



DeKalb County
GEORGIA

MEMORANDUM

May 10, 2023
via email

To: Michael L. Thurmond, Chief Executive Officer
Members, Board of Commissioners

From: Zachary Williams, Chief Operating Officer
Viviane H. Ernstes, County Attorney

**Subject: House Bill 431 – Bill Amending SPLOST Law
(Our File No. 02-0125)**

We write to provide you information about this important project and the new state law. Please note that we refer to the limited project SPLOST passed in 2017 by the voters as “SPLOST I” and the new unlimited project SPLOST that will be considered by the voters in 2023 as “SPLOST II”.

As you know, House Bill 431 (“H.B. 431”) was adopted by the General Assembly with a unanimous vote amending the State SPLOST I law to allow DeKalb County to use SPLOST II proceeds for all allowable categories of capital outlay projects.¹ This memorandum explains the changes that H.B. 431 makes to DeKalb County’s SPLOST.

Also, we have taken the liberty of providing you with a simple list of the kinds of capital outlay projects that can now be funded with SPLOST II dollars as a result of the adoption of H.B. 431.²

I. SPLOST Provisions That Changed After Passage of H.B. 431

Under general State law, most counties levying a SPLOST can use the tax to fund a broad variety of capital outlay projects.³ In 2017, the law was amended to limit the allowable categories of projects for counties that had a HOST but want to choose to levy both a SPLOST and an EHOST. Such counties were only permitted to use their SPLOST funds on four specific categories of projects: (1) transportation purposes, (2) public safety facilities and related capital equipment,

¹ See Attachment A, House Bill 431 for your convenience.

² See Attachment B, list of allowable capital outlay projects.

³ O.C.G.A. §§ 48-8-111(a)(1)(A)-(N), 48-8-121 are the state laws that list over a dozen specific categories of projects eligible for SPLOST II funding.

(3) debt service, and (4) the repair of capital outlay projects in an amount not to exceed fifteen percent (15%) of the total SPLOST proceeds. As far as we know, this limitation applied only to DeKalb County because we had a HOST and after 2017 the County levied SPLOST I and EHOST.

H.B. 431 removes this limitation and permits DeKalb County to have SPLOST II and fund all the various projects that other counties can fund with their SPLOST.

II. SPLOST Provisions That Will Remain the Same After Passage of H.B. 431

There are other provisions in State law unique to DeKalb County's SPLOST that will not be altered by H.B. 431. Specifically, the provisions relating to how SPLOST II proceeds will be distributed amongst the County and Municipalities will not change. O.C.G.A. § 48-8-109.5(e), is the state law governing the distribution of SPLOST proceeds, both I and II, in DeKalb County. It states the following:

e) Notwithstanding any provision of law to the contrary except subsection (f) of this Code section, in any county levying a tax under this part, a tax levied pursuant to the provisions of Part 1 of Article 3 of this chapter in a special district in such county *shall be strictly divided* between the unincorporated portions of the county whose geographical boundary is conterminous with that of the special district and the municipalities wholly or partially located within the special district *on a per capita basis, based on the most recent decennial census, unless altered by an intergovernmental agreement between the county and all municipalities* wholly located within the special district. Notwithstanding any provision of law to the contrary, the department *shall disburse directly to the county and each municipality its share of the proceeds of the tax levied pursuant to Part 1 of Article 3 of this chapter.* (Emphasis added).

Under this statute, DeKalb's SPLOST I and II proceeds must be disbursed either on a per capita basis, based on the most recent decennial census or according to the terms of an intergovernmental agreement between the County and every Municipality wholly located in DeKalb County. Additionally, this statute requires the State Department of Revenue to disburse SPLOST I and II proceeds to the County and Municipalities individually, unlike every other SPLOST in Georgia which disburses SPLOST proceeds only to the County.⁴ Again, neither of these two requirements will change with SPLOST II because of H.B. 431.

III. The EHOST Law Will Not Change

H.B. 431 did not change any provision of the EHOST law. Several commissioners have asked legal questions related to EHOST and those will be answered by separate memorandum.

⁴ Under every other SPLOST in Georgia, SPLOST proceeds are disbursed to the County by the Department of Revenue, then the County disburses the remaining proceeds to the Municipalities. O.C.G.A. § 48-8-115(b).

Memorandum to the CEO and BOC

May 10, 2023

Page 3 of 3

Attachments

cc: La'Keitha D. Carlos, Chief of Staff, CEO
Kwasi K. Obeng, Chief of Staff, BOC
T.J. Sigler, Budget Director
Dianne McNabb, Finance Director
Laura K. Johnson, Deputy County Attorney
Terry G. Phillips, Deputy County Attorney
Matthew C. Welch, Deputy County Attorney
Nicole Aigner, Complex Transaction Division Chief
Suzanne Success Osborne, Senior Assistant County Attorney
Shaheem Williams, Esq.

House Bill 431 (AS PASSED HOUSE AND SENATE)

By: Representatives Drenner of the 85th, Carter of the 93rd, Holcomb of the 81st, Moore of the 91st, Taylor of the 92nd, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Part 1 of Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia
 2 Annotated, relating to county special purpose local option sales tax, so as to remove
 3 provisions relating to the purpose of such tax in counties that also levy and collect an
 4 equalized homestead option sales tax; to provide for related matters; to repeal conflicting
 5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Part 1 of Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
 9 relating to county special purpose local option sales tax, is amended by revising
 10 paragraph (1) of subsection (a) of Code Section 48-8-111, relating to procedure for
 11 imposition of tax, resolution or ordinance, notice to county election superintendent, and
 12 election, as follows:

13 "(1) The purpose or purposes for which the proceeds of the tax are to be used and may
 14 be expended, which purpose or purposes may consist of capital outlay projects located
 15 within or outside, or both within and outside, any incorporated areas in the county in the

16 special district or outside the county, as authorized by subparagraph (B) of this paragraph
17 for regional facilities, and which may include any of the following purposes:

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

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

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

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

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

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

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

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

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

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

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

58 (L) The repair of capital outlay projects, including, but not limited to, roads, streets,
 59 and bridges, located, in part or in whole, within the special district that have been
 60 damaged or destroyed by a natural disaster;

61 (M) A capital outlay project or projects that are owned, operated, or administered by
 62 the state and located, in part or in whole, within the special district; or

63 (N) Any combination of two or more of the foregoing;

64 ~~provided, however, that a tax authorized under this part which is submitted to the voters~~
 65 ~~for approval in connection with an equalized homestead option sales tax pursuant to Part~~
 66 ~~2 of Article 2A of this chapter shall be used for transportation purposes which shall~~
 67 ~~include roads, bridges, public transit, rails, airports, buses, seaports, and including~~
 68 ~~without limitation road, street, and bridge purposes pursuant to paragraph (1) of~~
 69 ~~subsection (b) of Code Section 48-8-121, for public safety facilities and related capital~~

70 ~~equipment used in the operation thereof, for debt service purposes for which a~~
71 ~~municipality used proceeds from the homestead option sales and use tax, and for the~~
72 ~~repair of capital outlay projects; provided, however, that the amount of proceeds used for~~
73 ~~the repair of capital outlay projects shall not exceed 15 percent of the total proceeds~~
74 ~~which are collected under this part for a capital outlay project or projects authorized~~
75 ~~under this paragraph;"~~

76 **SECTION 2.**

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

Authorized Projects for SPLOST II Funding

General Capital Outlay Project Provision and Specifically Named Projects

- SPLOST II proceeds may be used by the County and qualified municipalities wholly located in DeKalb County (“Cities”) to fund “capital outlay projects” which are defined as follows:

A capital outlay project means any major, permanent, or long-lived improvement or betterment, such as land or structures.¹ Such projects are properly chargeable to a capital asset account as opposed to a current expenditure or ordinary maintenance expense. The term includes, but is not limited to, roads, streets, bridges, police cars, fire trucks, ambulances, garbage trucks, and other major equipment. ***SPLOST proceeds are NOT permissible for use on normal day-to-day maintenance and operation expenses of the County, the Cities or any SPLOST II project.***

- Although the law specifically lists certain kinds of projects for SPLOST II funding as detailed below, the County and the Cities are not limited to those listed items.
- ***There is a broad “general” project category that authorizes the County and the Cities to fund any capital outlay project with SPLOST II proceeds if the project is located 1-in the unincorporated area of the County and owned or operated by the County or 2- in a City and owned or operated by the City.² This provision gives the County and the Cities broad discretion over the type of capital outlay projects chosen by each for SPLOST II funding.***
- In addition to the general provision, below is a list of projects specifically designated for SPLOST II funding under State law:
- Road, street, and bridge purposes, including sidewalks and bicycle paths which include:

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

Construction of roads, streets, bridges, sidewalks, and bicycle paths;

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

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

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

¹ O.C.G.A. § 48-8-110(1).

² O.C.G.A. § 48-8-111(a)(1)(D).

Patching, leveling, milling, widening, shoulder preparation, culvert repair, and other repairs necessary for the preservation of roads, streets, bridges, sidewalks, and bicycle paths³

- Storm-water and drainage as part of a road, street and bridge project or as general capital outlay project.⁴
- Any capital outlay project jointly operated by a County authority and one or more cities;
- A cultural facility, recreational facility, or historic facility;
- A water or sewer capital outlay project, owned and/or operated by a county water and sewer district and one or more cities;
- A courthouse; administrative building; civic center; local or regional jail, correctional institution, or other detention facility; a library; a coliseum; local or regional solid waste handling facility; and a local or regional recovered materials processing facility;
- The retirement of a previously incurred general obligation debt;
- Public safety facilities, airport facilities, and/or related capital equipment;
- Voting equipment used in official elections or referendums;
- Any transportation facility designed for the transportation of people or goods, including railroads, port and harbor facilities, and/or mass transportation facilities;
- A hospital or hospital facility, owned and/or operated by the county, or jointly owned or operated by the County and a City, hospital authority or not-for-profit organization;
- The repair of existing capital outlay projects; or
- Any capital outlay project owned, operated, or administered by the State and located within the County.⁵

³ O.C.G.A. § 48-8-121(b)(1).

⁴ O.C.G.A. § 48-8-121(b)(2).

⁵ O.C.G.A. § 48-8-111(a)(1)(A)-(M).