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## HB 170 – Revenue and Taxation: Motor Fuel and Road Taxes

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## REVENUE AND TAXATION

***Motor Fuel and Road Taxes: Amend Various Provisions of the Official Code of Georgia Annotated so as to Provide for Additional Revenue Necessary for Funding Transportation Purposes in this State; Amend Chapter 12 of Title 28 of the Official Code of Georgia Annotated, Relating to the General Assembly, so as to Create the Special Joint Committee on Georgia Revenue Structure; Amend Title 32 of the Official Code of Georgia Annotated, Relating to Highways, Bridges, and Ferries, so as to Require an Annual Report from the Department of Transportation; Amend Title 40 of the Official Code of Georgia Annotated, Relating to Motor Vehicles and Traffic, so as to Levy a Registration Fee on Alternative Fueled Vehicles; Amend Chapter 12 of Title 45 of the Official Code of Georgia Annotated, Relating to the Governor, so as to Limit the Governor’s Power to Suspend the Collection of Certain Motor Fuel Taxes and Require Ratification by the General Assembly; Amend Title 48 of the Official Code of Georgia Annotated, Relating to Revenue and Taxation, so as to Reduce the State Income Tax Credits for Low-Emission Vehicles to Zero; Provide for the Elimination of State Sales and Use Taxes with Respect to Certain Sales of Motor Fuels; Revise the Exemption from Sales and Use Taxes for Jet Fuel; Provide for Revised Definitions of Certain Terms Relating to Prepaid Motor Fuel Taxes; Provide a Limit on Local Sales Taxes on Motor Fuels; Change the Rate and Method of Computation of Excise Tax on Motor Fuels; Repeal the Second Motor Fuel Tax; Provide for Editorial Revision; Provide for a State Fee on Hotel or Motel Room Rentals; Amend Part 3 of Article 2 of Chapter 10 of Title 32 of the Official Code of Georgia Annotated, the “Georgia Transportation Infrastructure Bank Act,” so as to Provide Revised Criteria for Determination of Eligible Projects by the Transportation Infrastructure Bank; Amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, Relating to Sales and Use Taxation, so as to Change Certain Provisions Relating to the Special District Transportation Sales and Use Tax Pursuant to the Transportation Investment Act of 2010; Provide for Future Levies to Be at a Fractional Rate; Change Procedures and Requirements***

***Regarding the Future Imposition of Such Tax; Change Certain Provisions Regarding the Ceiling on the Amount of Local Sales and Use Taxes; Provide for an Additional Transportation Special Purpose Local Option Sales and Use Tax by Counties and Municipalities; Provide for Definitions, Procedures, Conditions, and Limitations for the Imposition, Collection, Disbursement, and Termination of the Tax; Provide for Powers Duties, and Authority of the State Revenue Commissioner; Provide for a Short Title; Provide for Appropriations of Increases in Revenue; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS: O.C.G.A. §§ 28-12-1, -2, -3 (new); 32-5-27.1 (new); 32-10-127 (amended); 40-2-86.1, -151 (amended), -151.1 (new); 45-12-22 (amended); 48-7-40.16 (amended); 48-8-2, -3, -3.1, -6, -30, -49, -50, -82, -102, -110.1, -141, -201, -241, -242, -245 (amended), -260, -261, -262, -263, -264, -265, -266, -267, -268, -269, -269.1, -269.2, -269.3, -269.4, -269.5, -269.6 (new); 48-9-3, -14 (amended); 48-13-50.3 (new)

BILL NUMBER: HB 170

ACT NUMBER: 46

GEORGIA LAWS: 2015 Ga. Laws 236

SUMMARY: The Act restructures and increases funding for the Georgia Department of Transportation. It adjusts the statewide motor fuel tax, imposes a highway impact fee for heavy trucks, imposes fees on commercial and non-commercial alternative fuel vehicles, and imposes a hotel and motel tax on every room in the state, among other provisions.

EFFECTIVE DATE: July 1, 2015

*History*

Largely lauded by Georgia’s Republican and Democratic leadership and loathed by many rank-and-file Republicans in both chambers,<sup>1</sup> the Transportation Funding Act of 2015 (the TFA) was one of the primary topics of attention and debate during the 2015 legislative session. The discussion focused on the gravity of the need—the existence of which even many of the TFA’s most zealous opponents conceded—for a tax hike addressing Georgia’s deteriorating and underfunded infrastructure.<sup>2</sup> In the months leading up to the 2015 legislative session, many commentators astutely anticipated that transportation funding would garner the most attention around the Georgia State Capitol.<sup>3</sup> This was due in part to a resolution passed in the 2014 legislative session.<sup>4</sup>

House Resolution (HR) 1573 created the Joint Study Committee on Critical Transportation Infrastructure Funding (Study Committee).<sup>5</sup> The Study Committee was comprised of ten legislators,

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1. See Georgia House of Representatives Voting Record, HB 170, Vote #380 (Mar. 31, 2015); Georgia Senate Voting Record, HB 170, Vote #318 (Mar. 31, 2015); see also Jay Roberts, *Guest Column: A Fair Way to Fund Transportation*, ATLANTA J.-CONST., Apr. 7, 2015, at A12, available at 2015 WLNR 10081042.

In a debate of this importance, there are always going to be a few who are so busy looking for conspiracies that they are blind to the fact that not every vote is easy and not every good policy can be summarized in one sentence. They choose to just say “no” to everything and took the easy way out. I am, however, thankful for all those members of the General Assembly who had the courage to face a tough vote and choose sound policy over sensational rhetoric. I am grateful to those who came together to work constructively on this legislation and offered suggestions and improvements along the way. I also thank [Governor Nathan Deal (R)] for his support and his pledge to sign HB 170 into law.

*Id.*

2. See, e.g., Editorial, *State Transportation Funding Bill a Non-Starter*, MARIETTA DAILY J., Feb. 11, 2015, available at 2015 WLNR 4304605 (“No doubt, Georgia has plenty of needs for maintaining and improving roads, bridges and other infrastructure. But the sponsors of HB 170 would be well advised to scrap the bill. Like an aging car battery on a cold winter morning, this one’s a non-starter.”).

3. See, e.g., Chuck Williams, *Georgia General Assembly: Transportation Funding Tops Agenda for Columbus Lawmakers*, COLUMBUS LEDGER-ENQUIRER (Jan. 10, 2015), <http://www.ledger-enquirer.com/news/politics-government/article29383192.html> (“There is little doubt what issue will drive the Georgia General Assembly when it begins its 2015 session on Monday in Atlanta: Transportation funding.”).

4. See 2014 Ga. Laws 502.

5. See *id.*; SPECIAL JOINT STUDY COMM. ON CRITICAL TRANSP. INFRASTRUCTURE FUNDING, FINAL REPORT (Dec. 30, 2014), available at [http://www.house.ga.gov/Documents/CommitteeDocuments/2014/Critical\\_Trans\\_Infra\\_Funding/Transportation\\_Study\\_Committee\\_Final\\_Report\\_2014.pdf](http://www.house.ga.gov/Documents/CommitteeDocuments/2014/Critical_Trans_Infra_Funding/Transportation_Study_Committee_Final_Report_2014.pdf) [hereinafter STUDY COMMITTEE REPORT].

two citizens appointed by Lieutenant Governor Casey Cagle (R) and Speaker David Ralston (R-7th), and the chief executives of the Association of County Commissioners of Georgia (ACCG), the Georgia Municipal Association (GMA), the Georgia Chamber of Commerce, and the Metro Atlanta Chamber.<sup>6</sup> Tasked with addressing concerns of growing population, heavy reliance on federal funding, traffic congestion, and economic development, the Study Committee sought to identify new sources and methods of funding Georgia's transportation and infrastructure needs.<sup>7</sup> During the fall of 2014, the Study Committee traveled throughout the state and held eight public hearings.<sup>8</sup> In a final report delivered on December 30, 2014, just two weeks prior to the 2015 session, the Study Committee identified Georgia's needs, the magnitude of the problem, and its findings and recommendations to the legislature.<sup>9</sup>

As provided by the twenty-three page report, the Study Committee found that Georgia had a minimum \$1 billion to \$1.5 billion annual transportation-funding gap, and at least that much was needed for maintenance, repair, and modernization of existing roads and bridges across the state.<sup>10</sup> The Study Committee contracted with Ernst & Young and an infrastructure-consulting firm, HNTB Corporation, "to assess and report on the magnitude of critical long-term transportation needs."<sup>11</sup> In addition to the funding gap, HNTB estimated addressing "critical transportation needs," going beyond just maintenance and modernization, would require an additional investment annually of \$2.1 billion to \$2.9 billion.<sup>12</sup> For the "full universe of transportation needs . . . including . . . passenger rail systems," HNTB estimated the required additional funding would be \$3.9 billion to \$5.4 billion per year.<sup>13</sup> The minimum \$1 billion ended up being the target figure for the transportation-funding proponents, citing public safety, mitigation of traffic congestion, and economic

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6. STUDY COMMITTEE REPORT, *supra* note 5, at 1.

7. *Id.* at 3.

8. *Id.*

9. *See generally id.*

10. *Id.* at 14.

11. *Id.*

12. STUDY COMMITTEE REPORT, *supra* note 5, at 15.

13. *Id.*

development.<sup>14</sup> The Study Committee’s report also outlined one dozen funding options as suggestions to increase the requisite revenue for transportation infrastructure.<sup>15</sup>

Before the TFA, Georgia’s state transportation funding method was a combination of a sales tax and excise tax on motor fuel.<sup>16</sup> In Georgia, the transportation budget is funded separately from the rest of the state’s spending (aside from, in some instances, borrowing from the general fund), which is derived from the general fund.<sup>17</sup> The transportation budget can be analogized to a silo, set away from the rest of the state’s spending. The sales tax paid on the total purchase of fuel at the pump was 4%.<sup>18</sup> The excise tax was 7.5 cents per gallon.<sup>19</sup> Significantly, one quarter of the revenue from the 4% sales tax, commonly referred to as the “fourth penny,” was diverted to the general fund for non-transportation purposes.<sup>20</sup> Also before the TFA, Georgia law provided electric vehicle purchasers and lessees a \$5,000.00 income tax credit and low-emission vehicle purchasers a \$2,500.00 income tax credit.<sup>21</sup>

Aside from providing less revenue than the majority of other states, Georgia’s prior sales-tax dependent method of funding was too volatile.<sup>22</sup> As the price of fuel fluctuated, so too did revenue to the Georgia Department of Transportation (GDOT). The improvement of vehicle fuel efficiency also meant less revenue for roads and bridges, funded solely by the motor fuel tax.<sup>23</sup> Also, prior to the TFA, Georgia was highly reliant on federal government funding.<sup>24</sup> For example, in the 2014 fiscal year, GDOT’s revenue from the state motor fuel tax was roughly \$1 billion, and GDOT

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14. See *Georgia House Bill 170 (2015)*, AM. ROAD & TRANSP. BUILDERS ASS’N, <http://www.transportationinvestment.org/wp-content/uploads/2015/07/Georgia-HB170-2015-Case-Study.pdf> (last visited Oct. 19, 2015) [hereinafter ARTBA REPORT].

15. STUDY COMMITTEE REPORT, *supra* note 5, at 18–21.

16. *Id.* at 6.

17. *Id.*

18. ARTBA REPORT, *supra* note 14.

19. *Id.*

20. STUDY COMMITTEE REPORT, *supra* note 5, at 6, 18.

21. O.C.G.A. § 48-7-40.16(b) (2013 & Supp. 2015).

22. See Michael E. Paris & Tim Lowe, Opinion, *Council for Quality Growth Supports HB 170 Transportation Plan*, JACKSON PROGRESS-ARGUS (Feb. 17, 2015), <http://www.jacksonprogress-argus.com/news/2015/feb/17/op-ed-council-for-quality-growth-supports-hb-170/>.

23. See STUDY COMMITTEE REPORT, *supra* note 5, at 8.

24. ARTBA REPORT, *supra* note 14.

received roughly \$1.2 billion from federal funding; thus, federal funds accounted for approximately 54% of GDOT's budget.<sup>25</sup> Federal dollars are contingent upon state compliance with federal requirements and regulations, and the federal government has its own problems with revenue for transportation infrastructure.<sup>26</sup> Georgia has the tenth largest road system in the nation, the fourth busiest container port in the nation, and the world's busiest airport.<sup>27</sup> However, Georgia ranked "49th in terms of state spending per capita on roads . . . ."<sup>28</sup>

As several proponents of House Bill (HB) 170's passage declared throughout the debates during the 2015 legislative session, the legislature had "kicked the can down the road" on Georgia's transportation funding woes over the years.<sup>29</sup> This partly referenced the T-SPLOST of 2012, which is key to understanding the TFA's significance. The Transportation Investment Act of 2010 sought to ameliorate Georgia's transportation funding problems.<sup>30</sup> It did so by dividing the state into twelve regions and allowing each region to decide by referendum (in the summer of 2012) whether to impose a Transportation Special Purpose Local-Option Sales Tax (T-SPLOST) of 1% for transportation purposes.<sup>31</sup> T-SPLOST's proponents hoped that the Atlanta region—with its larger tax base—would be willing to pass the referendum, and that the proposal to invest those tax dollars within the region would be well received.<sup>32</sup> In the end, however, only three of the twelve regions approved T-SPLOSTs; the remaining

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25. STUDY COMMITTEE REPORT, *supra* note 5, at 7.

26. ARTBA REPORT, *supra* note 14. Governor Deal in his State of the State Address noted the problem with continued federal transportation funds, "If we do nothing, we would continue to have to depend on the federal government, whose transportation funds are also dwindling." *Id.*

27. STUDY COMMITTEE REPORT, *supra* note 5, at 5.

28. *Id.* at 13.

29. *See, e.g.*, Video Recording of House Proceedings, Mar. 5, 2015 (PM) at 1 hr., 4 min., 39 sec. (remarks by Rep. Mark Hamilton (R-24th)), <http://www.gpb.org/lawmakers/2015/day-27> [hereinafter House Video Day 27].

30. *See* Donnie Fetter, *Rural Leaders Want Share of Tax Revenues: Committee Approved to Analyze, Report Back on Proposal*, AUGUSTA CHRON., July 15, 2010, at B5, available at 2010 WLNR 25836466.

31. *See* Parker Wallace, *TSPLOST Results Are In*, GA. PUB. BROADCASTING (Aug. 1, 2012), <http://www.gpb.org/news/2012/08/01/tsplost-results-are-in>.

32. Charlie Harper, *T-SPLOST Regions and Local Control*, PEACH PUNDIT (July 11, 2012, 1:00 PM), <http://www.peachpundit.com/2012/07/11/t-splost-regions-and-local-control/>.

nine, including the metropolitan Atlanta region, were left without new revenue.<sup>33</sup>

On January 12, 2015, Georgia leaders put transportation at the forefront during the Georgia Chamber of Commerce’s annual Eggs & Issues event.<sup>34</sup> Governor Nathan Deal (R), Lieutenant Governor Cagle, and Speaker Ralston each made clear that a substantial transportation-funding measure was imperative.<sup>35</sup> Later that week, Governor Deal called on the legislature to find additional transportation revenue in his State of the State Address.<sup>36</sup> The state’s top three elected officials united in their call for at least \$1 billion.<sup>37</sup> According to Deal, Cagle, and Ralston, “doing nothing” was “not an option.”<sup>38</sup> In his State of the State, Governor Deal made his case:

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33. See Wallace, *supra* note 31. Governor Deal and Atlanta Mayor Kasim Reed joined to support the passage of the T-SPLOST referendum in Metropolitan Atlanta. *Battle over T-SPLOST Goes to the End*, ATLANTA J.-CONST. (July 31, 2012, 7:59 PM), <http://www.ajc.com/news/news/state-regional-govt-politics/battle-over-t-splst-goes-to-the-end/nQXdf/> [hereinafter *Battle over T-SPLOST*]. Despite the bipartisan support, the Atlanta Regional District failed to pass the T-SPLOST referendum with 62.30% voting “no” and 37.70% voting “yes.” GA. OFFICE OF THE SECRETARY OF STATE, GEORGIA ELECTION RESULTS, <http://results.enr.clarityelections.com/GA/40378/95366/en/summary.html#> (last updated Aug. 9, 2012) [hereinafter ELECTION RESULTS]. The Atlanta Regional District included Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry, and Rockdale Counties. *Atlanta, Georgia: Transportation Funding Initiative*, AM. ROAD & TRANSP. BUILDERS ASS’N, <http://www.transportationinvestment.org/wp-content/uploads/2014/01/Case-Study-Atlanta-Georgia-2012.pdf> (last visited Oct. 19, 2015) [hereinafter ARTBA T-SPLOST]. These counties represented areas most needing alleviation from traffic congestion. See *id.* The Metro-Atlanta plan consisted of raising over \$7 billion in a ten-year period to fund approximately 160 transportation projects in the region. *Battle over T-SPLOST, supra*. The three districts that voted in favor of the referendum were the Central Savannah River Area District, with 53.68% voting for the referendum and 46.32% voting against; River Valley District, with 54.27% voting for the referendum and 45.73% voting against; and Heart of Georgia Altamaha District with 51.71% voting for the referendum and 48.29% voting against. ELECTION RESULTS, *supra*. In addition to the Atlanta Regional District, the regions disapproving of the referendum were the Northwest Georgia District (67.61% to 32.39%), Georgia Mountains District (74.96% to 25.04%), Three Rivers District (69.29% to 30.71%), Northeast Georgia District (64.69% to 35.31%), Middle Georgia District (56.14% to 43.86%), Southwest Georgia District (56.60% to 43.40%), Southern Georgia District (57.85% to 42.15%), and Coastal Georgia District (57.52% to 42.48%). *Id.*

34. See Dave Williams, *Gov. Deal, Legislative Leaders on Same Page on Transportation*, ATLANTA BUS. CHRON.: CAPITOL VISION BLOG (Jan. 13, 2015, 10:21 AM), [http://www.bizjournals.com/atlanta/blog/capitol\\_vision/2015/01/gov-deal-legislative-leaders-on-same-page-on.html](http://www.bizjournals.com/atlanta/blog/capitol_vision/2015/01/gov-deal-legislative-leaders-on-same-page-on.html) [hereinafter Williams, *Same Page on Transportation*].

35. See *id.*

36. Press Release, Office of the Governor, State of the State: Great Challenges Require Great Cooperation (Oct. 23, 2015), <http://gov.georgia.gov/press-releases/2015-01-14/state-state-great-challenges-require-great-cooperation> [hereinafter Gov. Deal Address].

37. Williams, *Same Page on Transportation, supra* note 34.

38. Greg Bluestein et al., *Nathan Deal on Transportation Funding*, AJC.COM : POL. INSIDER BLOG (Jan. 13, 2015), <http://politics.blog.ajc.com/2015/01/13/nathan-deal-on-transportation-funding-we-all>



A need does exist. The excise tax, which is a per gallon flat fee, has remained the same since 1971. That's 44 years. In that time, the fuel efficiency for the average vehicle has almost doubled, which means the amount of excise tax collected for each mile driven has roughly been cut in half. And the federal government has mandated new standards that would again double the miles per gallon for the average vehicle over the next 10 years, meaning that the amount of excise tax collected for every mile traveled will continue to shrink every year. And that doesn't even account for inflation. In 2014 dollars, we collected approximately 17 percent less in state Motor Fuel Funds per capita for transportation than we did a quarter of a century ago, in part because of greater fuel efficiency. At the same time, we now have millions more people travelling on our roads. According to industry experts, simply maintaining what we currently have on our roadways requires a minimum of hundreds of millions of dollars in new revenue each year. Some industry experts even suggest it's more than \$1 billion a year.<sup>39</sup>

Governor Deal warned that, if the legislature did not come up with more revenue for transportation, "our roads will slowly slip into disrepair, the safety of our citizens will be jeopardized, and our economy will be stagnated by increased congestion."<sup>40</sup>

Tea Party-aligned activists and other anti-tax organizations remained opposed to the TFA throughout the session.<sup>41</sup> One of the largest obstacles HB 170 faced was public opposition sparked by Grover Norquist's Washington-based group—Americans for Tax Reform—who called the bill a "massive tax hike."<sup>42</sup> Influential Tea

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agree-we-need-additional-revenue/.

39. Gov. Deal Address, *supra* note 36.

40. *Id.*

41. See ARTBA REPORT, *supra* note 14.

42. Paul Blair, *ATR Opposes House Bill 170's Massive Gas Tax Increase in Georgia*, AMERICANS FOR TAX REFORM (Feb. 10, 2015, 7:48 AM), <http://www.atr.org/atr-opposes-house-bill-170s-massive-gas-tax-increase-georgia>.

Party figures, such as talk radio host Erick Erickson, vehemently opposed HB 170 throughout the session.<sup>43</sup> Some Republican legislators bemoaned the bill on social media and in local newspaper comments.<sup>44</sup> Even in the moments prior to the final passage of HB 170’s Conference Committee Report, Senator Mike Crane (R-28th) contentiously proclaimed from the Senate floor by way of parliamentary inquiry, “isn’t it true that this is a[n] unqualified midnight run on Georgia taxpayers?”<sup>45</sup>

Georgia’s business community prevailed in the transportation-funding debate. The Georgia Chamber of Commerce, its transportation-focused affiliate—the Georgia Transportation Alliance, and the Metro Atlanta Chamber supported the TFA.<sup>46</sup> Democrats too, especially on the House side, would prove crucial to

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43. See, e.g., Erick Erickson, *A Scorecard Vote Against HB 170 in the Georgia House*, ERICK ON THE RADIO (Mar. 5, 2015), <http://www.erickontheradio.com/2015/03/a-scorecard-vote-against-hb-170-in-the-georgia-house/>; ARTBA REPORT, *supra* note 14.

44. See, e.g., Jim Galloway, *Blowback on H.B. 170*, AJC.COM: POL. INSIDER BLOG (Mar. 6, 2015), <http://politics.blog.ajc.com/2015/03/06/blowback-on-h-b-170-60-republicans-just-sided-with-democratic-leader/>.

From the Facebook page of state Rep. John Pezold, [(R-133rd)]:  
[“]SIXTY GOP Representatives just sided with the Democratic Leader OVER the Majority Leader and Whip to raise taxes. When I got sworn in the first thing I was told was to vote with the majority leader on procedural votes. (Note these are not votes on bills) this was a motion to table the bill and send it back to committee to retool it.[“]

From the Facebook page of state Rep. Scott Turner, [(R-21st)]:  
[“]Today, I joined 9 committee chairmen, my Majority Leader, Majority Whip, and Caucus Vice Chair and voted against the largest tax increase in recent memory. The bill, HB 170, will raise a billion dollars in new revenue. Over the last several days, I have been pitching a plan that would meet our transportation funding needs using growth in revenue without raising taxes. I am not a member of the tax and spend party. I am a member of the party of ideas and of disciplined spending.[“]

From the Facebook page of state Rep. Heath Clark, [(R-147th)]: [“]HB 170: Voted NO. This bill as passed in the House will raise the amount of tax you pay on gasoline to about 35 cents per gallon. Even when gas was at \$4.00 a gallon you did not pay that much to the state of Georgia at the pump. I find it appalling that just 7 days ago the House voted on a budget that increased state spending by nearly \$1 Billion and then today we turn around and raise the taxes on its citizens to pay for [“]critical[“] needs. If these needs were so critical why did we not adequately address this need in the budget? We could prioritize our spending to address our critical needs.[“]

*Id.*

45. Video Recording of Senate Proceedings, Mar. 31, 2015 at 1 hr., 33 min., 1 sec. (PM 5), <http://www.gpb.org/lawmakers/2015/day-39>.

46. See ARTBA REPORT, *supra* note 14.

the TFA's passage.<sup>47</sup> As a piece in the *Atlanta Journal-Constitution* prognosticated in the session's early days, due to the "fractious" Republican majority in the legislature, passing "any tax increase . . . [would] require leaders in the House and Senate to cobble together a coalition made up of bits and pieces of all those myriad factions[,] [a]nd, likely, even Democrats."<sup>48</sup> In 2015, 157 of the 236 Georgia General Assembly members were Republicans, but "[p]olicywise, Georgia Republicans increasingly don't get along."<sup>49</sup> The *Atlanta Journal-Constitution's* Editorial Board also urged Georgia's lawmakers to find a way to increase transportation funding:

Hard reality must somehow whip soothing fantasy if Georgia desires to remain the economic juggernaut of the Southeast. That's the realistic way to view Georgia's current transportation/mobility/congestion mess born of underinvestment. If we can't accept this tough truth pretty darned quick, then all that we and our forebears have labored toward to make Georgia prosper will slowly begin to come unhinged. We can hang it up, in other words. That cannot happen.<sup>50</sup>

After all of the pre-session discussion and buildup, HB 170 finally debuted a few weeks into the 2015 legislative session.<sup>51</sup>

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47. See, e.g., Georgia House of Representatives Voting Record, HB 170 (Mar. 5, 2015) (Vote #130–133 on the day HB 170 passed the House); see also ARTBA REPORT, *supra* note 14. Of all legislators who voted in favor of the Conference Committee Report, 40% were Democrats. *Id.* Only 8% of Democrats voted against the Report's adoption. *Id.*

48. Aaron Gould Sheinin & Kristina Torres, *GOP Split Over Transit Factions Complicate Quest for Funds*, ATLANTA J.-CONST., Jan. 26, 2015, at A1, available at 2015 WLNR 2447336.

49. *Id.*

50. Andre Jackson, Editorial, *Fixing a Potholed Reality*, MYAJC.COM (Jan. 17, 2015), <http://www.myajc.com/news/news/opinion/fixing-a-potholed-reality/njqLl/>.

51. HB 170, as introduced, 2015 Ga. Gen. Assem.

*Bill Tracking of HB 170**Consideration and Passage by the House*

Representatives Jay Roberts (R-155th), Jon Burns (R-159th), Mark Hamilton (R-24th), Terry England (R-116th), Matt Hatchett (R-150th), and Sam Watson (R-172nd) sponsored HB 170.<sup>52</sup> When HB 170 was first introduced, Representative David Stover (R-71st) was also listed as a sponsor.<sup>53</sup> Representative Stover was later removed as a sponsor after publicly denouncing the bill.<sup>54</sup>

Transportation Committee Chairman Jay Roberts and Speaker of the House David Ralston (R-7th) unveiled HB 170 at a press conference on January 28, 2015, the day before it officially entered the hopper.<sup>55</sup> HB 170's first version was set to generate approximately \$1 billion in revenue annually.<sup>56</sup> First and foremost, it restructured the state's gas tax from a sales- and-excise-tax hybrid to a fixed excise tax of 29.2 cents per gallon on motor fuel and 33 cents per gallon on diesel fuel, indexed to inflation.<sup>57</sup> The 29.2 cents figure derived from the average cost of gasoline per gallon for the previous four years of \$3.39.<sup>58</sup> The bill also provided that local option sales taxes, which fund local government projects and schools, would remain honored but could not be renewed after they expired.<sup>59</sup> Further, local governments—municipalities and counties—could tax 3 cents per gallon by simple ordinance and an additional 3 cents each by referendum, but with the condition that these potential new taxes must be dedicated to transportation purposes.<sup>60</sup> Under another significant provision of the bill, non-commercial alternative fuel

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52. Georgia General Assembly, HB 170, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/170>.

53. HB 170, as introduced, 2015 Ga. Gen. Assem.

54. Greg Bluestein, *A Public Retreat By a Sponsor of Georgia's Push for More Transportation Cash*, AJC.COM: POL. INSIDER BLOG (Feb. 23, 2015), <http://politics.blog.ajc.com/2015/02/23/a-public-retreat-by-a-sponsor-of-georgias-push-for-more-transportation-cash/>.

55. See Aaron Gould Sheinin, *House Leaders Unveil \$1 Billion Transportation Plan*, ATLANTA J.-CONST., Jan. 28, 2015, available at 2015 WLNR 2743605.

56. *Id.*

57. HB 170, as introduced, § 4-7, p. 7, ln. 216–18, 2015 Ga. Gen. Assem.

58. See Kristina Torres, *Senate Passes Transportation Plan*, ATLANTA J.-CONST., Mar. 20, 2015, available at 2015 WLNR 8356109.

59. HB 170, as introduced, § 4-3, p. 5, ln. 147–60, 2015 Ga. Gen. Assem.

60. *Id.* § 4-2, p. 5, ln. 125–42.

vehicle owners would be assessed a \$200.00 annual fee and commercial alternative fuel vehicles would be assessed a \$300.00 annual fee per vehicle.<sup>61</sup>

Several interest groups and organizations were especially critical of HB 170's first version, namely Tea Party activists, school boards, and local governments' influential advocates under the Gold Dome, the GMA and ACCG.<sup>62</sup>

The bill was first read on the House floor on February 2, 2015, and Speaker Ralston assigned the bill to the Transportation Committee.<sup>63</sup> The House read the bill for the second time on February 3, 2015.<sup>64</sup>

#### *House Highway Regulations Subcommittee Consideration*

On February 5, 2015, the Highway Regulations Subcommittee of Transportation convened.<sup>65</sup> At the meeting, in response to the concerns raised by local governments, Chairman Roberts vowed that future changes to HB 170 would address their concerns.<sup>66</sup> The Subcommittee Chairman, Representative Jon Burns, also announced that the Subcommittee would hold another meeting before it sent the bill to the full Transportation Committee.<sup>67</sup>

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61. *Id.* § 2-2, p. 3, ln. 73–76.

62. See Edward H. Lindsey, Editorial, *Help Wanted, But No Critics*, ATLANTA J.-CONST., Feb. 3, 2015, at A10, available at 2015 WLNR 3288375. Responding to the “naysayers” in an op-ed, former State Representative and Majority Whip, Ed Lindsey (R-54th), opined:

[T]he Georgia House leadership has placed on the table its transportation plan, and the long knives of opponents have quickly emerged. An alphabet soup of organizations are cranking out their calls to respective members to oppose the plan including GSBA (Georgia School Board Association), GMA (Georgia Municipal Association), ACCG (Association County Commissioners of Georgia) and, of course, the usual assortment of naysayer organizations who can collectively be labeled by the acronym CAVE (Committees Against Virtually Everything). These organizations denounce the House leadership plan on the table but offer no viable alternatives despite the fact our transportation woes endanger our safety, dampen our quality of life and impede our economic development.

*Id.*

63. State of Georgia Final Composite Status Sheet, HB 170, May 14, 2015.

64. *Id.*

65. See Dave Williams, *Changes In Store For Transportation Funding*, ATLANTA BUS. CHRON.: CAPITOL VISION BLOG (Feb. 5, 2015, 12:10 PM), [http://www.bizjournals.com/atlanta/blog/capitol\\_vision/2015/02/changes-in-store-for-transportation-funding-bill.html](http://www.bizjournals.com/atlanta/blog/capitol_vision/2015/02/changes-in-store-for-transportation-funding-bill.html).

66. *Id.*

67. *Id.*

The Subcommittee convened again on February 9, 2015, where Chairman Roberts honored his promise from the previous meeting by introducing a new version of the bill.<sup>68</sup> This new version of HB 170 included a provision abolishing the \$5,000.00 tax credit for electric vehicles.<sup>69</sup> The Subcommittee voted to send the substitute to the full House Transportation Committee.<sup>70</sup>

### *House Transportation Committee Consideration*

On February 12, 2015, the House Transportation Committee convened and discussed HB 170 for the first time.<sup>71</sup> At this meeting, Chairman Roberts presented the bill, and the Committee heard testimony from multiple activists and organizations.<sup>72</sup> The Committee next convened on February 18, 2015.<sup>73</sup> The Committee adopted another substitute, which again addressed concerns from local governments regarding the local option sales taxes, chiefly by increasing the rate of local sales taxes from 1% to 1.25% “to account for the loss of revenue by not charging these taxes on motor fuel”<sup>74</sup> and removing the provision allowing local governments to charge an additional six-cent excise tax.<sup>75</sup>

The Committee favorably reported the bill by substitute on February 19, 2015.<sup>76</sup> When the Rules Committee next convened on February 24, 2015, HB 170 was not debated.<sup>77</sup> Some speculated that this meant the bill’s proponents did not have enough support from

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68. Jon Richards, *Subcommittee Moves Substitute Bill to Full Transportation Committee*, PEACH PUNDIT (Feb. 9, 2015), <http://www.peachpundit.com/2015/02/09/subcommittee-moves-substitute-bill-full-transportation-committee/> [hereinafter Richards, *Subcommittee*].

69. See HB 170 (LC 34 4522S), § 4-1, p. 5, ln. 159–60, 2015 Ga. Gen. Assem.

70. Richards, *Subcommittee*, *supra* note 68.

71. Jon Richards, *Transportation Committee Considers HB 170*, PEACH PUNDIT (Feb. 12, 2015), <http://www.peachpundit.com/2015/02/12/transportation-committee-considers-hb-170/>.

72. *Id.*

73. Jon Richards, *Transportation Funding Act Changes Unveiled*, PEACH PUNDIT (Feb. 18, 2015), <http://www.peachpundit.com/2015/02/18/transportation-funding-act-changes-unveiled/>.

74. *Id.*; HB 170 (LC 34 4522S), §§ 4-7 to -14, p. 8–12, ln. 233–382, 2015 Ga. Gen. Assem.

75. Compare HB 170 (LC 34 4522S), 2015 Ga. Gen. Assem., with HB 170, as introduced, § 4-2, p. 5, ln. 125–42, 2015 Ga. Gen. Assem.

76. Georgia General Assembly, HB 170, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/170>.

77. See generally Video Recording of House Rules Committee Meeting, Feb. 24, 2015, [http://media.legis.ga.gov/hav/15\\_16/2015/committees/rules/rules022415EDITED.wmv](http://media.legis.ga.gov/hav/15_16/2015/committees/rules/rules022415EDITED.wmv).

House colleagues to pass, specifically due to continued opposition from GMA and ACCG.<sup>78</sup>

Accordingly, HB 170 was withdrawn by the Rules Committee and sent back to the Transportation Committee on February 24, 2015.<sup>79</sup>

The Transportation Committee next met on March 2, 2015.<sup>80</sup> That day, the Committee adopted another substitute and reported the bill favorably by substitute.<sup>81</sup> The substitute maintained the excise tax and the electric vehicle fees.<sup>82</sup> The changes again dealt with local government taxation by allowing counties to continue using local taxes on motor fuel for the purpose of education transportation.<sup>83</sup>

### *House Rules Committee Consideration*

On March 3, 2015, Chairman Roberts presented the substitute to the House Rules Committee.<sup>84</sup> At that same meeting, Representative Hamilton introduced a technical amendment to the bill regarding the aviation fuel sales tax exemption.<sup>85</sup> According to Representative Hamilton, the language had to be changed to avoid losing federal funding, and the matter was left to be resolved the next day.<sup>86</sup> During the Rules Committee meeting the following morning, Rules Committee Chairman John Meadows (R-5th) accepted Representative Hamilton's amendment as a technical amendment and, without objection, HB 170 became a Rules Committee substitute.<sup>87</sup>

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78. See Aaron Gould Sheinin, *Transportation Bill Sent Back to Committee for More Work*, Feb. 24, 2015, available at 2015 WLNR 5630003.

79. *Id.*; see also State of Georgia Final Composite Status Sheet, HB 170, May 14, 2015.

80. See Georgia General Assembly, HB 170, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/170>.

81. HB 170 (LC 34 4586S), 2015 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 170, May 14, 2015.

82. HB 170 (LC 34 4586S), § 2-2, p. 4, ln. 111–28, 2015 Ga. Gen. Assem.; *id.* § 4-16, p. 13, ln. 430–34.

83. *Id.* § 1-2, p. 2, ln. 48–61; *id.* § 4-14, p. 12, ln. 390–401.

84. Video Recording of House Rules Committee Meeting, Mar. 3, 2015 at 31 min., 10 sec. (remarks by Rep. Jay Roberts (R-155th)), <http://www.gpb.org/lawmakers/2015/day-25>.

85. *Id.* at 32 min., 30 sec. (remarks by Rep. Mark Hamilton (R-24th)).

86. *Id.*

87. Video Recording of House Rules Committee Meeting, Mar. 4, 2015 at 2 min., 5 sec. (remarks by Rep. John Meadows (R-5th)), <http://www.gpb.org/lawmakers/2015/day-26>; see also HB 170 (HRCS), § 4-2A, p. 7, ln. 230–35, 2015 Ga. Gen. Assem.

On March 5, 2015, due to a procedural technicality and on Chairman Meadows’s request, HB 170 was recommitted to the Rules Committee before being sent to the House floor later that day.<sup>88</sup> The House read the bill for the third time as a Rules Committee substitute.<sup>89</sup> Two amendments emerged from the Rules Committee meeting to be heard on the House floor.<sup>90</sup> The first was from Representative Ed Setzler (R-35th), which would have required counties considering adding “fixed guide-way transit” to hold a referendum on the issue, similar to the counties that already have MARTA service—Fulton, DeKalb, and Clayton.<sup>91</sup> The second amendment, from House Majority Leader Larry O’Neal (R-146th) and Majority Whip Matt Ramsey (R-72nd), would have lowered the excise tax on gasoline to 24 cents and on diesel to 28 cents.<sup>92</sup> This amendment would have reduced the revenue raised by HB 170 significantly; Chairman Roberts claimed that it would result in \$250 million less in revenue.<sup>93</sup>

#### *House Floor Consideration*

The House then convened for the second time that day for debate on HB 170.<sup>94</sup> Chairman Roberts was first in the well to explain and advocate for the bill.<sup>95</sup> Following Chairman Roberts, Representatives Mark Hamilton, Calvin Smyre (D-135th), Terry England, Jon Burns, Tom Rice (R-95th), and Tom Kirby (R-114th), respectively, went to the well to speak in favor of HB 170’s passage.<sup>96</sup> Representative

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88. Video Recording of House Rules Committee Meeting, Mar. 5, 2015 (PM) at 4 min., 1 sec. (remarks by Rep. John Meadows (R-5th)), <http://www.gpb.org/lawmakers/2015/day-27>; State of Georgia Final Composite Status Sheet, HB 170, May 14, 2015.

89. State of Georgia Final Composite Status Sheet, HB 170, May 14, 2015.

90. Failed House Floor Amendment to HB 170, introduced by Rep. Ed Setzler (R-35th), Mar. 5, 2015; Failed House Floor Amendment to HB 170, introduced by Rep. Matt Ramsey (R-72nd), Mar. 5, 2015.

91. Failed House Floor Amendment to HB 170, introduced by Rep. Ed Setzler (R-35th), Mar. 5, 2015.

92. Failed House Floor Amendment to HB 170, introduced by Rep. Matt Ramsey (R-72nd), Mar. 5, 2015.

93. Jon Richards, *Transportation Funding Act Bill Up for Debate on the House Floor*, PEACH PUNDIT (Mar. 5, 2015), <http://www.peachpundit.com/2015/03/05/transportation-funding-act-bill-up-for-debate-on-the-house-floor/>.

94. House Video Day 27, *supra* note 29, at 38 min., 2 sec. (remarks by Rep. Jay Roberts (R-155th)).

95. *Id.*

96. *See generally id.*



Stover, formerly a sponsor of the bill, went to the well in opposition.<sup>97</sup> Next was the vote on the Ramsey amendment.<sup>98</sup> Representative Ramsey argued from the well that amending the bill with these excise rates would keep the bill “neutral at the pump,” and thus not cause a tax hike on Georgians.<sup>99</sup> The amendment, however, failed by a vote of 77 to 94.<sup>100</sup> Accordingly, the excise rates remained at 29.2 and 33 cents per gallon on gasoline and diesel fuel, respectively.<sup>101</sup> The Setzler amendment then failed narrowly by a vote of 84 to 87.<sup>102</sup> After these two amendments failed, Representative Ramsey moved to table the bill, which also failed by a vote of 56 to 111.<sup>103</sup> Thus, HB 170 went to a vote and passed 123 to 46.<sup>104</sup> Notably, only 3 of the 46 votes opposed to HB 170’s passage were Democrats.<sup>105</sup>

### *Consideration and Passage by the Senate*

Majority Whip Steve Gooch (R-51st) sponsored HB 170 in the Senate.<sup>106</sup> The Senate read the bill for the first time on March 9, 2015.<sup>107</sup> Lieutenant Governor Casey Cagle (R) referred the bill to the Transportation Committee, chaired by Senator Tommie Williams (R-19th).<sup>108</sup> The Senate Transportation Committee convened March 17, 2015, and revealed its substitute, which it adopted and favorably reported out of Committee.<sup>109</sup> The Senate version retained the electric

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97. *Id.* at 1 hr., 48 min., 22 sec. (remarks by Rep. David Stover (R-71st)).

98. *Id.* at 1 hr., 53 min., 51 sec. (remarks by Rep. Matt Ramsey (R-72nd)).

99. *Id.*

100. Georgia House of Representatives Voting Record, HB 170, Vote #130 (Mar. 5, 2015).

101. *See* HB 170 (HRCS), § 4-16, p. 13, ln. 434–36, 2015 Ga. Gen. Assem.

102. Georgia House of Representatives Voting Record, HB 170, Vote #131 (Mar. 5, 2015).

103. Georgia House of Representatives Voting Record, HB 170, Vote #132 (Mar. 5, 2015).

104. Georgia House of Representatives Voting Record, HB 170, Vote #133 (Mar. 5, 2015).

105. *See id.*; Aaron Gould Sheinin, *Transportation Plan Survives, As House Defeats Efforts to Cut Revenue*, ATLANTA J.-CONST., Mar. 5, 2015, at A1, available at 2015 WLNR 6770147.

106. Georgia General Assembly, HB 170, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/170>.

107. State of Georgia Final Composite Status Sheet, HB 170, May 14, 2015.

108. *Id.*; *Senate Transportation*, GEORGIA STATE SENATE COMMITTEES, <http://www.senate.ga.gov/committees/en-US/committee.aspx?Committee=86&Session=24> (last visited Oct. 25, 2015).

109. *See* Kristina Torres, *Georgia Senate Backs Lower Taxes, More Fees For Transportation Plan*, ATLANTA J.-CONST., Mar. 17, 2015, available at 2015 WLNR 8032218.

vehicle fees,<sup>110</sup> the elimination of the electric vehicle tax credit,<sup>111</sup> and the elimination of the aviation fuel tax credit.<sup>112</sup> The Senate Committee substitute’s noteworthy differences, however, included lowering the excise tax to 24 cents per gallon for both gasoline and diesel fuel;<sup>113</sup> adding a “highway user impact fee” of \$25.00 per passenger vehicle, \$10.00 per motorcycle, and \$50.00 per truck and bus;<sup>114</sup> and allocating \$250 million per year from the general fund to go toward GDOT reducing its debt service.<sup>115</sup>

The Senate read the bill the second time on March 19, 2015.<sup>116</sup> The bill was read for the third time and went to the floor for a vote on March 20, 2015.<sup>117</sup> Senator Gooch presented the bill.<sup>118</sup> Senator Williams brought two amendments, both of which were adopted without objection.<sup>119</sup> The first amendment removed the Committee substitute’s highway user impact fees on cars, trucks, buses, and motorcycles.<sup>120</sup> Senator Williams’s other amendment created a joint committee on revenue structure, a measure aimed at tax reform in the next session.<sup>121</sup> Five of the six amendments that went to a vote on the floor failed; the one that passed, brought by Majority Leader Bill Cowsert (R-46th), added language to the section of the bill requiring that GDOT provide the General Assembly with a strategic plan each year.<sup>122</sup> Notably, Senator Cowsert’s amendment amended, and effectively defeated, another amendment Senator John Albers (R-56th) introduced.<sup>123</sup> Senator Albers’s amendment sought to reduce

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110. See HB 170 (SCS), § 3-2, p. 4, ln. 109–15, 2015 Ga. Gen. Assem.

111. *Id.* § 5-1, p. 6, ln. 175–76.

112. *Id.* § 5-3, p. 8–9, ln. 258–301.

113. *Id.* § 5-13, p. 16, ln. 526–28.

114. *Id.* § 3-3, p. 5, ln. 131–42.

115. *Id.* § 2-2, p. 2, ln. 54–58.

116. State of Georgia Final Composite Status Sheet, HB 170, May 14, 2015.

117. *Id.*

118. Video Recording of Senate Proceedings, Mar. 20, 2015 (AM 2) at 47 min., 12 sec. (remarks by Sen. Steve Gooch (R-51st)), <http://www.gpb.org/lawmakers/2015/day-33> [hereinafter Senate Video Day 33].

119. *Id.* at 1 hr., 30 min., 45 sec. (remarks by Sen. Tommie Williams (R-19th)).

120. *Id.*; compare HB 170 (SCSFA), 2015 Ga. Gen. Assem., with HB 170 (SCS), § 3-3, p. 5, ln. 131–42, 2015 Ga. Gen. Assem.

121. HB 170 (SCFSA), § 1-2, p. 2–3, ln. 33–76, 2015 Ga. Gen. Assem.

122. *Id.* § 2-1, p. 3–4, ln. 81–100; Kristina Torres, *Transportation Plan Passes Senate, But Not Without Cuts*, ATLANTA J.-CONST., Mar. 21, 2015, available at 2015 WLNR 8356111.

123. See Failed Senate Floor Amendment to HB 170, introduced by Sen. John Albers (R-56th), Mar. 20, 2015.

the excise tax to 20 cents and decrease the Alternative Fuel Vehicles (AFV) fees, among other cuts in revenue the bill would generate.<sup>124</sup> Before Majority Leader Cowsert's amendment went to a vote, Senator Albers attempted to withdraw his amendment, presumably in concern that Majority Leader Cowsert's would pass.<sup>125</sup> Then, after Majority Leader Cowsert's amendment passed, Senator Albers attempted to reintroduce his amendment<sup>126</sup> by changing one word, but Lieutenant Governor Cagle ruled the attempt out of order.<sup>127</sup>

Four Democrats brought the other five failed amendments. Senator Vincent Fort's (D-39th) sought to increase minority-owned business participation in GDOT contracts.<sup>128</sup> Minority Leader Steve Henson's (D-41st) would have deleted the provisions in the Committee substitute that allocate \$250 million per year from the general fund to GDOT.<sup>129</sup> Senator Henson argued from the well that the allocation prioritizes transportation over education, which was a complaint from the Senate Democratic Caucus.<sup>130</sup> Senator Elena Parent (D-42nd) brought two amendments that failed. The first would have phased out, as opposed to immediately repealing, the state income tax credit on AFVs.<sup>131</sup> Senator Parent's other amendment would have required GDOT to prioritize maintenance of highway infrastructure over expansion and improvement.<sup>132</sup> Finally, Senator Emanuel Jones's (D-10th) amendment would have created a "Minority Compliance Officer," whose job would be to "improv[e] minority-owned business participation in state and federal projects."<sup>133</sup>

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124. *Id.*

125. See Senate Video Day 33, *supra* note 118, at 2 hr., 33 min., 28 sec. (remarks by Sen. John Albers (R-56th)).

126. *Id.* at 2 hr., 46 min., 17 sec. (remarks by Sen. John Albers (R-56th)).

127. *Id.* at 2 hr., 46 min., 34 sec. (remarks by Lieutenant Governor Casey Cagle (R)).

128. Failed Senate Floor Amendment to HB 170, introduced by Sen. Vincent Fort (D-39th), Mar. 20, 2015.

129. Failed Senate Floor Amendment to HB 170, introduced by Sen. Steve Henson (D-41st), Mar. 20, 2015.

130. See, e.g., Senate Video Day 33, *supra* note 118, at 1 hr., 53 min., 10 sec. (remarks by Sen. Steve Henson (D-41st)).

131. Failed Senate Floor Amendment to HB 170 (AM 34 0702), introduced by Sen. Elena Parent (D-42nd), Mar. 20, 2015.

132. Failed Senate Floor Amendment to HB 170 (AM 39 0118), introduced by Sen. Elena Parent (D-42nd), Mar. 20, 2015.

133. Failed Senate Floor Amendment to HB 170, introduced by Sen. Emanuel Jones (D-10th), Mar. 20, 2015.

On March 20, 2015, the thirty-third day of the session, without a single vote to spare, the Senate passed HB 170 by amended Committee substitute, 29 to 25.<sup>134</sup> No Democrats voted in favor of the bill.<sup>135</sup> On March 24, 2015, the Senate substitute was sent to the House, which disagreed with the Senate Committee substitute as amended by the Senate.<sup>136</sup> The Senate insisted on its position.<sup>137</sup> The following day, March 25, 2015, the House insisted on its position and appointed its Conference Committee, which consisted of Chairman Roberts, Representative Smyre, and Representative Hamilton.<sup>138</sup> The Senate appointed its Conference Committee that same day, which consisted of Senator Gooch, Chairman Williams, and President Pro Tempore David Shafer (R-48th).<sup>139</sup> Representative Smyre, the longest-serving member of the General Assembly who played an integral role in getting HB 170 passed in the House, was the lone Democrat on the Conference Committee.<sup>140</sup> The Senate’s appointees were all Republicans because the Senate Democratic Caucus was uniform in its opposition to HB 170.<sup>141</sup>

#### *Conference Committee Report Adoption*

On March 26, 2015, the day after the Conference Committee was picked, the *Atlanta Journal-Constitution* reported that Governor Nathan Deal (R) threatened calling a special session in June if legislators “fail[ed] to pass what he consider[ed] to be an adequate transportation funding bill” by the end of the regular session.<sup>142</sup> Between the appointment of the Conference Committee and its release of the Conference Committee Report on March 31, the Conference Committee met publicly only one time.<sup>143</sup> On the second-

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134. Georgia Senate Voting Record, HB 170, Vote #175 (Mar. 20, 2015).

135. *See id.*

136. State of Georgia Final Composite Status Sheet, HB 170, May 14, 2015.

137. *Id.*

138. *See id.*

139. *See id.*

140. *See id.*

141. *See id.*

142. Aaron Gould Sheinin & Kristina Torres, *Deal Uses Threat of Special Session: Lawmakers May Return if Transportation Bill Doesn’t Pass*, ATLANTA J.-CONST., Mar. 27, 2015, at B1, available at 2015 WLNR 9050211.

143. *See* Georgia General Assembly, HB 170, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/170>.

to-last day of the session, March 31, 2015, the Conference Committee struck a compromise on HB 170 and sent its Report to the two chambers for adoption.<sup>144</sup> The House, by a 129 to 41 vote, adopted the HB 170 Conference Committee Report around eleven o'clock that evening.<sup>145</sup> The Senate adopted it just prior to midnight by a 42 to 12 vote.<sup>146</sup>

As for the compromises in the Report, like both the House and Senate versions, the Report converted the state motor fuel tax to a pure excise tax.<sup>147</sup> The gasoline and diesel fuel rates were 26 cents and 29 cents (indexed to inflation and fuel economy standards), respectively, thus meeting in the middle of the House and Senate versions.<sup>148</sup> The AFV fees present in both versions remained in the Report, assessing non-commercial AFV owners \$200.00 annually and commercial AFVs \$300.00 annually.<sup>149</sup> The Report also repealed the AFV state income tax credit, as both chambers did.<sup>150</sup> After all of the early drama regarding local government taxation, HB 170's final version had little impact on existing local sales taxes.<sup>151</sup> The Report, following both the Senate and House versions, ended the aviation fuel sales tax exemption.<sup>152</sup> The Report incorporated the Senate amendments that created the Joint Committee on Revenue Structure<sup>153</sup> and required GDOT to submit ten-year strategic plans to the General Assembly.<sup>154</sup> Similar to one of the earlier Senate versions, the Report included "highway impact fees" to be dedicated to transportation purposes, but only for trucks.<sup>155</sup> Two of the Report's major provisions were not contained in either version: the hotel-motel tax<sup>156</sup> and modifications to the Transportation Infrastructure

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144. See State of Georgia Final Composite Status Sheet, HB 170, May 14, 2015.

145. Georgia House of Representatives Voting Record, HB 170 (Mar. 31, 2015).

146. Georgia Senate Voting Record, HB 170 (Mar. 31, 2015).

147. See HB 170 (CCR), § 5-14, p. 18, ln. 611-12, 2015 Ga. Gen. Assem; *id.* § 5-13, p. 14, ln. 461-83.

148. *Id.* § 5-13, p. 14, ln. 461-66.

149. *Id.* § 3-2, p. 5-6, ln. 158-80.

150. *Id.* § 5-1, p. 7-8, ln. 229-40.

151. See *id.* §§ 5-8 to -12, p. 11-14, ln. 362-457.

152. *Id.* § 5-3, p. 9-10, ln. 268-315.

153. HB 170 (CCR), § 1-1, p. 2-3, ln. 39-83, 2015 Ga. Gen. Assem.

154. *Id.* § 2-1, p. 3-4, ln. 88-110.

155. *Id.* § 3-3, p. 6-7, ln. 183-206.

156. Compare *id.* § 5-15, p. 18-19, ln. 615-46, with HB 170 (HRCS), 2015 Ga. Gen. Assem., and HB 170 (SCSFA), 2015 Ga. Gen. Assem.

Act of 2010 (TIA).<sup>157</sup> The Report created a \$5.00 per night room fee for hotels and motels; the revenue from that is designated for transportation purposes.<sup>158</sup> The TIA modifications allow counties that are not in current regions with an approved T-SPLOST to create their own county T-SPLOST.<sup>159</sup>

HB 170 was sent to Governor Deal on April 6, 2015, and was signed into law on May 4, 2015.<sup>160</sup>

### *The Act*

Section 1-1 of the Act amends Title 28 of the Official Code of Georgia Annotated by adding a new chapter, Chapter 12, which creates a Special Joint Committee on Georgia Revenue Structure.<sup>161</sup> The new Committee is tasked with introducing at least one bill or resolution in the House relating to tax reform in the 2016 legislative session.<sup>162</sup> The special joint committee is to be comprised of fourteen members, including the President Pro-Tempore of the Senate,<sup>163</sup> the Speaker Pro-Tempore of the House,<sup>164</sup> the Majority leaders of the House<sup>165</sup> and Senate,<sup>166</sup> the Minority leaders of the House<sup>167</sup> and Senate,<sup>168</sup> the Chairs of the Senate Finance Committee<sup>169</sup> and the House Committee on Ways and Means,<sup>170</sup> and three at-large members (two from the majority party and one from the minority party) from the House appointed by the Speaker of the House,<sup>171</sup> and three at-large members (two from the majority party and one from the minority party) to be appointed by the President of the Senate.<sup>172</sup>

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157. Compare HB 170 (CCR), § 7-5, p. 22–33, ln. 748–1144, 2015 Ga. Gen. Assem., with HB 170 (HRCS), 2015 Ga. Gen. Assem., and HB 170 (SCSFA), 2015 Ga. Gen. Assem.

158. HB 170 (CCR), § 5-15, p. 18–19, ln. 615–46, 2015 Ga. Gen. Assem.

159. See *id.* § 7-5, p. 22–33, ln. 748–1144.

160. State of Georgia Final Composite Status Sheet, HB 170, May 14, 2015.

161. O.C.G.A. § 28-12-1 (Supp. 2015).

162. O.C.G.A. § 28-12-2(a) (Supp. 2015).

163. O.C.G.A. § 28-12-1(a)(1) (Supp. 2015).

164. *Id.*

165. O.C.G.A. § 28-12-1(a)(2) (Supp. 2015).

166. *Id.*

167. O.C.G.A. § 28-12-1(a)(3) (Supp. 2015).

168. *Id.*

169. O.C.G.A. § 28-12-1(a)(4) (Supp. 2015).

170. *Id.*

171. O.C.G.A. § 28-12-1(a)(6) (Supp. 2015).

172. O.C.G.A. § 28-12-1(a)(5) (Supp. 2015).

This Section of the Act also outlines the procedure for the Tax Reform initiative: The introduced legislation will be referred directly to the Special Committee on Georgia Revenue Structure;<sup>173</sup> a do pass by Committee substitute will proceed directly to the floor of the House for an up or down vote, without amendment;<sup>174</sup> if approved by the House, the measure then moves to the Senate for an up or down vote without amendment.<sup>175</sup> The Act provides that this Chapter is to be repealed by law on July 1, 2016.<sup>176</sup>

Intended to increase GDOT's transparency and accountability, Section 2-1 of the Act amends Title 32 of the Code by adding a new section regarding a ten-year strategic plan from GDOT.<sup>177</sup> GDOT is now required annually to prepare and submit to the House and Senate Committees on Transportation a ten-year strategic plan that outlines the use of GDOT resources.<sup>178</sup> The House and Senate Committees on Transportation must approve these plans and "may make recommendations" to the House and Senate Appropriations Committees "for their consideration in developing the [State] budget."<sup>179</sup> The strategic plan must address construction of new highway projects,<sup>180</sup> maintenance of existing infrastructure,<sup>181</sup> bridge repair and replacement,<sup>182</sup> safety enhancements,<sup>183</sup> and administrative expenses.<sup>184</sup> This Section directs GDOT to give priority to maintenance of roads and bridges, to expansion and improvement "in the areas of the state most impacted by traffic congestion," and to "highway infrastructure [that] aid[s] in attracting economic development . . . ."<sup>185</sup>

Section 3-1 of the Act amends Title 40 of the Code in several respects. First, it changes the definition of "alternative fuel" to

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173. O.C.G.A. § 28-12-2(a) (Supp. 2015).

174. O.C.G.A. § 28-12-2(b) (Supp. 2015).

175. O.C.G.A. § 28-12-2(c) (Supp. 2015).

176. O.C.G.A. § 28-12-3 (Supp. 2015).

177. O.C.G.A. § 32-5-27.1(a) (Supp. 2015).

178. *Id.*

179. O.C.G.A. § 32-5-27.1(b) (Supp. 2015).

180. O.C.G.A. § 32-5-27.1(c)(1) (Supp. 2015).

181. O.C.G.A. § 32-5-27.1(c)(2) (Supp. 2015).

182. O.C.G.A. § 32-5-27.1(c)(3) (Supp. 2015).

183. O.C.G.A. § 32-5-27.1(c)(4) (Supp. 2015).

184. O.C.G.A. § 32-5-27.1(c)(5) (Supp. 2015).

185. O.C.G.A. § 32-5-27.1(d) (Supp. 2015).

“electricity, natural gas, and propane.”<sup>186</sup> It changes the definition of “alternative fueled vehicle” to specify that such vehicles are “solely” fueled by alternative fuel.<sup>187</sup> Moreover, it removes the “hybrid vehicle” definition.<sup>188</sup> Finally, this Section of the Act provides that, in order to apply for a specialty license plate for AFVs, the applicant must give proof that he has paid the prescribed registration fee.<sup>189</sup>

Section 3-2 further amends Title 40 by creating the registration fees on AFVs.<sup>190</sup> Annually, non-commercial AFVs are subject to a \$200.00 registration fee,<sup>191</sup> and commercial AFVs are subject to a \$300.00 registration fee.<sup>192</sup> The purpose of this Section is to ensure that drivers of AFVs contribute to road funding, just as non-AFV drivers do through the gas tax.<sup>193</sup> Indexing for inflation and fuel economy will begin July 1, 2016.<sup>194</sup> The consumer price index, however, will no longer be used after July 1, 2018.<sup>195</sup>

Section 3-3 further amends Title 40, adding a new Code section, which defines “transportation purposes”<sup>196</sup> and creates a “highway impact fee.”<sup>197</sup> The Georgia General Assembly recognized that heavier vehicles have a greater impact on the roads, so they created a highway impact fee for trucks.<sup>198</sup> Vehicles weighing 15,500 lbs. to 26,000 lbs. will pay \$50.00 annually;<sup>199</sup> vehicles weighing more than 26,001 lbs. will pay \$100.00 annually.<sup>200</sup> Because such a fee is not constitutionally required to go toward transportation funding, the Act provides that it is “the intention of the General Assembly, subject to appropriations,” that these fees go toward “transportation

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186. O.C.G.A. § 40-2-86.1(l)(7)(B)(i) (2014 & Supp. 2015).

187. O.C.G.A. § 40-2-86.1(l)(7)(B)(ii) (2014 & Supp. 2015).

188. *Compare* 2015 Ga. Laws 236, § 3-1, at 239, with O.C.G.A. § 40-2-86.1(l)(7)(B)(ii)(II) (2014).

189. O.C.G.A. § 40-2-86.1(l)(7)(C) (Supp. 2015).

190. O.C.G.A. § 40-2-151(a)(19) (Supp. 2015); 2015 Ga. Laws 236, § 3-2, at 239.

191. O.C.G.A. § 40-2-151(a)(19)(A)(i) (Supp. 2015).

192. O.C.G.A. § 40-2-151(a)(19)(A)(ii) (Supp. 2015).

193. Andria Simmons, *Electric Cars May Lose Tax Credits: Proposal Could End \$5,000 Tax Break, Slap Fees on Green Vehicles*, ATLANTA J.-CONST., Mar. 5, 2015, at A1, available at 2015 WLNR 6599040.

194. O.C.G.A. § 40-2-151(a)(19)(B)(iii) (Supp. 2015).

195. *Id.*

196. O.C.G.A. § 40-2-151.1(a) (Supp. 2015).

197. O.C.G.A. § 40-2-151.1(b) (Supp. 2015).

198. *See id.*

199. O.C.G.A. § 40-2-151.1(b)(1) (Supp. 2015).

200. O.C.G.A. § 40-2-151.1(b)(2) (Supp. 2015).



purposes,”<sup>201</sup> meaning “roads, bridges, public transit, rails, airports, buses, seaports, . . . accompanying infrastructure and services necessary to provide access to these transportation facilities, [and] general obligation debt and other multiyear obligations issued to finance such [transportation] purposes.”<sup>202</sup>

Section 4-1 of the Act amends Chapter 12 of Title 45, limiting the Governor’s authority to suspend the collection of state motor fuel and aviation gasoline taxes.<sup>203</sup> Now, unless the Governor has declared a state of emergency, he cannot suspend or modify the collection of such taxes.<sup>204</sup>

Each of Part V’s provisions amends Title 48. Section 5-1 abolishes the low- and zero-emission vehicle state income tax credits of \$2,500.00 and \$5,000.00, respectively.<sup>205</sup> This elimination took effect for all such vehicles purchased or leased after July 1, 2015.<sup>206</sup>

Section 5-2 amends Chapter 8, altering the definition of “prepaid local tax” to conform with the conversion of the state-level tax to a pure excise tax and to account for its indexing to inflation.<sup>207</sup> Section 5-3 ends the former 1% state sales and use tax exemption for aviation fuel on June 30, 2015.<sup>208</sup> Section 5-3 also requires the local sales tax on aviation fuel to be at or below the levels levied prior to January 1, 2014.<sup>209</sup> Finally, in accordance with federal law, beginning July 1, 2017, the Act requires that the revenue derived from aviation fuel sales be spent on aviation purposes.<sup>210</sup>

Sections 5-4, 5-5, 5-6, and 5-7 revise Code sections 3.1, 30, 49, and 50, respectively, of Chapter 8, changing the language to accord with the repeal of the state sales tax.<sup>211</sup>

Sections 5-8, 5-9, 5-10, 5-11, and 5-12, addressing local sales taxes on motor fuel, revise Code sections 82, 102, 110.1, 141, and

201. O.C.G.A. § 40-2-151.1(c) (Supp. 2015).

202. O.C.G.A. § 40-2-151.1(a) (Supp. 2015).

203. 2015 Ga. Laws 236, § 4-1, at 241.

204. O.C.G.A. § 45-12-22 (2002 & Supp. 2015).

205. O.C.G.A. § 48-7-40.16(b)(2) (Supp. 2015).

206. *Id.*

207. O.C.G.A. § 48-8-2(23) (2013 & Supp. 2015). *Compare* 2015 Ga. Laws 236, § 5-2, at 242, with O.C.G.A. § 48-8-2(24) (2013).

208. O.C.G.A. § 48-8-3(33.1)(B) (2013 & Supp. 2015).

209. O.C.G.A. § 48-8-3(33.1)(D) (2013 & Supp. 2015).

210. O.C.G.A. § 48-8-3(33.1)(G) (2013 & Supp. 2015).

211. O.C.G.A. § 48-8-3.1(a) (2013 & Supp. 2015); O.C.G.A. § 48-8-30(k) (2013 & Supp. 2015); O.C.G.A. § 48-8-49(b)(2) (2013 & Supp. 2015); O.C.G.A. § 48-8-50(b) (2013 & Supp. 2015).

201, respectively, of Chapter 8.<sup>212</sup> Each provides that the local-option sales taxes may continue to be imposed at a rate of 1% of the retail sales price of motor fuels, but caps the rate at \$3.00 per gallon.<sup>213</sup> In other words, local governments’ optional sales tax on motor fuel—MOST, LOST, HOST, ESPLOST, and SPLOST—may continue to be levied but are capped at 3 cents per gallon.

Section 5-13 of the Act, the most significant provision, adjusts the state excise tax on gasoline to 26 cents per gallon and on diesel fuel to 29 cents per gallon.<sup>214</sup> This Section, in concert with Section 5-14, also effectively closes the fourth-penny loophole (which allowed 1% of the sales tax on motor fuel to go to the general fund).<sup>215</sup> Now, all excise taxes collected from motor fuel will be used only for roads and bridges, as required by the Georgia Constitution.<sup>216</sup> This Section also provides that the excise tax will be adjusted according to fuel economy (beginning July 1, 2016) and indexed to inflation, using the Consumer Price Index until July 1, 2018.<sup>217</sup>

Section 5-14 repeals Code section 48-9-14—the former state sales tax provision—in its entirety, which effectively converts the entire state motor fuel tax to the excise tax.<sup>218</sup>

Section 5-15 adds a new Code section to Chapter 13, providing for a hotel-motel tax of \$5.00 per night.<sup>219</sup> Notably, on April 2, 2015, the final day of the session, the legislature passed HB 106,<sup>220</sup> which amended HB 170’s Section 5-15.<sup>221</sup> HB 106 redefines “innkeeper”

212. 2015 Ga. Laws 236, § 5-8, at 244–45; 2015 Ga. Laws 236, § 5-9, at 245; 2015 Ga. Laws 236, § 5-10, at 245; 2015 Ga. Laws 236, § 5-11, at 246; 2015 Ga. Laws 236, § 5-12, at 246–47.

213. O.C.G.A. § 48-8-82(b) (Supp. 2015); O.C.G.A. § 48-8-102(b)(2) (Supp. 2015); O.C.G.A. § 48-8-110.1(d) (Supp. 2015); O.C.G.A. § 48-8-141(b) (Supp. 2015); O.C.G.A. § 48-8-201(e) (Supp. 2015).

214. O.C.G.A. § 48-9-3(a)(1) (2013 & Supp. 2015).

215. *See id.*; 2015 Ga. Laws 236, § 5-13, at 247; 2015 Ga. Laws 236, § 5-14, at 250.

216. GA. CONST. art. III, § 9, para. 6(b) (“An amount equal to all money derived from motor fuel taxes received by the state . . . is hereby appropriated . . . for all activities incident to providing and maintaining an adequate system of public roads and bridges in this state, as authorized by laws enacted by the General Assembly of Georgia, and for grants to counties by law authorizing road construction and maintenance, as provided by law authorizing such grants.”).

217. O.C.G.A. § 48-9-3(a)(1.1) (Supp. 2015).

218. 2015 Ga. Laws 236, § 5-14, at 250; O.C.G.A. § 48-9-14 (2013 & Supp. 2015).

219. O.C.G.A. § 48-13-50.3(b) (Supp. 2015).

220. State of Georgia Final Composite Status Sheet, HB 106, May 14, 2015.

221. *See* 2015 Ga. Laws 1443, § 3, at 1454–55. HB 106, the cleanup bill passed on the fortieth day, replaced a large portion of the TIA modifications in Part VII of HB 170 discussed *infra*, but the changes were only technical. *See* 2015 Ga. Laws 1443, § 2, at 1444–54. Substantively, HB 106’s TIA modifications are the same as HB 170’s Conference Committee Report. *See id.*

(those directed to charge the \$5.00 per night fee) from those “furnishing for value to the public any rooms, lodgings, or accommodations” under HB 170, to “furnishing for value the public a hotel or motel room.”<sup>222</sup> This change ensures that only hotel and motel rooms, as opposed to campsites, for example, are assessed the fees.<sup>223</sup> The rationale for the hotel-motel tax, which was not in any prior version of HB 170, is that a higher proportion of out-of-staters will pay the taxes than other means of revenue generation.<sup>224</sup>

Section 6-1 of the Act revises subsection (b) of Part 3 of Article 2 of Chapter 10 of Title 32 of the Code, the Georgia Transportation Infrastructure Bank Act.<sup>225</sup> Now, preference for loans from the Transportation Infrastructure Bank may be given to eligible projects in Tier 1 and Tier 2 counties.<sup>226</sup> The Act also provides “[p]reference for grants and other financial assistance may be given to eligible projects which have local financial support.”<sup>227</sup>

Part VII of the Act modifies the Transportation Investment Act of 2010 (TIA).<sup>228</sup> The Act amends TIA to allow individual counties, not currently in a region with an approved Transportation Special Local Option Sales Tax (T-SPLOST), to impose their own county T-SPLOST.<sup>229</sup> A county T-SPLOST may be imposed at a fractional rate up to 1% in .05% increments.<sup>230</sup> If a county does not reach an intergovernmental agreement with its respective municipalities, the maximum rate of tax for the county T-SPLOST cannot exceed

222. Compare O.C.G.A. § 48-13-50.3(a)(2) (Supp. 2015), with 2015 Ga. Laws 236, § 5-15, at 251.

223. See *id.*

224. Roberts, *supra* note 1.

The members of the Senate originally discussed a \$5 per day rental car fee to make up for the revenue lost to a lower excise tax. However, since half of the cars rented in this state are rented by Georgians, we wanted to find a way to shift more of that burden to those visiting from outside Georgia so that they, too, had to pay some of the costs of Georgia’s transportation network. Shifting that fee to a \$5 per night fee on hotel and motel rooms, excluding extended stays, means that 85 percent of the revenue from this fee will come from those who live out-of-state.

*Id.*

225. 2015 Ga. Laws 236, § 6-1, at 251–52.

226. O.C.G.A. § 32-10-127(b)(2) (Supp. 2015). Tier 1 counties are those “ranked and designated as the first through seventy-first least developed counties” in Georgia. O.C.G.A. § 48-7-40(b)(2) (2013 & Supp. 2015). Tier 2 counties are those “ranked and designated as the seventy-second through one hundred sixth least developed counties . . .” *Id.*

227. O.C.G.A. § 32-10-127(b)(3) (Supp. 2015).

228. See 2015 Ga. Laws 236, § 7-1, at 252.

229. See O.C.G.A. §§ 48-8-260–269.6 (Supp. 2015).

230. O.C.G.A. § 48-8-241(e) (Supp. 2015).

.75%.<sup>231</sup> Counties participating in a regional mass transportation system may impose a county T-SPLOST beginning July 1, 2016 (another provision effectuated by HB 106’s passage; HB 170 originally provided July 1, 2015).<sup>232</sup> All other counties, those not participating in a regional mass transportation system, may begin July 1, 2017.<sup>233</sup> The Act further provides that county T-SPLOSTs may not exceed five years,<sup>234</sup> that all revenue must be dedicated to transportation,<sup>235</sup> and that at least 30% of the estimated revenue must be spent on projects in the “state-wide strategic transportation plan.”<sup>236</sup> Moreover, according to the Act, voters must approve the county T-SPLOST by referendum.<sup>237</sup> Finally, Part VII of the Act allows the TIA regions with a current regional T-SPLOST in place to renew the tax at the expiration of its ten-year term, without authorization from the General Assembly.<sup>238</sup>

Part VIII of the Act provides that the Act shall be known as the Transportation Funding Act of 2015,<sup>239</sup> and that “[i]t is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state.”<sup>240</sup>

### *Analysis*

The bipartisan passage of the Transportation Funding Act was a predominate plotline of the 2015 General Assembly session. Despite the challenges it faced from some voices on the right—as it was a substantial tax increase<sup>241</sup>—and from some on the left who would have preferred more money for public transportation and keeping the

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231. O.C.G.A. § 48-8-262(c)(2) (Supp. 2015).

232. *Compare* O.C.G.A. § 48-8-261(b) (Supp. 2015), with 2015 Ga. Laws 236, § 7-5, at 254–55, and 2015 Ga. Laws 1443, § 2, at 1445.

233. O.C.G.A. § 48-8-261(c) (Supp. 2015).

234. O.C.G.A. § 48-8-262(d)(2)(C) (Supp. 2015).

235. *See* O.C.G.A. § 48-8-261(b)(3)(C) (Supp. 2015); O.C.G.A. § 48-8-261(c)(2)(C) (Supp. 2015).

236. O.C.G.A. § 48-8-241(f) (Supp. 2015).

237. O.C.G.A. § 48-8-263 (Supp. 2015).

238. *See* O.C.G.A. § 48-8-245(c)(3) (2013 & Supp. 2015).

239. 2015 Ga. Laws 236, § 8-1, at 264.

240. 2015 Ga. Laws 236, § 8-2, at 264.

241. *See supra* notes 42–44 and accompanying text.

AFV tax credit<sup>242</sup>—the nearly \$1 billion per year in funding for transportation the Act generates begins to address critical needs for Georgia’s continued economic development and road safety.<sup>243</sup>

In the end, the TFA achieves much of what the Joint Study Committee suggested. It substantially addresses the minimum \$1 billion funding gap: the Governor’s Office of Planning and Budget’s fiscal note estimated that GDOT’s revenue would be increased by approximately \$870 million in its first year.<sup>244</sup> As a result, the road maintenance backlog and road repair and improvement cycle will be alleviated.<sup>245</sup> Revenue generated as a result of the TFA will enable GDOT’s budget to be expanded by approximately 40%.<sup>246</sup> Unlike before, when the maligned fourth-penny went to the general fund, all state taxes on transportation will go to funding transportation.<sup>247</sup> This was another theme pushed by legislators and advocates: money collected on transportation (*i.e.* the gas tax) should be re-invested in transportation.<sup>248</sup> Some scrutinized GDOT’s past reputation for inefficiency as making them unworthy of more money from Georgia taxpayers, but GDOT will be more accountable and transparent with the ten-year strategic plan provisions.<sup>249</sup> By converting the state motor fuel tax to a pure excise tax, revenue for transportation will be less volatile with fluctuating gas prices; by indexing the excise tax to inflation, the motor fuel tax preserves its purchasing power.<sup>250</sup>

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242. *See, e.g., supra* notes 131–37 and accompanying text.

243. *See* Roberts, *supra* note 1.

244. Charlie Harper, Op-Ed., *Largest Tax Hike in History? Hardly*, COLUMBUS LEDGER-ENQUIRER (July 21, 2015), <http://www.ledger-enquirer.com/opinion/opn-columns-blogs/article29479276.html> [hereinafter Harper, *Tax Hike*].

245. Charlie Harper, Op-Ed., *Transportation Bill Becomes Law*, COLUMBUS LEDGER-ENQUIRER (May 5, 2015), <http://www.ledger-enquirer.com/opinion/opn-columns-blogs/article29449639.html> [hereinafter Harper, *Becomes Law*].

246. *Id.*

247. Baruch Feigenbaum, Op-Ed., *Another View: The Good, Bad of Transportation Bill*, ATLANTA J.-CONST., May 10, 2015, at A15, available at 2015 WLNR 13667834.

248. *See, e.g.,* Roberts, *supra* note 1 (“The revenue that comes from both of these fees will be spent on transportation purposes, which include everything from roads and bridges to buses and public transit. If that revenue is not spent on transportation, we will no longer charge those fees. This enforces the promise that this revenue will go directly toward making Georgia’s transportation network better.”).

249. *See, e.g.,* Senate Video Day 33, *supra* note 118, at 1 hr., 38 min., 20 sec. (remarks by Sen. Bill Cowsert (R-46th)).

250. STUDY COMMITTEE REPORT, *supra* note 5, at 18–19.

The TFA maintained the “user fee” theme throughout, which was a chief talking point for those advancing it.<sup>251</sup> With the excise tax, drivers on Georgia’s roads will theoretically pay (by the gallon consumed) for how much they drive on the road, rather than the hybrid sales tax-excise tax model.<sup>252</sup> With the fee on AFVs, those drivers will also contribute to the maintenance and repair of the roads on which they drive in Georgia.<sup>253</sup> With the highway impact fee, coupled with the diesel excise tax, heavier trucks too will pay their fair share for their wear and tear on Georgia’s infrastructure.<sup>254</sup>

Local governments, which vehemently opposed the early versions of HB 170 that handcuffed the municipalities’ ability to levy their own taxes on motor fuel, are largely unaffected.<sup>255</sup> Georgia’s over-reliance on unreliable and inefficient federal dollars is assuaged.<sup>256</sup> Although the elimination of the tax exemption for airlines will not add revenue directly toward roads and bridges, this elimination was crucial in securing votes from some legislators who thought not doing so would be a deal-breaker.<sup>257</sup> With the alterations to the Transportation Investment Act, the TFA also enables counties or regions to reach agreements to fund projects that will directly benefit them.<sup>258</sup> At least one local official in the Atlanta area has already publicly proposed putting this provision to use.<sup>259</sup>

Not everyone was happy with the TFA, however, as exemplified by the hotel and tourism industry’s outrage upon realizing they would

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251. See, e.g., Harper, *Becomes Law*, *supra* note 245 (“[The Act] will also end the practice of Georgia taxpayers paying \$5,000 (on top of \$7,500 in federal subsidies) for the purchase of electric cars. Instead, owners of electric vehicles will now pay an annual fee commensurate with an average Georgia driver’s gasoline excise tax—extending the ‘user fee’ concept beyond the gas pumps.”).

252. See Feigenbaum, *supra* note 247.

253. *Id.*

254. *Id.*

255. See *supra* note 151 and accompanying text.

256. See Harper, *Becomes Law*, *supra* note 245.

257. See Jim Galloway, *Injecting a Delta Piñata into the Transportation Bill*, ATLANTA J.-CONST., Mar. 5, 2015, available at 2015 WLNR 6550198 (“[T]here’s no doubting the strangeness of the situation: By inserting a Richard Anderson piñata into H.B. 170, Republicans may have improved the chances of passage for a \$1 billion transportation bill—most of which the Delta CEO heartily supports.”).

258. See Harper, *Becomes Law*, *supra* note 245.

259. *Id.* (“Georgians can expect to be hearing the term “TSPLOST” again, especially those in metro Atlanta. Fulton County Commission Chairman John Eaves has already stated that he would like his county to consider another bite at the TSPLOST apple. HB 170 allows counties and cities to form their own regions, thus avoiding the competing agendas between urban and exurban Georgians on the same ballot.”).

be impacted by the nightly room fee.<sup>260</sup> The hotel-motel tax was not discussed publicly throughout the debate, and the industry felt “blindsided” when the Conference Committee Report was released.<sup>261</sup> In all likelihood, the industry will push to change that aspect of the TFA in the 2016 session.<sup>262</sup> The hotel and tourism industry was not alone in their criticism of the \$5.00 fee.<sup>263</sup> As a Reason Foundation scholar put it: “One of the worst things in the bill is the \$5.00-a-night hotel room fee, which will be charged to hotel visitors and used to fund local roads. Hotel users should pay to use roads when they drive on them, not when they sleep in a hotel bed.”<sup>264</sup>

In the few months between the TFA going into effect and this *Peach Sheet*’s publication, gas prices fell substantially, despite the tax increase at the pump.<sup>265</sup> One member of the local political press quipped: “If you’re Gov[ernor] Nathan Deal or a Republican state lawmaker who voted for that \$900 million-a-year bill to fund road and bridge repairs, go ahead and exhale. Then thank your lucky stars—and maybe the Saudis.”<sup>266</sup>

Overall, statesmen, the business community, and transportation-policy experts hail the TFA as a huge achievement.<sup>267</sup> Several other states have grappled with depleted transportation budgets in the past few years and have faced similar anti-tax-increase sentiment.<sup>268</sup> Five

260. Julia Ritchey, *State Transportation Bill’s Lodging Tax Sparks Ire of Local Industry Groups*, SAVANNAH MORNING NEWS (Apr. 2, 2015, 12:28 AM), <http://savannahnow.com/exchange/2015-04-02/state-transportation-bills-lodging-tax-sparks-ire-local-industry-groups>.

261. Greg Bluestein, *Georgia’s Hotel Industry Fights New \$5 Fees*, ATLANTA J.-CONST., Apr. 24, 2015, available at 2015 WLNR 12019642.

262. *Id.*

263. *See, e.g.*, Feigenbaum, *supra* note 247.

264. *Id.*

265. Greg Bluestein et al., *Whew. Gas Prices Drop by 50 Cents Since Tax Hike Added*, AJC.COM: POL. INSIDER BLOG (Sep. 15, 2015), <http://politics.blog.ajc.com/2015/09/15/whew-gas-prices-drop-by-50-cents-since-tax-hike-added/>.

266. *Id.*

267. *See, e.g.*, Press Release, Office of the Governor, Deal: Georgians Rise to Transportation Challenges (May 4, 2015), <https://gov.georgia.gov/press-releases/2015-05-04/deal-georgians-rise-transportation-challenges>; Roberts, *supra* note 1; Seth Millican, *HB 170 Finally Provides Funding for Georgia Transportation Infrastructure*, GA. CHAMBER BLOG (May 6, 2015), [http://www.gachamber.com/HB170\\_Blog/](http://www.gachamber.com/HB170_Blog/); Harper, *Becomes Law*, *supra* note 245.

268. *See* Harper, *Tax Hike*, *supra* note 244 (“Neighboring states South Carolina and Tennessee that currently have gas taxes lower than Georgia’s are debating a similar measure to increase their state’s funding for roads[,] as future funding from the Federal Highway Trust Fund remains murky.”).

other states have gas tax hikes going into effect in 2015 alone.<sup>269</sup> Going forward, Georgia will face more challenges, and need more money, to modernize its infrastructure network.<sup>270</sup> The political capital expended by infrastructure advocates in 2015 likely means that transportation funding will not be at the forefront in the immediate future. Surely, funding for multimodal, light rail, and public transportation must be addressed in the future. But the existing infrastructure's health had to be tended to first. Georgians can thank Governor Deal, Representative Roberts, Representative Smyre, Senator Gooch, and the General Assembly for refusing to kick the can.

*Megan E. Canning & John C. Winne*

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269. Kendall Trammell, *Higher Gas Taxes Start Tomorrow in Georgia*, AJC.COM: ROUTE 666 BLOG (July 2, 2015), <http://commuting.blog.ajc.com/2015/06/30/higher-gas-taxes-start-tomorrow-in-georgia/> (“Drivers in Idaho, Maryland, Rhode Island, Nebraska and Vermont will also get charged more at the pump due to laws taking effect at the start of the new fiscal year.”).

270. Harper, *Becomes Law*, *supra* note 245.



