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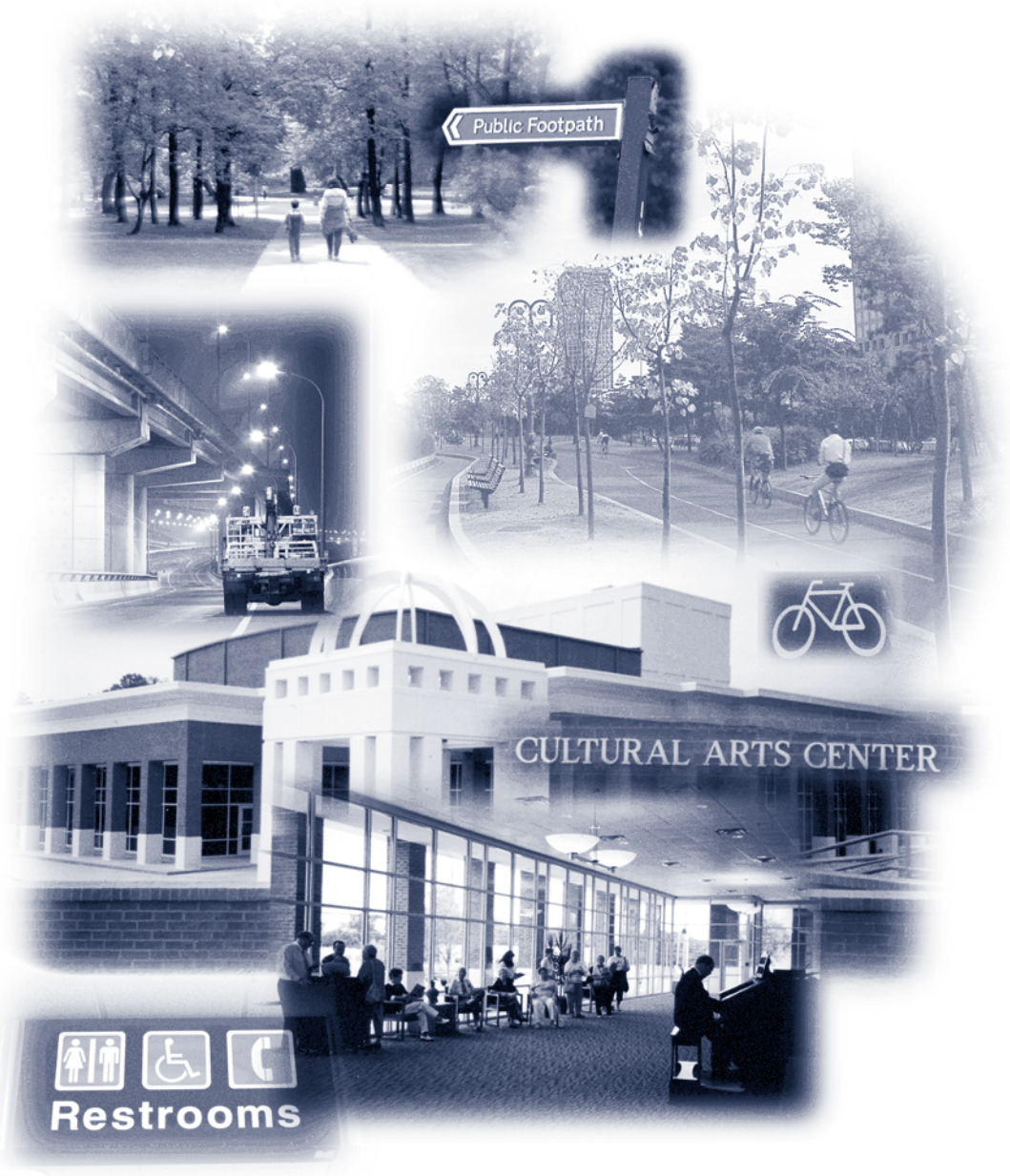
Special Purpose Local Option Sales Tax

SPLOST:
Building for the Future



GEORGIA MUNICIPAL ASSOCIATION

A Georgia Municipal Association Publication

SPLOST:
Building for the Future

Third Edition

Georgia Municipal Association
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Foreword

The Georgia Municipal Association is pleased to provide for municipal officials a discussion of legal and policy considerations relevant to the special purpose local option sales tax. We trust that this publication will be helpful to cities in working with other local governments to diversify the city's tax base by utilizing the special purpose local option sales tax. The special purpose local option sales tax can be a powerful tool to respond to local capital outlay needs without increasing property taxes. We welcome your comments and suggestions for revision and improvement of the publication after your review of its contents.

This publication was originally drafted in 2004 after significant changes in state law governing the special purpose local option sales tax. The publication was revised and updated in 2011 by Mark Baggett, Senior Government Relations Associate, and Rusi Patel, Associate General Counsel.

This publication is intended to assist municipal officials in identifying issues so that they can discuss them and appropriately consult with their city attorney. This publication is provided for general information purposes only, does not constitute legal advice and may not apply to your specific situation. Municipal officials should consult with their city attorney before taking any action based on the content of the publication.

Lamar Norton
GMA Executive Director

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Introduction

Although counties were originally established to serve as administrative arms of the state and cities were established to provide municipal services to densely populated areas, today both cities and counties in Georgia are under tremendous pressure to provide newer and better services to their residents. These services often require infrastructure critical to supporting day to day life in their communities, such as transportation infrastructure, water and sewer infrastructure, recreation facilities, detention facilities, public safety facilities, and downtown development. Despite their common interests of working for the benefit of their communities, over time many cities and counties began to compete against each other rather than work together. This conflict can be traced back to the adoption of Amendment 19 in 1972, which for the first time authorized counties to provide services previously provided only by cities. This competition began to take its toll on municipal infrastructure in a significant way starting in 1985 when the playing field between cities and counties was further tilted by legislation allowing counties to control the only sales tax specifically created to fund local capital projects, the Special Purpose Local Option Sales Tax (SPLOST). This was particularly inequitable since county SPLOST expenditures were not limited to the traditional projects undertaken by counties as administrative arms of the state. In many instances the proceeds were used by counties to pay for the provision of municipal-type services in the unincorporated area, while the financing of these same type city services within the traditional city boundary were ignored.

Due to concern from both cities and counties about the need for more cooperation and communication between local governments, GMA and ACCG worked in partnership to address these concerns. Both associations selected four members to form a task force to determine the root of the concerns and to reach solutions that would ultimately benefit local taxpayers. This task force was overseen by Representative Richard Royal, Chairman of the House Ways and Means Committee, and by Representative Mickey Channell, Chairman of the House Industrial Relations Committee. Through the task force discussions, it became apparent that the SPLOST needed to be addressed through legislative action, and that any delay would result in further erosion of city and county relations and continue to deprive cities of equitable access to funds for capital projects.

House Bill 1714, a bipartisan bill, was introduced as a "landmark piece of legislation." It was the result of two years of negotiations between GMA and ACCG members and staff. The legislation amended the SPLOST law and enacted provisions relating to significant land use changes in proposed or newly annexed areas. Both associations supported the bill. Although HB1714 itself did not pass the legislature, its contents, further perfected in accordance with a subsequent agreement between the two associations, was included in House Bill 709, which was passed by the General Assembly and signed into law by the Governor on April 23, 2004. House Bill 709 also authorized the City of Atlanta to ask for voter approval of a one cent sales tax within the City of Atlanta to fund water and sewer projects and authorized Columbus to seek voter approval for an additional one cent to the existing local option sales tax levy.

House Bill 709 ensured that cities have a meaningful voice in determining the project list on which the proceeds of the tax are spent. In return for a seat at the table on SPLOST, cities agreed to provide counties with an opportunity for input on land use changes of newly annexed property within the affected county and to attempt to resolve legitimate concerns arising from those land use changes.

Due to the effective date stated in HB709, the new SPLOST provisions were only applicable to SPLOSTs imposed under a resolution or ordinance adopted by a county or city on or after July 1, 2004. They were not applicable to SPLOSTs that were called prior to that date.

In the 2011 legislative session, the law was amended to provide local governments the ability to abandon existing SPLOST projects that are deemed infeasible. The revenue for these projects may be used to rollback property taxes or to reduce debt. GMA encourages local governments to use this provision sparingly. SPLOST project lists should be prepared with the intent of actually undertaking the capital outlay projects identified. Abandoning numerous projects may affect voter confidence in future SPLOST referenda.

This publication discusses in detail the SPLOST law in an effort to ensure that cities and counties will be able to work together in determining the SPLOST projects that will best benefit their communities.

SPLOST

Special District Tax

Although the text of the law explicitly refers to the SPLOST as a county special purpose local option sales tax, the tax is ***legally*** and ***technically*** a special district tax. Code section 48-8-110.1 of the Official Code of Georgia Annotated (O.C.G.A.) cites the special district provision of the Georgia Constitution (Article IX, Section II, Paragraph VI) as the authority creating the special districts. As in the Local Option Sales Tax (LOST), the geographic boundaries of each special district are the same as the geographic boundaries of each county. The practical effect of this change is to ensure that municipalities may legally receive SPLOST proceeds, either with or without an intergovernmental agreement.

Qualified Municipalities

To be eligible for SPLOST proceeds, a city must be a "qualified municipality." "Qualified municipality" is defined in O.C.G.A. § 48-8-110(4). A city must provide at least three services out of a list of 12 services to be qualified. The 12 services on the list are:

- Law enforcement;
- Fire protection and fire safety;
- Road and street construction or maintenance;
- Solid waste management;
- Water supply or distribution or both;
- Waste-water treatment;
- Storm-water collection or disposal;
- Electric or gas utility services;
- Enforcement of building, housing, plumbing, and electrical codes and other similar codes;
- Planning and zoning;
- Recreational facilities; and
- Library.

In addition to services provided directly by a municipality, services provided by contract count as services provided for purposes of qualification.

Selection of Projects

Only counties have the authority to call for a SPLOST referendum. Once a county government decides to call for a SPLOST (but prior to the call itself and prior to the vote of the county to impose the tax), the county must provide written notice, either through the mail or through some other method of delivery, to the chief elected official of each qualified municipality within the special district. This notice must communicate the date, time, location and purpose of a meeting during which representatives from the county and each qualified municipality will discuss capital projects that could be included in the SPLOST referendum. These projects may include municipally owned or operated capital projects. The notice must be delivered at least 10 days prior to the date of the meeting and the meeting must be held at least 30 days before the call for the referendum.

Types of Projects

Only certain types of projects are eligible under the law for SPLOST funding. The types of projects that may be funded through a SPLOST are:

1. Roads, streets, and bridges, which may include sidewalks and bicycle paths;
2. A capital outlay project in the special district consisting of a courthouse or administrative buildings; a civic center; a local or regional jail, correctional institution, or other detention facility; a library; a coliseum; local or regional solid waste handling facilities; local or regional recovered materials processing facilities; or any combination of such projects;
3. A capital outlay project to be operated by a joint authority or authorities of the county and one or more qualified municipalities within the special district;
4. A capital outlay project to be owned or operated or both by the county, one or more qualified municipalities in the special district, one or more local authorities in the special district, or any combination thereof;
5. A capital outlay project consisting of a cultural, recreational, or historic facility or a facility for some combination of these purposes;
6. A water or sewer capital outlay project, or combination thereof, to be owned or operated by a county water and sewer district and one or more qualified municipalities in the special district;
7. The retirement of existing general obligation debt of the county, one or more qualified municipalities, or any combination thereof;
8. A capital outlay project within the special district consisting of public safety or airport facilities, or both, or related capital equipment used to operate such facilities, or any combination of such purposes;
9. A capital outlay project within the special district consisting of capital equipment for use in voting in official elections or referenda;
10. A capital outlay project within the special district consisting of any transportation facility designed for the transportation of people or goods, including but not limited to railroads, port and harbor facilities, mass transportation facilities, or any combination thereof;
11. A capital outlay project within the special district consisting of a hospital or hospital facility owned by the county, a qualified municipality or a hospital authority and operated by such county, municipality, or hospital authority, or by a nonprofit, tax-exempt organization through a lease or contract with the county, municipality or hospital authority; or
12. Any combination of two or more of the above projects.

PRACTICE TIP

Note that city owned and operated projects are fully eligible for SPLOST funding just as county owned and operated projects. Thus city water systems, sewer systems, other utility systems, stormwater facilities, drainage projects, and greenspace could all be funded through SPLOST if approved by the voters. Note also that the fourth category listed above (and in the statute at O.C.G.A. § 48-8-111(a)(1)(D)) is extremely broad and authorizes a wide variety of capital outlay projects.

PRACTICE TIP

SPLOST revenue may only be spent on voter-approved capital projects. Spending SPLOST revenue on maintenance and operations is a violation of the law.

In addition to using the SPLOST to retire existing general obligation debt, a city or county may issue general obligation debt in conjunction with the SPLOST. Doing so will enable a local government to commence funding projects in anticipation of receiving SPLOST proceeds to pay the debt. If general obligation debt is to be issued in conjunction with the SPLOST, the SPLOST ballot question must be accompanied by a ballot question requesting voter approval to issue the debt.

Road, Street and Bridge Projects

Cities and counties may issue general obligation debt for road, street and bridge purposes in conjunction with calling a SPLOST. General Obligation debt shall be payable first from the separate SPLOST account and any remaining liability on the debt shall be paid from the general fund.

Eligible Road, Street and Bridge Purposes

SPLOST funds may be used for road repair.

Authorized road, street and bridge projects include:

1. Acquisition of rights of way for roads, streets, bridges, sidewalks and bicycle paths;
2. Construction of roads, streets, bridges, sidewalks and bicycle paths;
3. Renovation and improvement of roads, streets, bridges, sidewalks and bicycle paths, including resurfacing;
4. Relocation of utilities for roads, streets, bridges, sidewalks, and bicycle paths;
5. Improvement of surface-water drainage from roads, streets, bridges, sidewalks, and bicycle paths; and
6. Patching, leveling, milling, widening, shoulder preparation, culvert repair, and other repairs necessary for the preservation of roads, streets, bridges, sidewalks and bicycle paths.

PRACTICE TIP

In addition, storm-water capital outlay projects and drainage capital outlay projects may be funded under SPLOST either as general projects or as road, street and bridge projects.

Call for Referendum

After the meeting to determine the projects that will be included on the ballot for SPLOST funding, if the county votes to impose the SPLOST, the county will forward a copy of the resolution or ordinance calling for the SPLOST to the county election superintendent. The resolution or ordinance must identify the capital projects selected by the county and qualified municipalities for which SPLOST proceeds may be used[1].

PRACTICE TIP

Only projects that are listed on the SPLOST referendum are eligible to be funded through SPLOST revenue.

The ordinance or resolution must also specify the maximum length of time for which the SPLOST will be levied, the estimated cost of the projects to be funded by the SPLOST proceeds and the amount of general obligation debt, if any, to be issued in conjunction with the SPLOST.

PRACTICE TIP

Cities as well as the county may issue general obligation debt in conjunction with the imposition of a SPLOST. To do so, the SPLOST ballot question must be accompanied by a ballot question asking the voter to approve the issuance of general obligation debt. The question must specify each city or county that seeks to issue general obligation debt in conjunction with the SPLOST and the amount of debt to be issued.

When the election superintendent receives the resolution or ordinance, he or she must issue the call for referendum on the SPLOST to voters within the special district. The election superintendent must publish the date and purpose of the SPLOST referendum in the county's official organ once a week for four weeks immediately preceding the date of the referendum.

[1] "The resolution or ordinance passed by the county governing authority must specify each purpose to which the tax will be devoted." 1990 Op. Att'y Gen. No. U90-18.

The election must be held on one of the following dates specified in Georgia law.[2] During odd years, elections may be held on the third Tuesday in March, or the Tuesday after the first Monday in November. In even years, elections may be held on the date of the general primary (typically the third Tuesday in July), and the Tuesday after the first Monday in November. A referendum may also be held in conjunction with the presidential preference primary if one is held that year.

If general obligation debt is to be issued in conjunction with the SPLOST by the county or by any qualified municipality, the referendum notice must also include the amount of the debt, the purpose for which the debt will be issued, the interest rate or rates the debt will bear and the amount of principal to be repaid each year during the life of the debt.

PRACTICE TIP

Keep in mind that the law specifies timeframes that must be followed in order for a SPLOST to be valid.

The **notice to "meet and confer"** must be delivered by the county governing authority at least **10 days prior to the "meet and confer" meeting** between the county and each qualified municipality within the special district.

The **"meet and confer"** meeting must be held at least **30 days prior to call for referendum**.

Advertising in the official organ of the county (the election superintendent has this responsibility) is required **once a week for four weeks immediately preceding the election**.

Ballot Question

The law provides only two ballot questions. The first question calls for the election of a SPLOST, for a maximum time period and for raising an estimated amount of revenue[3]. The second question relates to the approval of general obligation debt. If a SPLOST call does not include a referendum on general obligation debt, this question will not be included on the ballot.

If a SPLOST referendum fails, a special district may not hold a referendum for 12 months from the month in which the referendum was held. However, if an election date occurs during the twelfth month following the month in which the SPLOST referendum failed, a new SPLOST referendum may be submitted to the voters on that date.

[2] O.C.G.A. § 21-2-540(c)(2).

[3] The referendum question "must be only so specific as to place the electorate on fair notice as to which projects the tax proceeds will be devoted and where there is municipal participation in such projects, identification of the municipalities and projects involved would be required." 1990 Op. Att'y Gen. No. U90-18. Although it is not clear what this means, identifying projects by the categories enumerated in Code section 48-8-11(a)(1)(A)-(L) should be sufficient.

PRACTICE TIP

Any SPLOST approved through a referendum will be effective on the first day of the calendar quarter that begins more than 80 days after the date of the referendum. For example, a SPLOST that is approved in a November referendum will be effective April 1 of the next year. Likewise, a SPLOST that is approved in a March referendum will be effective July 1.

Distribution of Revenue

The law provides two methods for determining the distribution of SPLOST funds and the selection of SPLOST projects. Under each method, the Department of Revenue will distribute all of the SPLOST proceeds collected in a special district to the county government, which will then distribute SPLOST proceeds to the city government or governments in accordance with the distribution schedule.

Intergovernmental Agreements

One method of determining the project list and the distribution of revenue to finance the selected projects is through an intergovernmental agreement. The county and one or more qualified municipalities representing at least 50 percent of the municipal population in the county must sign the intergovernmental agreement.

PRACTICE TIP

The total county population is irrelevant when addressing the intergovernmental agreement. Only the population of each city within the county should be considered to determine which city or cities comprise 50 percent or more of the municipal population.

Basis for Population

Although the law does not specify the basis for determining population, the only population figures officially accepted by the state are the decennial census figures.

Terms of the Agreement

Cities and counties can design their intergovernmental agreements to fit local needs. While the specific provisions of SPLOST intergovernmental agreements will vary from special district to special district, all intergovernmental agreements for use of SPLOST proceeds **must** include the following eight terms:

1. The specific capital outlay projects to be funded by the SPLOST;
2. The estimated dollar amount of SPLOST to be allocated to each project;
3. The procedures for distributing the SPLOST proceeds to qualified municipalities;
4. The schedule for distributing SPLOST proceeds to qualified municipalities, including priority or order in which projects will be fully or partially funded;

5. A statement that all projects listed in the agreement will be funded from the SPLOST, unless otherwise agreed;
6. A statement that SPLOST money will be kept in separate accounts and used only for the specified purposes;
7. Record-keeping and audit procedures; and
8. Any other provisions the county and participating cities want to include.

PRACTICE TIP

If the SPLOST projects are determined by an intergovernmental agreement, the county government must distribute any proceeds due to cities under the agreement in accordance with the agreed upon distribution schedule.

Distribution to Cities

Unlike the LOST, the SPLOST does not contain an absent municipality provision. While it is possible that cities that are not required parties to the intergovernmental agreement could be excluded from receiving SPLOST funds, it is equally possible for every city to be included. Although only a combination of those cities that represent at least 50 percent of the municipal population in a county are needed to sign the intergovernmental agreement, all cities **may** sign the agreement. Additionally, the city or cities that do represent at least 50 percent of the municipal population may negotiate with the county on the behalf of or for the inclusion of all cities in the special district. In so doing, those cities can ensure that all cities will benefit from the SPLOST.

It is important that those governments that choose to enter into an intergovernmental agreement work to include SPLOST projects from all cities within the special district. Since each SPLOST must be approved in a district-wide referendum, including projects from all cities on a SPLOST referendum may help ensure the passage of the SPLOST. By contrast, denying SPLOST funding to a city or cities or working to exclude a city from the intergovernmental agreement could work against a successful referendum.

As a general rule, cities that were successful in their 2002 LOST negotiations achieved that success by working first with all of the municipalities in the special district. Once the cities had determined among themselves the distribution that each city should receive based on the eight statutory criteria, the cities went as a group to negotiate with the county. Although only the cities representing 50 percent or more of the municipal population were required signatories of the LOST distribution certificate, all cities participated in the process. As a result of this unified approach, cities were able to collectively work to achieve an equitable distribution formula. All cities benefited from working together for the good of each city in the special district. The same process should be useful in SPLOST negotiations. Although only those cities with at least 50 percent of the municipal population are required signatories, even those cities may fare better in SPLOST negotiations if they work with all cities in the county to present a unified and responsible proposal.

Benefits of Intergovernmental Agreements

Entering into an intergovernmental agreement can provide significant benefits to both the county and to the cities involved in the SPLOST. The negotiation process allows the county and the cities the opportunity to work on joint projects, and to discuss what projects will best serve the needs of all citizens in the county. Through discussions, a county and the cities that are party to the intergovernmental agreement could determine that a project desired by a smaller city could be key to economic development and growth in the area. Additionally, the county and the cities could determine that certain projects should have priority on the funding list. Moreover, with more local governments scrutinizing the SPLOST project list, it becomes more likely that a balanced list will be selected that will receive voter approval.

The law provides certain incentives to encourage cities and counties to enter into intergovernmental agreements for the use of SPLOST proceeds. First, if a county and the cities in the county sign an intergovernmental agreement for the use of SPLOST proceeds, the SPLOST can be imposed for a maximum of six years rather than for a maximum of five years[4]. This additional year can save local governments significant costs by delaying a future SPLOST call for an extra year. Further, it makes more revenue available for capital expenditures, thereby allowing more projects to be funded. Although some projects may otherwise be saved for a future SPLOST, nothing guarantees that voters will approve subsequent SPLOSTs. Second, if the county and cities enter into an intergovernmental agreement for the use of SPLOST proceeds, the tax may be collected for the full six years regardless of when and if projects are fully funded at an earlier time[5]. Excess funds, if any, would be used to retire county debt or placed in the county general fund to roll back property taxes.

Practice Tips when Drafting Intergovernmental Agreements

A decision by the Supreme Court of Georgia regarding intergovernmental contracts emphasizes the need for intergovernmental contracts entered into under SPLOST to discuss specific capital outlay projects and not generalize these projects as "services". Although the case concerns the Homestead Option Sales Tax (HOST), not the SPLOST, and the SPLOST statute differs from the HOST statute in effect at the same time the IGA was entered into, because the SPLOST statute specifically authorizes IGA's, cities and city attorneys should be familiar with the case and its holdings.

The facts of the Decatur decision are that several cities and the county entered into an intergovernmental agreement under which a portion of the HOST proceeds were to be paid to the cities to construct capital outlay projects within their jurisdictions. The Georgia Supreme Court had to decide whether the intergovernmental agreement was valid under the Intergovernmental Contracts Clause of the Georgia Constitution. To evaluate this issue the Court looked at whether the agreement was a contract for the

[4] O.C.G.A. § 48-8-111(a)(2).
[5] O.C.G.A. § 48-8-111(a)(3); O.C.G.A. § 48-8-112(b)(3).
6 City of Decatur v. DeKalb County 289 Ga. 612 (2011).

provision of services and, to a lesser extent, whether the agreement was for the joint or separate use of facilities or equipment.

The Court took a very narrow view of the term "services" and held that the intergovernmental agreement was invalid. The court stated, "The focus and clear purpose of the agreement is to provide a formula for the distribution of the HOST revenues; simply it is a revenue-sharing agreement….The fact that the present IGA [intergovernmental agreement] requires the Cities to expend the tax proceeds in accordance with the mandates of the Homestead Option Sales and Use Tax Act, OCGA § 48-8-102, does not transform it into either a contract for services or one for the use of facilities." In their decision the Court very narrowly construed the Georgia Constitution to exclude the provision of capital outlay projects as a "service".

When entering into an intergovernmental agreement cities must first be sure to look to the Intergovernmental Contracts Clause of the Georgia Constitution, which can be found in Article IX, Section III, Paragraph I. The Intergovernmental Contracts Clause requires such agreements to be for "joint services, for the provision of services, or for the joint or separate use of facilities or equipment" amongst other requirements. The Decatur decision indicates that the Georgia Supreme Court intends for such agreements to declare the specific projects contemplated. Agreements which speak in terms of "revenue-sharing" are likely to be viewed unfavorably by Georgia courts and should be avoided. Cities should remember that intergovernmental agreements for SPLOST are not "revenue-sharing" agreements but are agreements for the provision of facilities and equipment such as fire stations, police cars, and roads. Additionally, cities should be sure to memorialize in the agreement the frequency and other specifics of the distribution of funds collected from the SPLOST. The county does not have to own the equipment or facility. City officials should consult their city attorney before negotiating any intergovernmental agreement to ensure the agreement complies with state laws.

PRACTICE TIP

With an intergovernmental agreement, a SPLOST may be called for any length of time up to six years.

Absence of Intergovernmental Agreement—Population-based Split

While the goal of the law is to foster cooperation among local governments, the law provides a default mechanism for distributing SPLOST revenue in the event that the cities and the county are unable to reach an intergovernmental agreement addressing use of all SPLOST proceeds. This default mechanism provides for a population-based SPLOST distribution. Any revenue not used to fund eligible county-wide projects will be distributed to the county and to each city within the special district according to population.

PRACTICE TIP

This distribution formula ensures that, even without an intergovernmental agreement, all qualified municipalities in a county are guaranteed a share of SPLOST revenue. The only exception to this rule is if the county opts to utilize all of the SPLOST proceeds for "level one county-wide projects" which fulfill the county's obligation to the state, in which case the SPLOST must be levied for a full six years.

Level One Projects

The law specifies that, should the county and cities representing 50 percent of the municipal population within that county not reach agreement on division of all of the SPLOST proceeds, the county may use some or all of the SPLOST proceeds for "level one county-wide projects." A level one county-wide project is defined as a county-wide project that carries out state functions. Level one projects are limited to: a county courthouse; a county administrative building primarily used for constitutional officers or elected officials; a county or regional jail, correctional institution, or other detention facility; a county health department; or any combination of these projects[6]. This method of funding for level one projects is designed to ensure that counties are able to fulfill their constitutionally mandated duties that they provide on behalf of the state.

To ensure the likelihood that city projects will receive SPLOST proceeds in the event that a county opts to fund level one projects without an intergovernmental agreement, *the law requires that any SPLOST that includes funding for level one county-wide projects through this distribution method be levied for at least five years. If level one projects are projected to require more than 24 months of SPLOST proceeds, the SPLOST must be levied for a full six years.* In each case, the length of time of the call determines the expiration date of the tax, regardless of when revenue expectations are met.

For example, if a county calls a SPLOST to fund a courthouse renovation project that will require 48 months of estimated SPLOST proceeds, and the county does not enter into an intergovernmental agreement with the cities with respect to all of the SPLOST proceeds, the SPLOST must be levied for six years. The remaining funds will be distributed among the county and the qualified municipalities in the county, subject to an intergovernmental agreement relating to those proceeds or subject to a population-based division. Furthermore, if all of the voter-approved projects, including the courthouse project, are estimated to cost $60 million and that $60 million is collected in five years, the SPLOST will still be levied and collected for another year. The excess proceeds may be used to pay any additional eligible project costs, to retire county general obligation debt, or to roll back county-wide property taxes.

Level Two Projects

If a county chooses not to fund any level one projects, the county may allocate up to 20 percent of the anticipated SPLOST proceeds to fund "level two county-wide projects." A

[6] O.C.G.A. § 48-8-110(2)(A).

level two project is "a county-wide project… of the county or one or more municipalities, *other than a level one county-wide project*, which project must be owned or operated or both either by the county, one or more municipalities, or any combination thereof[7]." The law does not impose a minimum time requirement for the length of the call when level two projects are funded absent an intergovernmental agreement. The maximum length of time for which a SPLOST may be called to fund level two projects without an intergovernmental agreement for the entire SPLOST proceeds is five years.

Level two projects may include city projects that provide a county-wide service. If municipal projects are designated as level two projects, the county must distribute the appropriate tax proceeds to the municipality or municipalities owning or operating the level two projects.

PRACTICE TIP

This provision only applies if no level one project is funded. If a county funds one or more eligible level one projects, the county **may not** also allocate 20 percent off the top for level two county-wide projects.

Since level one projects and level two projects are mutually exclusive, a county cannot opt to fund a level one project without an intergovernmental agreement and call that project a level two project in order to fund other level two projects as well or in order to reduce the required length of time for which a SPLOST must be called. *Level one projects cannot fall into the category of level two projects.* For example, a county may not consider a jail project a level two project in order to take advantage of the 20% set-aside for eligible county-wide projects with the goal of funding the jail project and other possible level two projects. The definition of level two projects specifically excludes level one projects and jail projects are clearly defined as level one projects.

PRACTICE TIP

Level two projects will vary from special district to special district, depending on which government in that district is a primary provider of a given service, and depending on which services are primarily provided by a single unit of government, or through a joint city-city or city-county effort. Regardless, level two projects are projects that have a county-wide benefit. For example, if a county is the primary provider of road, street and bridge services, then projects related to roads, streets and bridges could be level two projects. Likewise, if a city is the primary provider of recreation services, then that city could receive level two funding for recreation projects. Moreover, if a city and a county jointly provide a service county-wide, projects relating to that service could receive level two project funding.

[7] O.C.G.A. § 48-8-110(2)(B).

Population-Based Distribution

If no county-wide project is included in the resolution or ordinance calling for the SPLOST, or if proceeds exceed the amount needed to fund the county-wide projects, the remaining SPLOST revenue will be disbursed in one of two ways.

1. Through an intergovernmental agreement that covers the revenue remaining after the county-wide projects are accounted for. All of the terms required for the general SPLOST intergovernmental agreement apply to this agreement as well. The incentives, however, do not apply. Under this scenario, the SPLOST may not be levied for more than five years, and must cease to be collected once the projects identified on the ballot have been funded. As an exception to this rule, if the county-wide projects are level one projects that require more than 24 months of expected revenue, the SPLOST must be levied for six years and must be collected for the entirety of that six-year period. Likewise, if level one projects require 24 months or less of SPLOST revenue, the SPLOST must be levied for a full five years.

2. By population. All remaining funds will be distributed to the qualified municipalities in the special district based on the ratio that each city's population bears to the total population of the county. If a city is located in more than one county, only the part of the city's population that is in the county calling the SPLOST will count towards its population. The county will get its population share based on the population of the unincorporated part of the county.

Using the example above, if a county opted to fund a level one project without an intergovernmental agreement, such as courthouse project, that required 48 months of estimated revenue, the SPLOST must be levied for six years. The remaining 24 months of revenue will be distributed either according to an intergovernmental agreement addressing that portion of SPLOST proceeds, or according to population. If it is distributed according to population, then each qualified municipality and the county will receive its pro rata share of the SPLOST proceeds derived from that 24 months. The county's population share is based on the unincorporated population of the county. Thus if the county's population is 40 percent of the total population, City X's population is 25 percent of the total population and City Y's population is 35 percent of the total population, the county, City X and City Y would receive 40 percent, 25 percent and 35 percent of 24 months of SPLOST proceeds for their voter-approved projects. The county would also receive 48 months of SPLOST proceeds to fund the level one project.

PRACTICE TIP

The governing authority of the county must distribute the proceeds of the tax to the cities on a monthly basis when the SPLOST revenue is distributed according to the population-based split.

It is important to note that SPLOST revenue distributed to cities must be spent on capital outlay projects. *A capital outlay project must be included on the SPLOST referendum in order to be eligible for funding.* Therefore, all capital outlay projects must be valid projects and must be able to sustain voter scrutiny.

Any SPLOST revenue collected that exceeds the amount needed to fund eligible, voter approved projects must be used to pay off county general obligation debt and, once that debt is satisfied, to roll back county-wide property taxes.

Cessation of the SPLOST

The date on which the SPLOST will cease to be collected depends on a number of factors determined prior to the SPLOST referendum.

- If the SPLOST was called subject to an overall intergovernmental agreement, the SPLOST will terminate subject to the terms of that agreement. Through an intergovernmental agreement, the SPLOST may be levied for up to six years, regardless of when the revenue required to fund projects is realized.
- If the SPLOST did not have an overall intergovernmental agreement and it funded level one projects, the SPLOST must be collected for a full five years. If the level one project or projects were estimated to require more than 24 months of revenue, the SPLOST must be collected for a full six years.
- In all other instances, the SPLOST will terminate at the end of the calendar quarter during which the Commissioner of Revenue determines that the tax has raised revenues equal to or greater than the amount specified as the estimated amount of proceeds to be raised by the tax.
- In cases in which general obligation debt is issued in conjunction with the SPLOST and a court denies the validation of that debt, the SPLOST will cease at of the end of the first day of the calendar quarter ending more than 80 days after the date on which the court denies validation of the debt.

Upon its termination for reasons other than debt validation denial, the SPLOST may be reimposed so that the new SPLOST becomes effective on the day following the day that the current SPLOST expires.

Accountability

The law imposes reporting and accountability requirements on local governments receiving SPLOST proceeds for capital projects.

Separate Account for SPLOST Monies

Any county or municipality receiving SPLOST monies must hold those funds in a separate account from other funds, and the county or municipality may not commingle SPLOST funds with other funds of the local government. The purpose of this language is to ensure that SPLOST revenue is not commingled with general fund revenue, which is, at least in part, spent on maintenance and operations.

Audit Requirements

The law requires each local government receiving SPLOST funds to maintain a record of each project for which SPLOST funds are used. Each annual audit is required to contain

a schedule that shows the original estimated cost of each project, the current estimated cost of each project if it is different than the original estimated cost, amounts previously expended and amounts expected to be spent in the current year. The purposes of this requirement are to ensure that SPLOST revenues are spent on SPLOST projects, and to track local government SPLOST spending.

Public Reporting Requirement

The reporting requirement ensures local government accountability to the public. Specifically, the law requires each local government receiving SPLOST proceeds to keep a record of each project funded by SPLOST. At least once a year, each city or county receiving SPLOST revenue must publish a simple, nontechnical SPLOST report in a newspaper of general circulation within that city or county and in a prominent location on the local government website, if they maintain one. The report must include information about the original estimated cost of each project for which the city or county receives SPLOST revenue, the current estimated cost if it is different, amounts spent on each project in prior years and amounts spent in the current year, any excess proceeds which have not been spent for the project, estimated completion date, and the actual completion cost of a project completed during the year, If a city or county is using the SPLOST to fund road, street and bridge projects, the report must include a consolidated schedule of original estimated cost, current estimated cost and amounts expended, rather than a break down for each individual transportation project. The report must also include a statement of any corrective action that the local government plans to implement to address any project that is underfunded or behind schedule.

This reporting requirement will notify the public in the event that a project that was expected to require $4 million will actually cost $6 million. It will also inform the public of any project that will not be funded during the anticipated time frame. If a project costs less than the estimated amount, this report will make the public aware of any unused or redirected funds. The intent of this public reporting requirement is to hold local governments more accountable for presenting accurate financial estimates to the public, as well as for acting as reliable fiscal stewards.

The superior courts have jurisdiction to enforce the SPLOST reporting requirements including the power to grant injunctions or other equitable relief. The Attorney General has the authority to impose either civil or criminal actions in order to enforce compliance with the reporting requirements.

Infeasible SPLOST Project

In 2011 the law was amended to allow for any a county or city to abandon a SPLOST project previously approved by the voters because it has become impracticable, unserviceable, unrealistic or no longer in the best interests of the citizens. The city or county must pass a resolution determining that the SPLOST project has become infeasible and then get voter approval within the entire special district authorizing the governing authority to abandon the project. The referendum to abandon the project must

be held in conjunction with a future SPLOST referendum[8]. The revenue collected for the abandoned project may only be used to reduce general obligation debt or rollback property taxes within the county or city where the project was to be completed.

Conclusion

The SPLOST law is intended to encourage local government cooperation, and through that process, to provide all citizens with the infrastructure and other facilities necessary to foster the quality of life desired for each community. However, the law alone cannot achieve that goal. It is incumbent on each local government official and employee to approach SPLOST negotiations from a community-wide perspective, bearing in mind that success at the detriment of another community may not be the best alternative. Instead, cities and counties achieve success when all elements of the community are healthy and prosperous, and when all governments as well as residents work cooperatively for the benefit of everyone.

[8] O.C.G.A. § 48-8-110(2)(B).

QUESTIONS AND ANSWERS

1. *What is a special district?*

   Special districts are authorized by the Georgia Constitution in Article IX, Section II, Paragraph VI. They can be created by general law to allow local governments to levy taxes and provide services. The SPLOST was amended to be a special district tax to ensure that both cities and the county comprising the special district could receive and expend SPLOST revenue. The boundaries of the SPLOST special district are the same as the county boundaries.

2. *What if a city is in more than one special district? Can the city use SPLOST money in parts of the city that are outside of the special district?*

   Since the SPLOST is a special district tax, the proceeds of the tax must be expended to provide services within the special district. The Georgia Supreme Court held in *Wells v. City of Baldwin*, 565 S.E.2d 439 (2002), that revenue from the Local Option Sale Tax (LOST) could only be used to roll back the millage rate for city residents within the special district. In that case, the City of Baldwin, which is located in both Banks County and Habersham County, had used tax proceeds collected from the Banks County LOST to roll back property taxes for all city residents including those residents that lived in Habersham County. In its opinion, the court cited its decision in *Youngblood v. State of Ga.*, 388 S.E.2d 671 (1990), in which the court held that "the Special District Clause of the Constitution limits the expenditure of revenue derived from the special district tax to the provision of local governmental services within the special district." Thus relying on the Special District provision, which is an integral part of the amendments to the SPLOST contained in HB 709, SPLOST proceeds, like LOST proceeds, should be spent for capital outlay projects within the special district.

   The provision of the Georgia Constitution authorizing the creation of special districts and the levying of taxes within special districts states that "…fees, assessments, and taxes may be levied and collected within such districts to pay, wholly or partially, the cost of providing such services therein and to construct and maintain facilities therefore." Ga. Const. Art. IX, Sec. II, Par. VI. Thus a city located in more than one special district could use SPLOST funds to expand a water system to serve the portion of the city located within the special district levying the SPLOST. Likewise such a city could use SPLOST funds to expand the capacity of a sewage treatment plant located in the portion of the city in another county if the facilities being constructed are to provide services in the area funding such services (the area in which the SPLOST is collected). The law would seem to require a nexus between the facility being constructed and the area being served as well as a method of tracking the proper expenditure of funds.

3. Can a city force the county to call a SPLOST?

No. Counties have the sole authority to call for a SPLOST referendum. Once a county decides to call a SPLOST, the county must include cities in a discussion of SPLOST projects. The county can either enter into an intergovernmental agreement with cities stating what SPLOST projects will be funded and in what priority order, or the county may choose to fund county-wide projects and distribute remaining SPLOST proceeds to cities based on a population split.

4. What happens if a city and a county fail to reach an intergovernmental agreement? Can the county still call the SPLOST?

Yes. If the county and cities comprising at least 50 percent of the aggregate municipal population fail to reach an agreement, the county can still call a SPLOST, but if it does call a SPLOST, the county must distribute SPLOST proceeds to cities. The only exception to this rule is if a county chooses to use all six years of SPLOST proceeds to only fund one or more level one county-wide projects. Otherwise, any proceeds remaining after funding county-wide projects must be distributed to cities according to a population-based split.

Level one projects are limited by law to include only courthouse projects, county administrative buildings that primarily house county constitutional officers or elected officials, correctional facilities and county health department facilities. The reason for this exception is that counties are required, by law, to provide these facilities as administrative arms of the state. Since only so many courthouses, administrative buildings, correctional facilities and health departments are required, they should not require SPLOST funding on a continual basis.

5. What if cities make up less than 50 percent of the total county population? Can the cities still enter into an intergovernmental agreement with the county for SPLOST purposes?

Yes. The county population does not matter for purposes of determining who will be a party to the intergovernmental agreement. Only municipal population matters. Whichever city or cities contain at least 50 percent of the total municipal population in a special district will be the city or cities that can enter into an intergovernmental agreement with the county.

6. What is a qualified municipality?

A qualified municipality is a city that provides, either directly or through contract, at least three of the following twelve services: law enforcement; fire protection and fire safety; road and street construction or maintenance; solid waste management; water supply or distribution or both; waste-water

treatment; storm-water collection and disposal; electric or gas utility services; enforcement of building, housing, plumbing, and electrical codes and other similar codes; planning and zoning; recreational facilities; or library. This definition is similar to the definition in law that defines an "active" or "inactive" municipality.

7. *Can a county treat a jail, courthouse or other project that meets the description of "level one county-wide project" as a "level two county-wide project" in a SPLOST referendum?*

No. O.C.G.A. 48-8-110(2)(B) defines a level two county-wide project as "a county-wide project or projects of the county or one or more municipalities, **other than a level one county-wide project**, which project or projects are to be owned or operated or both either by the county, one or more municipalities, or any combination thereof" [emphasis added]. Thus the types of projects that are "level one county-wide projects" and the types of projects that are "level two county-wide projects" are clearly intended to be mutually exclusive.

8. *Can a county use SPLOST to retire previously incurred general obligation debt as part of its level one project list?*

No. The law is specific that projects that may be funded as level one projects are limited to "a county courthouse; a county administrative building primarily for county constitutional officers or elected officials; a county or regional jail, correctional institution, or other detention facility; a county health department facility; or any combination of such projects." Use of the term "projects" indicates that use of SPLOST for level one projects (absent an intergovernmental agreement) is to fund actual projects, not to retire debt. The law is very specific as to which projects may be funded as level one projects. Had the law contemplated retiring previously incurred general obligation debt as a permitted level one project, the law would have specified that intent.

9. *If the county and cities representing at least 50 percent of the municipal population enter into an agreement to call the SPLOST for six years, or if the county calls a SPLOST to fund level one projects, and all projects are funded prior to the date on which the SPLOST will expire, what happens to the excess proceeds?*

Absent an intergovernmental agreement to the contrary, the excess proceeds will be used to retire any debt of the county that is not incurred pursuant to the SPLOST. Once that debt is retired, excess proceeds will be paid into the county's general fund with the requirement that it will be used to reduce property taxes.

However, if a county and the cities in that county reach an intergovernmental agreement on the use of SPLOST proceeds, that agreement can specify how

excess proceeds may be used. The full extent of this exception is unclear. Cities and counties would be well-advised to refrain from using excess proceeds for purposes outside the scope of the SPLOST law.

10. What is the basis for population?

Population is defined as "the total number of inhabitants constituting a particular race, class, or group in a specified area[9]." The law does not specify the basis for the population figures used, but the only accepted statewide data is the decennial census.

11. Can a county call a SPLOST but choose to exclude some cities from receiving SPLOST funding?

A county cannot, on its own, act to prevent any city from receiving SPLOST funding for capital projects. Through an intergovernmental agreement with cities representing 50 percent or more of the municipal population in a special district, the county and those cities have the ability to choose which projects will receive SPLOST revenue. It is possible that the agreement could leave some cities with no SPLOST funding. That said, it is important for counties to remember that all cities are part of the county and that denying them a voice in the deliberations or funding for infrastructure projects will slight those county residents that reside in cities. It is important, too, for cities to take care of one another in order to ensure the health of all cities in a special district.

If the county and cities fail to enter into an intergovernmental agreement, each qualified municipality will receive SPLOST funding based on its population after any funding for level one or level two county-wide projects is determined. The only way that a city would not receive SPLOST funding under this scenario is if the county chose to use all of the SPLOST to fund only one or more level one projects. However, using all of the SPLOST proceeds for one or more level one projects may not appeal to the voters and may fail to be approved by the voters.

12. What if a city does not have any capital projects that could be eligible for SPLOST funding or lacks administrative capacity to manage projects?

Every city regardless of size or service complexity, has legitimate capital needs, whether those needs address transportation, libraries, parks and recreation or downtown development projects. If a city is eligible for SPLOST proceeds under the population-based distribution but is unable to oversee SPLOST projects, that city could have an intergovernmental

[9] The American Heritage® Dictionary of the English Language, Fourth Edition. Copyright © 2000 by Houghton Mifflin Company.

agreement with another city or the county to manage or operate its SPLOST projects.

13. How specific should a ballot question be?

As indicated in a 1990 Opinion of the Attorney General[10], the list of projects on the referendum must be specific enough to place the voters on fair notice as to which projects the tax proceeds will be devoted. Moreover, where there is municipal participation in SPLOST projects, identification of the municipalities and projects involved is required. Thus the SPLOST referendum should indicate the types of projects that will be funded by the SPLOST. Utilizing the categories of projects listed in Code section 48-8-111 should provide sufficient detail to place the voters on notice as to the types of projects to be funded by the SPLOST. Types of SPLOST projects not included in the ballot question may not receive SPLOST funding. This principle holds true whether the city will be receiving SPLOST funding through an intergovernmental agreement or through the population-based distribution.

14. If no intergovernmental agreement is reached and the county funds county-wide projects, does funding for those projects come off the top or is it allocated based on the percentage cost of the projects?

The law is not specific on this subject. It does mention "remaining" funds, which could indicate that county-wide projects would receive priority funding and that the population distribution to cities would be delayed until those county-wide projects have been funded. However, this method of distribution may prove unsatisfactory to the voters. In the past, concerns have been raised about counties listing projects on the referendum and then moving those projects to the bottom of the funding priority list. As a result, those projects often were not funded and were not completed. Entering into an intergovernmental agreement will clear up any confusion on this issue, as the law specifies that intergovernmental agreements must state the priority of funding for projects.

15. What are some examples of level two projects?

Level two projects must have county-wide benefit. Examples could include certain transportation projects, if the county is the chief caretaker of roads, streets and bridges, libraries that are part of a truly county-wide library system, and parks and recreation facilities that are part of a county-wide system. Cities can also receive SPLOST funding for level two projects. Examples of city county-wide projects include an airport that serves the entire county, a water or sewer system that is the primary water or sewer system in

[10] 1990 Op. Att'y Gen. No. U90-18.

the county, parks and recreation facilities available to all county residents, and civic centers and arenas that are generally available to the public.

16. *Does a referendum have to state that a local government does not intend to issue general obligation date in conjunction with the SPLOST?*

No. A SPLOST referendum only has to address general obligation debt if one of the local governments intends to issue general obligation debt in conjunction with the SPLOST.

17. *What are the advantages of intergovernmental agreements over the population-based distribution method?*

If a county and cities reach an intergovernmental agreement with respect to SPLOST, the SPLOST may be levied for six years (otherwise the maximum time period is five years unless a level one project will require more than 24 months of revenue) and the SPLOST may be collected for the entire time period regardless of when revenue estimates are achieved. More importantly, an intergovernmental agreement allows cities and counties to structure the SPLOST distribution to meet the needs of their local community. Through an intergovernmental agreement, cities and the county can determine the priority of project funding and the time periods for distributing SPLOST proceeds to the different local governments receiving SPLOST funding. In an intergovernmental agreement, cities and the county can also specify what to do in the event that a government's SPLOST proceeds exceed the amount needed to fund that government's project or projects. The agreement can specify that any excess proceeds be distributed to one or more other local governments to increase funding for other approved SPLOST projects.

The population-based split is more restrictive. Through it, the county may choose to fund level one or level two county-wide projects off the top. Cities might not receive remaining SPLOST funds until the county-wide projects have been fully funded. This process could result in some critical projects remaining unfunded or underfunded, or at best a delay in funding city projects. Note that a SPLOST could fund a level one or level two county-wide project and be subject to an intergovernmental agreement only with respect to the remaining proceeds.

WORKSHEET FOR CALCULATING SPLOST ALLOCATIONS

1. Is there an intergovernmental agreement entered into prior to the call covering **all** SPLOST proceeds?

    a. If yes, the SPLOST may be called for up to six years and collected for the entire period even if revenue estimates are reached earlier.

    b. If yes, skip the remaining questions.

    c. If no, go to question #2.

2. Will the county be putting any level one county-wide projects on the SPLOST ballot?

    a. If no, go to question #3.

    b. If yes, are the level one county-wide projects estimated to exceed 24 months of SPLOST collections?

        i. Yes – The SPLOST must be levied for six years and collected for the entire six year period even if revenue estimates are reached earlier.

        ii. No – The SPLOST must be levied for a five-year period and will be collected for the entire five years even if revenue estimates are reached earlier.

    c. If yes, skip question #3.

3. Will the county be putting any level two county-wide projects on the SPLOST ballot? (Level one and level two projects are mutually exclusive unless they are both/all allowed on the ballot through an intergovernmental agreement.)

    a. If yes, the total estimated cost of all level two county-wide projects cannot exceed 20 percent of projected SPLOST collections.

    b. No.

4. After the amounts allocated for any level one or level two county-wide projects are accounted for, the remaining proceeds will be distributed either:

    a. Pursuant to an intergovernmental agreement addressing the remaining proceeds; or

    b. To qualified municipalities based upon the ratio that the population (located within the county) of each municipality bears to the total population of the county with the remainder going to the county.

SPECIAL PURPOSE LOCAL OPTION SALES TAX STATUTES

48-8-110

As used in this part, the term:

(1) 'Capital outlay project' means major, permanent, or long-lived improvements or betterments, such as land and structures, such as would be properly chargeable to a capital asset account and as distinguished from current expenditures and ordinary maintenance expenses. Such term shall include, but not be limited to, roads, streets, bridges, police cars, fire trucks, ambulances, garbage trucks, and other major equipment.

(2) 'County-wide project' means a capital outlay project or projects as defined in paragraph (1) of this Code section of the county for the use or benefit of the citizens of the entire county and is further defined as follows:

(A) 'Level one county-wide project' means a county-wide project or projects of the county to carry out functions on behalf of the state and is limited to a county courthouse; a county administrative building primarily for county constitutional officers or elected officials; a county or regional jail, correctional institution, or other detention facility; a county health department facility; or any combination of such projects; and

(B) 'Level two county-wide project' means a county-wide project or projects of the county or one or more municipalities, other than a level one county-wide project, which project or projects are to be owned or operated or both either by the county, one or more municipalities, or any combination thereof.

(3) 'Intergovernmental agreement' means a contract entered into pursuant to Article XI, Section III, Paragraph I of the Constitution between a county and one or more qualified municipalities located within the special district containing a combined total of no less than 50 percent of the aggregate municipal population located within the special district.

(4) 'Qualified municipality' means only those incorporated municipalities which provide at least three of the following services, either directly or by contract:

(A) Law enforcement;

(B) Fire protection (which may be furnished by a volunteer fire force) and fire safety;

(C) Road and street construction or maintenance;

(D) Solid waste management;

(E) Water supply or distribution or both;

(F) Waste-water treatment;

(G) Storm-water collection and disposal;

(H) Electric or gas utility services;

(I) Enforcement of building, housing, plumbing, and electrical codes and other similar codes;

(J) Planning and zoning;

(K) Recreational facilities; or

(L) Library.

48-8-110.1

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this part within a special district, the governing authority of any county in this state may, subject to the requirement of referendum approval and the other requirements of this part, impose within the special district a special sales and use tax for a limited period of time which tax shall be known as the county special purpose local option sales tax.

(c) Any tax imposed under this part shall be at the rate of 1 percent. Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, except that a tax imposed under this part shall apply to sales of motor fuels as that term is defined by Code Section 48-9-2 and shall be applicable to the sale of food and beverages as provided for in division (57)(D)(i) of Code Section 48-8-3.

48-8-111

(a) Prior to the issuance of the call for the referendum and prior to the vote of a county governing authority within a special district to impose the tax under this part, such governing authority may enter into an intergovernmental agreement with any or all of the qualified municipalities within the special district. Any county that desires to have a tax under this part levied within the special district shall deliver or mail a written notice to the mayor or chief elected official in each qualified municipality located within the special district. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the county and of each qualified municipality are to meet to discuss the possible projects for inclusion in the referendum, including municipally owned or operated projects. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the issuance of the call for the referendum. Following such meeting, the governing authority of the county within the special district voting to impose the tax authorized by this part shall notify the county election superintendent by forwarding to the superintendent a copy of the resolution or ordinance of the governing authority calling for the imposition of the tax. Such ordinance or resolution shall specify eligible expenditures identified by the county and any qualified municipality for use of proceeds distributed pursuant to subsection (b) of Code Section 48-8-115. Such ordinance or resolution shall also specify:

(1) The purpose or purposes for which the proceeds of the tax are to be used and may be expended, which purpose or purposes may consist of capital outlay projects located within or outside, or both within and outside, any incorporated areas in the county in the special district or outside the county, as authorized by subparagraph (B) of this paragraph for regional facilities, and which may include any of the following purposes:

(A) A capital outlay project consisting of road, street, and bridge purposes, which purposes may include sidewalks and bicycle paths;

(B) A capital outlay project or projects in the special district and consisting of a courthouse; administrative buildings; a civic center; a local or regional jail, correctional institution, or other detention facility; a library; a coliseum; local or regional solid waste handling facilities as defined under paragraph (27.1) or (35) of Code Section 12-8-22, as amended, excluding any solid waste thermal treatment technology facility, including, but not limited to, any facility for purposes of incineration or waste to energy direct conversion; local or regional recovered materials processing facilities as defined under paragraph (26) of Code Section 12-8-22, as amended; or any combination of such projects;

(C) A capital outlay project or projects which will be operated by a joint authority or authorities of the county and one or more qualified municipalities within the special district;

(D) A capital outlay project or projects, to be owned or operated or both either by the county, one or more qualified municipalities within the special district, one or more local authorities within the special district, or any combination thereof;

(E) A capital outlay project consisting of a cultural facility, a recreational facility, or a historic facility or a facility for some combination of such purposes;

(F) A water capital outlay project, a sewer capital outlay project, a water and sewer capital outlay project, or a combination of such projects, to be owned or operated or both by a county water and sewer district and one or more qualified municipalities in the county;

(G) The retirement of previously incurred general obligation debt of the county, one or more qualified municipalities within the special district, or any combination thereof;

(H) A capital outlay project or projects within the special district and consisting of public safety facilities, airport facilities, or related capital equipment used in the operation of public safety or airport facilities, or any combination of such purposes;

(I) A capital outlay project or projects within the special district, consisting of capital equipment for use in voting in official elections or referendums;

(J) A capital outlay project or projects within the special district consisting of any transportation facility designed for the transportation of people or goods, including but not limited to railroads, port and harbor facilities, mass transportation facilities, or any combination thereof;

(K) A capital outlay project or projects within the special district and consisting of a hospital or hospital facilities that are owned by a county, a qualified municipality, or a hospital authority within the special district and operated by such county, municipality, or hospital authority or by an organization which is tax exempt under Section 501(c)(3) of the Internal Revenue Code, which operates the hospital through a contract or lease with such county, municipality, or hospital authority; or

(L) Any combination of two or more of the foregoing;

(2) The maximum period of time, to be stated in calendar years or calendar quarters and not to exceed five years, unless the provisions of paragraph (1) of subsection (b) or subparagraph (b)(2)(A) of Code Section 48-8-115 are applicable, in which case the maximum period of time for which the tax may be levied shall not exceed six years;

(3) The estimated cost of the project or projects which will be funded from the proceeds of the tax, which estimated cost shall also be the estimated amount of net proceeds to be raised by the tax, unless the provisions of paragraph (1) of subsection (b) or subparagraph (b)(2)(A) of Code Section 48-8-115 are applicable, in which case the final day of the tax shall be based upon the length of time for which the tax was authorized to be levied by the referendum; and

(4) If general obligation debt is to be issued in conjunction with the imposition of the tax, the principal amount of the debt to be issued, the purpose for which the debt is to be issued, the local government issuing the debt, the interest rate or rates or the maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt.

(b) Upon receipt of the resolution or ordinance, the election superintendent shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the county within the special district. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organ of the county. If general obligation debt is to be issued by the county or any qualified municipality within the special district in conjunction with the imposition of the tax, the notice published by the election superintendent shall also include, in such form as may be specified by the county governing authority or the governing authority or authorities of the qualified municipalities imposing the tax within the special district, the principal amount of the debt, the purpose for which the debt is to be issued, the rate or rates of interest or the maximum rate or rates of interest the debt will bear, and the amount of principal to be paid in each year during the life of the debt; and such publication of notice by the election superintendent shall take the place of the notice otherwise required by Code Section 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

(c)(1) The ballot submitting the question of the imposition of the tax authorized by this part to the voters of the county within the special district shall have written or printed thereon the following:

( ) YES Shall a special 1 percent sales and use tax be imposed in the special district of _____County for a period of time not to exceed _____ and for the raising of an

( ) NO estimated amount of $_____ for the purpose of _____?'

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

'If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of $_____ for the above purpose.'

(d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes' and all persons opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in favor of imposing the tax then the tax shall be imposed as provided in this part; otherwise the tax shall not be imposed and the question of imposing the tax shall not again be submitted to the voters of the county within the special district until after 12 months immediately following the month in which the election was held; provided, however, that if an election date authorized under Code Section 21-2-540 occurs during the twelfth month immediately following the month in which such election was held, the question of imposing the tax may be submitted to the voters of the county within the special district on such date. The election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds.

(e)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I or Article IX, Section V, Paragraph II of the Constitution is given to the proper officers of the county or qualified municipality within the special district issuing such debt; otherwise such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the county or qualified municipality within the special district issuing such debt may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this part. If such

debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this part. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the county or qualified municipality within the special district issuing such debt from the tax authorized by this part. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the county or qualified municipality within the special district issuing such debt; and any liability on such debt which is not satisfied from the proceeds of the tax authorized by this part shall be satisfied from the general funds of the county or qualified municipality within the special district issuing such debt.

48-8-111.1

(a) With respect to any consolidated government created by the consolidation of a county and one or more municipalities, the provisions of this Code section shall control over any conflicting provisions of this article.

(b) The tax authorized by this article, if imposed by a consolidated government, shall not be subject to any maximum period of time for which the tax may be levied if general obligation debt is to be issued in conjunction with the imposition of the tax. In such case the resolution or ordinance calling for the imposition of the tax shall not be required to state a maximum period of time for which the tax is to be levied; and the language relating to the maximum period of time for which the tax is to be levied shall be omitted from the ballot. The resolution or ordinance calling for the imposition of the tax shall state the maximum amount of revenue to be raised by the tax, and the tax shall terminate as provided in paragraph (1) or (3) of subsection (b) of Code Section 48-8-112.

(c) A consolidated government shall be authorized to levy a tax for any capital outlay project provided for in subparagraphs (a)(1)(C), (a)(1)(D), and (a)(1)(F) of Code Section 48-8-111, or any combination thereof, without the necessity of operating such project jointly with a qualified municipal governing authority, owning or operating such projects with one or more qualified municipalities, or entering into a contract with one or more qualified municipalities with respect to such project.

(d) In all respects not otherwise provided for in this Code section, the levy of a tax under this article by a consolidated government shall be in the same manner as the levy of the tax by any other county.

48-8-112

(a) If the imposition of the tax is approved at the special election, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters. With respect to services which are regularly billed on a monthly basis, however, the resolution shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in the previous sentence.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution or ordinance calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the county and qualified municipalities within the special district net proceeds equal to or greater than the amount specified as the estimated amount of net proceeds to be raised by the tax, unless the provisions in paragraph (1) of subsection (b) or subparagraph (b)(2)(A) of Code Section 48-8-115 are applicable, in which case the final day of the tax shall be based upon the length of time for which the tax was authorized to be levied by the referendum.

(c)(1) At any time no more than a single 1 percent tax under this part may be imposed within a special district.

(2) The governing authority of a county in a special district in which a tax authorized by this part is in effect may, while the tax is in effect, adopt a resolution or ordinance calling for the reimposition of a tax as authorized by this part upon the termination of the tax then in effect; and a special election may be held for this purpose while the tax is in effect. Proceedings for the reimposition of a tax shall be in the same manner as proceedings for the initial imposition of the

tax, but the newly authorized tax shall not be imposed until the expiration of the tax then in effect; provided, however, that in the event of emergency conditions under which a county is unable to conduct a referendum so as to continue the tax then in effect without interruption, the commissioner may, if feasible administratively, waive the limitations of subsection (a) of this Code section to the minimum extent necessary so as to permit the reimposition of a tax, if otherwise approved as required under this Code section, without interruption, upon the expiration of the tax then in effect.

(3) Following the expiration of a tax under this part, the governing authority of a county within a special district may initiate proceedings for the reimposition of a tax under this part in the same manner as provided in this part for initial imposition of such tax.

48-8-113

A tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of the county and qualified municipalities within such special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer´s liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the county and qualified municipalities within the special district or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

48-8-114

Each sales tax return remitting taxes collected under this article shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this article are collected and distributed according to situs of sale.

48-8-115

(a) The proceeds of the tax collected by the commissioner in each county within a special district under this part shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration;

(2) Except for the percentage provided in paragraph (1) of this Code section, the remaining proceeds of the tax shall be distributed to the governing authority of the county within the special district imposing the tax as specified in subsection (b) of this Code section.

(b) The county within the special district shall distribute any such proceeds as follows:

(1) To the county governing authority and any qualified municipalities as specified in an intergovernmental agreement. Where an intergovernmental agreement has been entered into, the agreement shall, at a minimum, include the following:

(A) The specific capital outlay project or projects to be funded pursuant to the agreement;

(B) The estimated or projected dollar amounts allocated for each project from tax proceeds from the tax authorized by this part;

(C) The procedures for distributing proceeds from the tax authorized by this part to qualified municipalities;

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

(E) A provision that all capital outlay projects included in the agreement shall be funded from proceeds from the tax authorized by this part except as otherwise agreed;

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

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

(H) Such other provisions as the county and participating municipalities choose to address; or

(2) Where an intergovernmental agreement has not been entered into pursuant to paragraph (1) of this subsection, the county within the special district shall distribute the proceeds of the tax authorized by this part as follows:

(A)(i) To the governing authority of the county for one or more level one county-wide projects specified by the governing authority of the county in the ordinance or resolution

required by subsection (a) of Code Section 48-8-111; provided, however, that any tax levied under this part that funds level one county-wide projects where an intergovernmental agreement has not been entered into pursuant to paragraph (1) of this subsection shall be levied for a five-year period. In the event that any or all level one county-wide projects are estimated to cost an amount which exceeds the proceeds projected to be collected during a 24 month period of the levy of the tax, the tax shall be levied for a six-year period; or

(ii) In the event that no level one county-wide project is included in the ordinance or resolution required by subsection (a) of Code Section 48-8-111, to the governing authority of the county for one or more level two county-wide projects specified by the governing authority of the county in the ordinance or resolution required by subsection (a) of Code Section 48-8-111. In the event no level one county-wide project is included in the ordinance or resolution required by subsection (a) of Code Section 48-8-111 and the governing authority of the county has specified one or more municipal projects as level two county-wide projects in the ordinance or resolution required by subsection (a) of Code Section 48-8-111, to the governing authority of the appropriate municipality or municipalities for such level two county-wide projects specified in the ordinance or resolution required by subsection (a) of Code Section 48-8-111. The total estimated cost of all level two county-wide projects specified under this division shall not exceed 20 percent of the proceeds projected to be collected during the period specified in the ordinance or resolution required by subsection (a) of Code Section 48-8-111; or

(B) In the event that no county-wide project is included in the resolution or ordinance calling for the imposition of the tax or in the event that tax proceeds exceed that amount required to fund the county-wide project or projects, the remaining proceeds shall be distributed in the following manner:

(i) As specified in an intergovernmental agreement other than the agreement specified in paragraph (1) of this subsection. The intergovernmental agreement shall include, at a minimum, the information required in paragraph (1) of this subsection; or

(ii) To the qualified municipalities within the special district based upon the ratio that the population of each qualified municipality bears to the total population of the county within the special district. If any qualified municipality is located in more than one county, only that portion of its population that is within the special district shall be counted. The remainder of such proceeds shall be distributed to the governing authority of the county within the special district. Capital outlay projects included in the

referendum ballot by the county or any qualified municipalities within the special district shall be based upon the anticipated proceeds and distribution of the tax. The governing authority of the county within the special district shall distribute all proceeds received by the county for the tax levied pursuant to this part to the qualified municipalities within the special district on a monthly basis where proceeds are distributed in accordance with this division.

48-8-116

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as he deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the county or in a special district which includes the county; and taxes so paid in another jurisdiction shall be credited first against the tax levied under Article 2 of this chapter, if applicable, and then against the tax levied under this article.

48-8-117

No tax provided for in this article shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the county in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller’s vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Interstate Commerce Commission or the Georgia Public Service Commission.

48-8-118

(a) As used in this Code section, the term 'building and construction materials' means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or

articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No tax provided for in this article shall be imposed upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to the voters´ approval of the levy of the tax and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax.

48-8-119

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax authorized to be imposed by this article.

48-8-120

Except as provided in Code Section 48-8-6, the tax authorized by this part shall be in addition to any other local sales and use tax. Except as provided in Code Section 48-8-6, the imposition of any other local sales and use tax within a county or qualified municipality within a special district shall not affect the authority of such a county to impose the tax authorized by part and the imposition of the tax authorized by part shall not affect the imposition of any otherwise authorized local sales and use tax within the county within the special district.

48-8-121

(a)(1) The proceeds received from the tax authorized by this part shall be used by the county and qualified municipalities within the special district receiving proceeds of the sales and use tax exclusively for the purpose or purposes specified in the resolution or ordinance calling for imposition of the tax. Such proceeds shall be kept in a separate account from other funds of such county and each qualified municipality receiving proceeds of the sales and use tax and shall not in any manner be commingled with other funds of such county and each qualified municipality receiving proceeds of the sales and use tax prior to the expenditure.

(2) The governing authority of the county and the governing authority of each qualified municipality within the special district receiving any proceeds from the tax pursuant to this part shall maintain a record of each and every project for which the proceeds of the tax are used. A schedule shall be included in each annual audit which shows for each such project the original estimated cost, the current estimated cost if it is not the original estimated cost,

amounts expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(3) In the event that a qualified municipality fails to comply with the requirements of this part, the county within the special district shall not be held liable for such noncompliance.

(b)(1) If the resolution or ordinance calling for the imposition of the tax specified that the proceeds of the tax are to be used in whole or in part for capital outlay projects consisting of road, street, and bridge purposes, then authorized uses of the tax proceeds shall include:

(A) Acquisition of rights of way for roads, streets, bridges, sidewalks, and bicycle paths;

(B) Construction of roads, streets, bridges, sidewalks, and bicycle paths;

(C) Renovation and improvement of roads, streets, bridges, sidewalks, and bicycle paths, including resurfacing;

(D) Relocation of utilities for roads, streets, bridges, sidewalks, and bicycle paths;

(E) Improvement of surface-water drainage from roads, streets, bridges, sidewalks, and bicycle paths; and

(F) Patching, leveling, milling, widening, shoulder preparation, culvert repair, and other repairs necessary for the preservation of roads, streets, bridges, sidewalks, and bicycle paths.

(2) Storm-water capital outlay projects and drainage capital outlay projects may be funded pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 or in conjunction with road, street, and bridge capital outlay projects.

(c) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the governing authority of the county or qualified municipalities within special district issuing the debt determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due the county or qualified municipalities within special district issuing such debt will receive from the tax authorized by this part net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this part shall be payable first from the separate account in which are placed the proceeds received by the county or qualified municipalities within the special district issuing such debt from the tax authorized by this part. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the county or qualified

municipalities within the special district issuing such debt; and any liability on said debt which is not satisfied from the proceeds of the tax authorized by this part shall be satisfied from the general funds of the county or qualified municipalities within the special district issuing such debt.

(d) The resolution or ordinance calling for imposition of the tax authorized by this part may specify that all of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the resolution or ordinance so provides, then such proceeds shall be used solely for such purpose except as provided in subsection (g) of this Code section.

(e) The resolution or ordinance calling for the imposition of the tax authorized by this part may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the ordinance or resolution so provides, it shall specifically state the other purposes for which such proceeds will be used; and such other purposes shall be a part of the capital outlay project or projects for which the tax is to be imposed. In such a case no part of the net proceeds from the tax received in any year shall be used for such other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(f) The resolution or ordinance calling for the imposition of the tax may specify that no general obligation debt is to be issued in conjunction with the imposition of the tax. If the ordinance or resolution so provides, it shall specifically state the purpose or purposes for which the proceeds will be used.

(g)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the county or qualified municipality within the special district receives from the tax net proceeds in excess of the estimated cost of the capital outlay project or projects stated in the resolution or ordinance calling for the imposition of the tax or in excess of the actual cost of such capital outlay project or projects, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-112 by reason of denial of validation of debt, then all net proceeds received by the county or qualified municipality within the special district from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Unless otherwise provided in this part or in an intergovernmental agreement entered into pursuant to this part, excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of the county within the special district other than indebtedness incurred pursuant to this part. If there is no such other indebtedness or, if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into the general fund of the county within the special district, it being the intent that any funds so paid into the general fund of the county be used for the purpose of reducing ad valorem taxes.

48-8-122

The governing authority of the county and the governing authority of each municipality receiving any proceeds from the tax under this part or under Article 4 of this chapter shall maintain a record of each and every project for which the proceeds of the tax are used. Not later than December 31 of each year, the governing authority of each local government receiving any proceeds from the tax under this part shall publish annually, in a newspaper of general circulation in the boundaries of such local government and in a prominent location on the local government website, if such local government maintains a website, a simple, nontechnical report which shows for each project or purpose in the resolution or ordinance calling for imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, amounts expended in the current year, any excess proceeds which have not been expended for a project or purpose, estimated completion date, and the actual completion cost of a project completed during the current year. In the case of road, street, and bridge purposes, such information shall be in the form of a consolidated schedule of the total original estimated cost, the total current estimated cost if it is not the original estimated cost, and the total amounts expended in prior years and the current year for all such projects and not a separate enumeration of such information with respect to each such individual road, street, or bridge project. The report shall also include a statement of what corrective action the local government intends to implement with respect to each project which is underfunded or behind schedule.

48-8-123.

(a) For purposes of this Code section, the term "infeasible" means that the project has, in the judgment of the governing authority as expressed in the resolution or ordinance required by subsection (b) of this Code section, become impracticable, unserviceable, unrealistic, or otherwise not in the best interests of the citizens of the special district or the municipality.

(b) (1) Notwithstanding any other provision of this part to the contrary, if the tax authorized by this part has been imposed within a special district for a purpose or purposes authorized by subsection (a) of Code Section 48-8-111 and one or more projects authorized therein become or are determined to be infeasible, then the provisions of this Code section shall apply. However, this Code section shall not apply until and unless the governing authority or governing authorities specified under paragraph (2) of this subsection adopt a resolution or ordinance determining that such project or projects for which the levy has been approved have become infeasible in accordance with paragraph (2) of this subsection.

(2) (A) If a project that has become infeasible is a project for which the county is responsible, an ordinance or resolution of the county shall be required determining that the project has become infeasible.

(B) If a project that has become infeasible is a municipal project, an ordinance or resolution of the municipality responsible for the project shall be required determining that the project has become infeasible. Upon its approval by the municipality, such ordinance or resolution shall be transmitted to the governing authority of the county. The county governing authority shall rely on the determination by the municipality that the municipal project has become infeasible.

(C) If a project that has become infeasible is a joint project of the county or a county authority and one or more municipalities or a joint project of two or more municipalities, an ordinance or resolution of all of the jurisdictions involved in the joint project shall be required determining that the project has become infeasible.

(3) If the governing authority desiring to determine that a project is infeasible has incurred or entered into financing for such project, whether through an intergovernmental contract, a multiyear lease or purchase contract under Code Section 36-60-13, or other form of indebtedness, no such ordinance or resolution shall be adopted until the governing authority discharges in full the obligation incurred or provides for the defeasance of such obligation.
(c) Upon the adoption of the resolution or ordinance required by subsection (b) of this Code section, the tax shall continue to be imposed for the same period of time and for the raising of the same amount of revenue as originally authorized. Subject to approval in a referendum required by subsection (d) of this Code section, the county, or any municipality if the infeasible project is a project owned or operated by the municipality, or those entities that are part of a joint project, may expend the previously collected and future proceeds of the tax, or such portion thereof as

was intended for the purpose that has been determined to be infeasible if the tax were imposed for more than one purpose, to reduce any general obligation indebtedness of the affected jurisdiction within the special district other than indebtedness incurred pursuant to this part, or by paying such proceeds into the general fund of the county or municipality to be used for the purpose of reducing ad valorem taxes, or both. In the event of a joint project in which there is an intergovernmental agreement apportioning the project, the proceeds shall be divided among the entities to such joint agreement according to such apportionment. In the event of a joint project in which there is no agreement apportioning the project, the proceeds shall be divided equally among the entities to the joint project.

(d) (1) Upon the adoption of the resolution or ordinance required by subsection (b) of this Code section, the governing authority of the county shall notify the county election superintendent by forwarding to the superintendent a copy of a resolution or ordinance calling for the modification of the purpose for which proceeds of the tax authorized by this part may be expended. Such ordinance or resolution shall specify the modified purpose for which the balance of proceeds of the tax are to be used and an estimate of the amount of the proceeds available to be used for the modified purpose.

(2) Upon receipt of the resolution or ordinance required by this subsection, the election superintendent shall issue the call for an election for the purpose of submitting to the voters of the county within the special district the question of modifying the project or projects for which the proceeds of the levy may be expended. The election superintendent shall issue the call and shall conduct the election, in conjunction with the next election held, to submit to the electors of the special district the imposition of a tax under this part and shall conduct the election in the manner specified in subsection (b) of Code Section 48-8-111.

(3) The ballot submitting a question of the approval of the modified purpose for a levy previously approved by the electors of the county within the special district as authorized by this Code section shall have written or printed thereon the following:

"( ) YES Shall the capital outlay project consisting of approved for use of proceeds of the special 1 percent sales and use tax imposed in the special district of

"( ) NO County in a referendum on be modified so as to authorize use of such proceeds for the

purpose of (reducing debt, reducing ad valorem taxes, or reducing debt and ad valorem taxes) of the (county) (municipality)?"

(4) If there are multiple projects to be submitted to the electors for approval of modified purpose, there shall be one question for all projects of the county or its authorities, one question for all projects of municipalities, and one question for joint projects.

(5) All persons desiring to vote in favor of modifying the project or projects shall vote "Yes," and all persons opposed to modifying the project or projects shall vote "No." If more than one-half of the votes cast are in favor of modifying the project or projects, then the proceeds of the tax imposed as provided in this part shall be used for such modified purpose; otherwise, the proceeds of the tax shall not be used for such modified purpose. The election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds.

(e) This Code section shall not apply to a board of education which levies the sales tax for educational purposes pursuant to Part 2 of this article and Article VIII, Section VI, Paragraph IV of the Constitution.

48-4-124

The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this part, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person or entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this part.