nays.⁶³

Consideration by House

The resolution was first read by the House on February 21, 2008.⁶⁴ It was read the second time on February 22, 2008.⁶⁵ It was then reported favorably by the House Transportation Committee on March 18, 2008 where a substitute was proposed.⁶⁶ On March 27, 2008 it was read the third time and was passed and adopted by the House.⁶⁷ After passing and adopting the substitute to SR 845, the House immediately transmitted it to the Senate, which disagreed with the House substitute.⁶⁸ On March 28, 2008 the Senate and House conference committees were appointed.⁶⁹

House Committee Substitute

The House Transportation Committee adopted a substitute to SR 845 which included a number of substantive changes.⁷⁰ First, in the

59. *Id.*

60. SR 845, amendment (08 AM 18 1432), 2008 Ga. Gen. Assem.

61. See Mullis Interview, *supra* note 1.

62. SR 845 (SCSFA), 2008 Ga. Gen. Assem.

63. See Georgia Senate Voting Record, SR 845 (Feb. 10, 1008).

64. See State of Georgia Final Composite Status Sheet, SR 845, Feb. 21, 2008 (Apr. 4, 2008).

65. See *id.* at Feb. 22, 2008.

66. See *id.* at Mar. 18, 2008.

67. See *id.* at Mar. 27, 2008.

68. *Id.* at Mar. 27, 2008.

69. *Id.* at Mar. 28, 2008.

70. See State of Georgia Final Composite Status Sheet, SR 845, Mar. 18, 2008 (Apr. 4, 2008); 845

preamble, the House deleted the phrases “and mass transit networks; to authorize such a tax on a joint county and municipal basis or” and “including multiple counties and cities”, in order to clarify that the funding may be used for transportation projects which may or may not include mass transit networks.⁷¹

Many changes were made to section 1 of the bill.⁷² First, the title of Paragraph V was changed from “Transportation Improvement Sales and Use Tax” to “Regional Commission Area Transportation Tax.”⁷³ Second, the date on which the tax could first be levied was changed from May 1, 2009 to July 1, 2009.⁷⁴ Also, the House modified the resolution to allow a sales and use tax of up to 1 percent instead of requiring that the sales and use tax be 1 percent.⁷⁵ The Committee broadened the purpose of the tax, stating that the tax would be used “to fund transportation purposes in a regional commission area” rather than “to fund transportation projects.”⁷⁶ Further, in the next sentence, the House defines “transportation purposes” to “include, but not be limited to, roads, freight and passenger rail, bridges, airports, public transit, buses, seaports, and all accompanying infrastructure and services necessary to provide access to these transportation facilities,” as well as “capital outlay and maintenance expenses.”⁷⁷

Next, the House altered the geographic boundaries of the special transportation districts.⁷⁸ Rather than confining the geographic boundaries of each special transportation district to that of the 159 Georgia counties, as set forth in the Senate’s version of the bill, the House Transportation Committee expanded the district borders to coincide with the “regional development center” (RDC) as defined in

(HCS), 2008 Ga. Gen. Assem.

71. Compare SR 845 (SCSFA), p. 1, ln. 2–3, 2008 Ga. Gen. Assem. with SR 845 (HCS), p. 1, ln. 2–3, 2008 Ga. Gen. Assem.

72. 845 (HCS), 2008 Ga. Gen. Assem.

73. Compare SR 845 (SCSFA), p. 1, ln. 11, 2008 Ga. Gen. Assem. with SR 845 (HCS), p. 1, ln. 11, 2008 Ga. Gen. Assem.

74. Compare SR 845 (HCS), § 1, p. 1, ln. 10–11, 2008 Ga. Gen. Assem. with SR 845 (SCSFA), § 1, p. 1, ln. 11–12, 2008 Ga. Gen. Assem.

75. Compare SR 845 (HCS), p. 1, ln. 11, 2008 Ga. Gen. Assem. with SR 845 (SCSFA), p. 1, ln. 12, 2008 Ga. Gen. Assem.

76. Compare SR 845 (HCS), § 1, p. 1, ln. 11–12, 2008 Ga. Gen. Assem. with SR 845 (SCSFA), § 1, p. 1, ln. 12–13, Ga. Gen. Assem.

77. SR 845 (HCS), § 1, p. 1, ln. 13–17, 2008 Ga. Gen. Assem.

78. See *infra* text accompanying note 79.

Article 2, Chapter 8, Title 50 of the Georgia Code.⁷⁹ This modification represented a compromise between the Senate's county-by-county approach and an earlier effort made by the House to create a state-wide transportation tax increase.⁸⁰ Lumping surrounding counties into a regional district also served to make possible a regionalized project even when one county opposed the tax increase.⁸¹

The House also changed the procedures relating to the tax's imposition. The original language was the following:

“[w]hen the imposition of a joint county and municipal sales and use tax for transportation is authorized according to the procedures of this Paragraph, the county whose geographical boundary is conterminous with that of the special district and each participating municipality located wholly or partially within the special district shall levy a joint sales and use tax”⁸²

This language was replaced with the following: “[w]hen the imposition of a regional commission area transportation tax is authorized according to the procedures of this Paragraph, the special transportation district shall levy a sales and use tax.”⁸³ This alteration again reflected the House's preference of a regional rather than a county-by-county approach.⁸⁴ Instead of the individual counties taking responsibility for the imposition and collection of the tax, the newly-created special transportation districts would assume the obligation on their respective regional taxpayers.⁸⁵

79. Compare SR 845 (HCS), § 1, p. 1, ln. 18–21, 2008 Ga. Gen. Assem., with SR 845 (SCSFA), § 1, p. 1, ln. 14–16, 2008 Ga. Gen. Assem. See Video Recording of House Floor Debate, Mar. 27, 2008, Segment 2, at 00 hr., 1 min. (remarks by Rep. Vance Smith, Jr. (R-129th)) (clarifying that the lines of the special transportation districts will be set, “as defined in Art 2, Ch. 8 of Title 50 of the Code of Georgia, . . . [to] follow the RDC lines”).

80. Interview with Representative Vance Smith, Jr. (R-129th), Apr. 9, 2008 (on file with the Georgia State University Law Review) [hereinafter Smith Interview].

81. *Id.*

82. SR 845 (SCSFA), § 1, p. 1, ln. 16–20, 2008 Ga. Gen. Assem.

83. SR 845 (HCS), § 1, p. 1, ln. 22–24, 2008 Ga. Gen. Assem.

84. See Smith Interview, *supra* note 80.

85. Compare SR 845 (SCSFA), § 1, p. 1, ln. 18–20, 2008 Ga. Gen. Assem., with SR 845 (HCS), § 1 p. 1, ln. 22–24, 2008 Ga. Gen. Assem.

The House also added a sentence requiring the elected officials occupying the RDCs to develop “a list of transportation purposes to be funded within the regional commission area.”⁸⁶ Under Code section 50-8-34, at least two elected officials from each county occupy the boards of the various RDCs.⁸⁷ SR 845 calls these various county officials to collaborate with each other and the DOT to create a list of regional transportation projects.⁸⁸ Once created, the RDC officials submit the list to the voters residing in the respective special transportation district in the form of a referendum. At that point, the voters choose whether to approve or disapprove a tax for the enumerated projects.⁸⁹

The House Committee version does not include the provision adopted by the Senate, which mandates that the new funds generated by the transportation special location option tax shall not be used to replace existing general transportation funds within the regional development area.⁹⁰

The House Committee also altered the provision requiring certain information to be provided to the voters along with the ballot containing the question of the whether to self-impose the tax.⁹¹ First, the House Committee made a technical modification, specifying that the resolution would originate with “two publicly elected members per county of the regional commission calling for the imposition of the tax” rather than being “a joint resolution of the county and each participating municipality” as called for by the Senate.⁹² More importantly, the Committee added that the resolution must describe “[t]he amount of the tax to be levied, not to exceed 1 percent, which shall be determined by the regional commission located in the special

86. SR 845 (HCS), § 1, p. 1, ln. 27, p. 2, ln. 1–2, 2008 Ga. Gen. Assem.

87. O.C.G.A. § 50-8-34 (Supp. 2008) (“[T]he board shall have at least one elected or appointed municipal government official from each member county and at least one elected or appointed county government official from each member county.”).

88. SR 845 (HCS), § 1, p. 1, ln. 27, p. 2, ln. 1–2, 2008 Ga. Gen. Assem.

89. SR 845 (HCS), § 1, p. 1, ln. 27, p. 2, ln. 1–2, 2008 Ga. Gen. Assem.

90. Compare SR 845 (SCSFA), § 1, p. 2, ln. 7, 2008 Ga. Gen. Assem., with SR 845 (HCS), 2008 Ga. Gen. Assem.

91. Compare SR 845 (SCSFA), § 1, p. 2, ln. 17–22, 2008 Ga. Gen. Assem., with SR 845 (HCS), § 1, p. 2, ln. 11–21, 2008 Ga. Gen. Assem.

92. Compare SR 845 (HCS), § 1, p. 2, ln. 11–12, 2008 Ga. Gen. Assem., with SR 845 (SCSFA), § 1, p. 2, ln. 17.

transportation district.”⁹³ The Senate version, on the other hand, did not require the resolution or the ballot to state the amount of the tax.⁹⁴ The House Committee then modified the provision requiring that the time period for the tax be stated on the resolution.⁹⁵ Rather than allowing the time period “to be stated in calendar years or calendar quarters”⁹⁶ the House Committee version requires the time period “to be stated in calendar years.”⁹⁷ Significantly, House Committee version mandates that “[t]he tax imposed pursuant to this Paragraph shall be subject to any sales and use tax exemption which is imposed by general law.”⁹⁸ This subsection is in opposition to SR 845, as passed by the Senate, which mandates that the sales and use taxes imposed by SR 845 shall not be subject to “the tax exemption with respect to the sale or use of food and beverages which is imposed by law.”⁹⁹

The House Committee removed the provision in SR 845, as adopted by the Senate, which exempted from the tax (1) “[t]he sale or use of tangible personal property used in the production or generation of energy;” and (2) “[t]he sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale.”¹⁰⁰

The House Committee made a significant change to the provision which requires that a certain amount of the funds raised from the tax be used in the special transportation district.¹⁰¹ The House Committee version mandates that 100 percent of “the total amount of proceeds collected in a special transportation district shall be expended within that special transportation district on transportation purposes,”¹⁰² while the Senate version requires only 80 percent of the proceeds to

93. SR 845 (HCS), § 1, p. 2, ln. 14–15, 2008 Ga. Gen. Assem.

94. SR 845 (SCSFA), 2008 Ga. Gen. Assem.

95. See *infra* text accompanying note 96–97.

96. SR 845 (SCSFA), § 1, p. 2, ln. 23, 2008 Ga. Gen. Assem.

97. SR 845 (HCS), § 1, p. 2, ln. 19, 2008 Ga. Gen. Assem.

98. SR 845 (HCS), § 1, p. 2, ln. 28–29, 2008 Ga. Gen. Assem.

99. SR 845 (SCS), § 1, p. 2, ln. 32–34, 2008 Ga. Gen. Assem.

100. Compare SR 845 (SCS), § 1, p. 2, ln. 35–37, p. 3, ln. 1–2, 2008 Ga. Gen. Assem. with SR 845 (HCS), 2008 Ga. Gen. Assem.

101. Compare SR 845 (SCS), § 1, p. 2, ln. 39, 2008 Ga. Gen. Assem. with SR 845 (HCS), § 1, p. 2, ln. 31, 2008 Ga. Gen. Assem.

102. SR 845 (HCS), § 1, p. 2, ln. 33–35, 2008 Ga. Gen. Assem.

be expended within the special transportation district.¹⁰³ The House found that it made more sense for the funds of the self-imposed tax to be kept by the region imposing the tax than to have 20 percent of the funds taken out of the region.¹⁰⁴

Within the House Transportation Committee, there was discussion of the phrase “transportation purpose” and the phrase “transportation project.”¹⁰⁵ Representative Steve Davis (R-109) believed that requiring a discussion of the specific “transportation projects” to be funded by the tax increase would foster transparency in spending, to the benefit of the citizens of the regional transportation districts.¹⁰⁶ Others, including Representative Vance Smith (R-129th), believed that the phrase “transportation purpose” offered more flexibility in spending for the regional transportation districts.¹⁰⁷ When Representative Smith attempted to amend the bill to change the word “purposes” to “projects,” the Committee voted unanimously against his amendment.¹⁰⁸

The House Committee version varies only minimally from the Senate version in section 2.¹⁰⁹ Section 2 sets forth the wording of the ballot for the referendum vote.¹¹⁰ The House version changes the text of the ballot to “[s]hall the Constitution of Georgia be amended so as to provide for a regional commission area sales and use tax of up to 1 percent for a specified period of time to fund a list of transportation purposes in that regional commission area if approved in a referendum?”¹¹¹ The changes here are directly related to the changes made by the House in section 1, described above.¹¹²

103. SR 845 (SCSFA), § 1, p. 3, ln. 10–12, 2008 Ga. Gen. Assem.

104. See Smith Interview, *supra* note 80.

105. See, e.g., Video Recording of House Transportation Committee Meeting, Feb. 20, 2008 at 1 hr., 24. min., 40 sec. (remarks by Rep. Vance Smith (R-129th)), <http://media.legis.ga.gov/hav/08/comm/trans/trans031208.wmv> [hereinafter House Committee Video]; *id.* at 2 hr., 23 min., 13 sec. (remarks by Rep. Tom Graves (R-12th)); *id.* at 2 hr., 29 min., 47 sec. (remarks by Rep. Barry Loudermilk (R-14th)).

106. House Committee Video, *supra* note 105 at 1 hr., 25 min., 24 sec. (remarks by Rep. Steve Davis (R-109th)).

107. *Id.* at 2 hr., 23 min., 57 sec. (remarks by Rep. Vance Smith (R-129th)).

108. *Id.* at 3 hr., 5 min., 38 sec. (remarks by Rep. Carl Rogers (R-26th)).

109. Compare SR 845 (HCS), § 2, 2008 Ga. Gen. Assem., with SR 845 (SCSFA), § 2, 2008 Ga. Gen. Assem.

110. SR 845 (HCS), § 2, p. 3, ln. 5–8, 2008 Ga. Gen. Assem.

111. *Id.*

112. See *supra* text accompanying notes 73–98.

House Floor's changes to House Committee Substitute

On March 27, 2008, the House approved the resolution as received from the House Transportation committee with one notable amendment.¹¹³ In addition to the previous amendment to Section IV of the Constitution, the House floor also sought to amend subparagraph (b) of Article III, Section IX, Paragraph VI.¹¹⁴ As amended, the existing text under subparagraph (b) was relabeled (b)(1), and a new subparagraph, (b)(2) was created.¹¹⁵ Subparagraph (b)(2) would read as follows:

An amount equal to the state sales and use tax collected on sales of motor fuels for the purpose of propelling motor vehicles on the public roads of this state not otherwise exempted by general law shall be collected and placed in a fund within the Department of Transportation that is dedicated to use for transportation purposes. This fund shall be appropriated by the direction of the General Assembly for all transportation purposes, including public transit, rails, airports, buses, seaports, and all accompanying infrastructure and services necessary to provide access to these transportation facilities. The expenditure of such funds shall be subject to all the rules, regulations, and restrictions imposed on the expenditure of appropriations by provisions of the Constitution and laws of this state, unless such provisions are in conflict with the provisions of this subparagraph; provided, however, that the proceeds of the tax hereby appropriated shall not be subject to budgetary reduction. In the event of invasion of this state by land, sea, or air or in case of a major catastrophe so proclaimed by the Governor, said funds may be utilized for defense or relief purposes on the executive order of the Governor.¹¹⁶

113. State of Georgia Final Composite Status Sheet, SR 845, Mar. 27, 2008 (Apr. 4, 2008).

114. SR 845 (HCSFA), § 1, p. 2, ln. 7–21, 2008 Ga. Gen. Assem.

115. *Id.*

116. SR 845 (HCSFA), § 1, p. 2, ln. 7–21, 2008 Ga. Gen. Assem.

The amendment was proposed in response to concerns that it was improper for any part of the sales tax imposed on motor fuels to be used for non-transportation purposes.¹¹⁷

Consideration by Conference Committee

Following the resolution's approval in the House on March 27, 2008, it was immediately transferred to the Senate.¹¹⁸ That same day, the Senate indicated its disagreement with the House version.¹¹⁹ The House insisted on its position on March 28, 2008, and the Conference Committee was appointed.¹²⁰ The Conference Committee adopted a substitute to SR 845.¹²¹

The Conference Committee made a few small changes to the preamble.¹²² First, the word "regional" before "transportation purpose" was deleted.¹²³ Second, the word "specific" was added before "transportation purposes."¹²⁴

Next, in the second paragraph in section 1, the phrase "Following a phase in period to be determined by the General Assembly by general law" was added.¹²⁵ Further, in that same paragraph, the qualification "on January 1, 2008" was added after "not otherwise exempted by general law."¹²⁶ In that same sentence, the phrase "placed in a fund within the Department of Transportation that is dedicated to use for transportation purposes" was changed to "placed in a fund managed by the Department of Transportation that is designated solely for transportation purposes."¹²⁷ In the following sentence "including

117. See, e.g., Video Recording of House Floor Debate, Mar. 27, 2008 at 57 min., 27 sec. (remarks by Rep. DuBose Porter (D-143th)); *id.* at 1 hr., 18 sec. (remarks by Rep. DuBose Porter (D-143th)).

118. State of Georgia Final Composite Status Sheet, SR 845, Mar. 27, 2008 (Apr. 4, 2008).

119. *Id.*

120. *Id.* at Mar. 28, 2008.

121. *Id.* at Apr. 4, 2008.

122. See *infra* text accompanying notes 123–124.

123. Compare SR 845 (CCS), p. 1, ln. 2, 2008 Ga. Gen. Assem., with SR 845 (HCSFA), p. 1, ln. 2, 2008 Ga. Gen. Assem.

124. Compare SR 845 (CCS), p. 1, ln. 7, 2008 Ga. Gen. Assem., with SR 845 (HCSFA), p. 1, ln. 7, 2008 Ga. Gen. Assem.

125. Compare SR 845 (CCS), § 1, p. 2, ln. 7, 2008 Ga. Gen. Assem., with SR 845 (HCSFA), § 1, p. 2, ln. 7, 2008 Ga. Gen. Assem.

126. Compare SR 845 (CCS), § 1, p. 2, ln. 10, 2008 Ga. Gen. Assem., with SR 845 (HCSFA), § 1, p. 2, ln. 9, 2008 Ga. Gen. Assem.

127. Compare SR 845 (HCSFA) § 1, p. 2, ln. 9–10, 2008 Ga. Gen. Assem., with SR 845 (CCS), § 1, p. 2, ln. 10–11, 2008 Ga. Gen. Assem.

public transit, rails, airports, buses, seaports, and all accompanying infrastructure and services necessary to provide access to these transportation facilities” was changed to “which shall include but not be limited to roads, freight and passenger rail, bridges, airports, public transit, buses, seaports, and all accompanying infrastructure and services.”¹²⁸ The Conference Committee then clarified that “the proceeds of the tax” would not “be subject to the provisions of Article III, Section IX, Paragraph IV(c), relative to the lapsing of funds, or to any allocation or balancing of state and federal funds otherwise required by general law.”¹²⁹

The Conference Committee made changes to Section 2 of SR 845.¹³⁰ In particular, Section 2, was changed to specify, in detail, the terms that must be implemented by general law.¹³¹ This section mandates that the details of the creation of the special transportation districts, the procedures to be followed by the regional districts, and other matters, will be left to be determined by general law.¹³²

Although the House was able to adopt the amended version,¹³³ the Conference Committee Report failed to receive a constitutional majority in the Senate.¹³⁴ Consequently, the resolution failed.

HB 1035

The enabling legislation associated with SR 845 is found in Section 1 of HB 1035, which passed on April 4, 2008.¹³⁵ Similar to the Senate’s original version of SR 845, which allowed individual counties to choose whether or not to include themselves in the transportation project, HB 1035 allows counties “to opt out of the

128. Compare SR 845 (HCSFA) § 1, p. 2, ln. 12–13, 2008 Ga. Gen. Assem., with SR 845 (CCS), § 1, p. 2, ln. 13–15, 2008 Ga. Gen. Assem.

129. SR 845 (CCS), § 1, p. 2, ln. 19–22, 2008 Ga. Gen. Assem.

130. Compare SR 845 (CCS), 2008 Ga. Gen. Assem., with SR 845 (HCSFA), 2008 Ga. Gen. Assem.

131. SR 845 (CCS), § 2, 2008 Ga. Gen. Assem.

132. *Id.*

133. Georgia House of Representatives Voting Record, SR 845 (Apr. 4, 2008).

134. Because this was a constitutional amendment, it needed a two-third majority vote in the Senate, but it only received support from 35 out of 56 senators, even after reconsideration. Georgia Senate Voting Record, SR 845 (Apr. 4, 2008, 11:54 PM); *id.* at 11:56 PM.

135. HB 1035 (CCS), 2008 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 1035, Apr. 4, 2008 (Apr. 4, 2008).

special transportation district for purposes of levying the tax.”¹³⁶ The Senate, however, wanted this provision built into the constitutional amendment itself, which would have made it more difficult to alter the legislation in future sessions.¹³⁷ Section 3 of HB 1035 stated that the enabling legislation found in Section 1 would become ineffective if the constitutional amendment authorizing “additional funding sources for transportation purposes” was not ratified by resolution in the November 2008, state-wide general election.¹³⁸ Because SR 845 did not pass, the portion of HB 1035, related to the SPLOST has therefore been rendered ineffective.

Analysis

Two main concerns prevented SR 845 from passing during the 2008 Legislative Session.¹³⁹ First, several Representatives, including Barry Loudermilk (R-14th), Doug Holt (R-112th), Steve Davis (R-109th), and Mark Hatfield (R-177th), expressed concern that, if counties were not constitutionally provided the ability to opt out of a transportation district, then they could be forced into costly projects for the benefit of nearby counties with larger populations.¹⁴⁰ This problem could arise in two ways.¹⁴¹ First, the composition of the regional development committee, if proportional to population, could concentrate power in high population counties and give those counties the power to tax surrounding counties for their own benefit.¹⁴² Second, even if membership on the regional development committee, which determines the transportation projects to be submitted in the referendum, is evenly representative of each county in the regional transportation district, a county with a smaller

136. HB 1035 (CCS), p. 2, ln. 30–32, 2008 Ga. Gen. Assem.

137. See Mullis Interview, *supra* note 1.

138. HB 1035 (CCS), § 3, 2008 Ga. Gen. Assem.

139. See *infra* text accompanying notes 140–143.

140. House Committee Video, *supra* note 105, at 50 min., 17 sec. (remarks by Rep. Barry Loudermilk (R-14th)); *id.* at 57 min. (remarks by Rep. Doug Holt, (R-112th)); *id.* at 1 hr., 21 min., 50 sec. (remarks by Rep. Steve Davis (R-109th)); *id.* at 2 hr., 52. min., 38 sec. (remarks by Rep. Mark Hatfield (R-177th)).

141. See *infra* text accompanying notes 134–135.

142. See Mullis Interview, *supra* note 1

population could still be forced into funding transportation projects in neighboring counties by the referendum vote.¹⁴³

Representative Hatfield (R-177th), proposed a solution.¹⁴⁴ He suggested an amendment to require passage of the referendum approving the sales tax increase and the regional development committee's spending recommendations to pass by a two-thirds supermajority.¹⁴⁵ His amendment, however, failed.¹⁴⁶ Although corrective, opt-out language was incorporated into the enabling legislation of HB 1035, and due to the ease in which this statutory language could be altered, when the matter went back to the Senate for a final vote, many Senators remained skeptical that the issue was properly resolved.¹⁴⁷

Second, the more rigid Republicans of the Senate appeared unmovable when it came to allowing a tax increase without offering a corresponding decrease.¹⁴⁸ Governor Perdue shared in this opinion, and spoke openly of his disapproval of the SPLOST.¹⁴⁹ This lack of executive support was a major detractor to the resolution's success, and it is hoped that upon subsequent introduction, this impediment will be cured.¹⁵⁰ Although this concern permeated the debates, according to Representative Vance Smith, the issues of a tax decrease and the SPLOST are wholly unrelated.¹⁵¹ Regardless, the Transportation Committee of the Senate was unable to convince a supermajority of the resolutions' merit, and it therefore failed.¹⁵²

Notwithstanding SR 845's failure, however, the effort put forth in the 2008 session demonstrated a bipartisan consensus that the issue of inadequate transportation funding in the state of Georgia warrants

143. *Id.*

144. *See infra* text accompanying note 145.

145. House Committee Video, *supra* note 105, at 2 hr., 52 min., 38 sec., (remarks by Rep. Mark Hatfield (R-177th)).

146. *Id.* at 2 hr., 59 min., 40 sec. (remarks by Rep. Carl Rogers (R-26th)) (motion fails, 18 nays, 6 yeas).

147. *See* Mullis Interview, *supra* note 1.

148. *See* Mullis Interview, *supra* note 1.

149. *Perdue Says He'd Campaign Against a Sales Tax for Transportation*, ATLANTA J.-CONST., Mar. 27, 2008, available at http://www.ajc.com/metro/content/shared-blogs/ajc/politicalinsider/entries/2008/03/27/perdue_says_hed_campaign_again.html (last visited June 9, 2008).

150. *See* Mullis Interview, *supra* note 1.

151. *See* Smith Interview, *supra* note 80.

152. Georgia Senate Voting Record, SR 845 (Apr. 4, 2008, 11:54 PM); *id.* at 11:56 PM.

immediate attention.¹⁵³ Further, both branches eagerly await another opportunity to resubmit the resolution for passage.¹⁵⁴

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153. See Mullis Interview, *supra* note 1.

154. See Mullis Interview, *supra* note 1.

