

6TH EDITION

Special Purpose Local Option Sales Tax

A GUIDE FOR COUNTY OFFICIALS



ACCG
Advancing Georgia's Counties.

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Table of Contents

LIST OF FREQUENTLY ASKED QUESTIONS	5
INTRODUCTION	7
What Is a SPLOST?	7
History	8
PLANNING A SPLOST PROGRAM	9
PROMOTING THE APPROVAL OF A SPLOST	9
MUNICIPALITIES ELIGIBLE TO RECEIVE FUNDING	10
Qualified Municipalities	10
REQUIRED STEPS TO LEVY THE TAX	11
Step 1: Meet and Confer	11
Step 2: Adopt Resolution	11
Step 3: Call for the Referendum	11
Step 4: Provide Public Notice	12
Step 5: Prepare Ballot Language	13
Step 6: All Projects Must be Approved	13
Additional Steps	13
When General Obligation Debt is to be Issued	13
Infeasible Projects	14
Approval/Disapproval of Levy	14
PROJECTS ELIGIBLE FOR FUNDING	15
Capital Outlay Defined	15
Authorized Projects	15
Roads, Streets, and Bridges	15
Stormwater and Drainage	16
Damage from Natural Disasters	16
ALLOCATION OF REVENUES BETWEEN THE COUNTY AND QUALIFIED MUNICIPALITIES	20
Method 1. Intergovernmental Agreements	20
Model Intergovernmental Agreement	21
Benefits of the Intergovernmental Agreement Method	21

Table of Contents *continued*

Method 2. Population Distribution	21
Step 1. Select “Level One” County-Wide Projects, if Applicable	21
Step 2. If No Level One Projects Are Selected in Step 1, Select Level Two County-Wide Projects.....	23
Step 3. Allocate Remaining Proceeds Based on Population.....	23
Municipality Shares Not Guaranteed	23
TERMINATION OF THE TAX	25
REIMPOSITION/CONTINUATION OF SPLOST	26
Postponement of SPLOST Election Due to Emergency	26
DISPOSITION OF EXCESS PROCEEDS	27
EXCLUSIVE USE/SEPARATE ACCOUNTS	29
RECORD KEEPING, AUDITS, AND REPORTS	30
Audit	30
Annual Reporting	30
COUNTY PROTECTION FROM LIABILITY	31
THE STATE’S ROLE IN ADMINISTERING SPLOST	31
FINANCING SPLOST PROJECTS	32
Benefits of Financing a SPLOST Project	32
Options Available for Financing SPLOST Projects	32
Borrowing from the General Fund	32
Borrowing from the State	32
General Obligation Debt Financing	32
Revenue Bonds and Intergovernmental Agreements	32
Lease-Purchase	33
Georgia Transportation Infrastructure Bank	33
ENFORCEMENT	34
FRIVOLOUS OR MERITLESS CHALLENGES TO SPLOST LEVIES	34

List of Frequently Asked Questions

Are there requirements, such as contribution limits, that apply to private SPLOST public relations campaigns?	10
Can the SPLOST ballot be designed to authorize voter approval on some, but not all, projects on the SPLOST ballot?	12
Must the SPLOST resolution/ballot question be precleared by the U.S. Justice Department?	12
How much detail is needed on the ballot in describing proposed SPLOST projects?	12
Who establishes the revenue estimate and the project costs specified in the resolution and on the ballot?	13
Can SPLOST funds be used for state-owned projects?	16
Can “soft costs” such as professional fees, engineering fees, or attorneys’ fees be paid with SPLOST proceeds?	16
Can SPLOST revenues be used to build local schools?	16
Can a project be funded jointly from ESPLOST and SPLOST?	16
Can SPLOST funds be used to construct projects for local charities or other nonprofit organizations?	16
Can capital outlay projects supporting enterprise services be funded through SPLOST?	17
Can capital projects serving more than one county or municipality or a regional authority be funded through SPLOST?	17
Can SPLOST proceeds be used to pay for a SPLOST election?	17
Can SPLOST funds be used to reduce property taxes?	17
Can SPLOST proceeds be used to pay off revenue bonds that are outstanding at the time of the SPLOST referendum?	17
Can SPLOST funds be borrowed to pay for other county services or projects and paid back later from the general fund?	17
After the SPLOST referendum has passed, may a county use other available revenue to begin construction on the SPLOST-approved projects and to reimburse itself once the SPLOST revenues start to come in?	18
Is the Department of Revenue responsible for preclearing or approving SPLOST projects either before or after a referendum is held?	18

Can SPLOST revenues be moved between voter-approved projects to accommodate greater costs in one or more of the projects? 18

In case of a “shortfall” of SPLOST funds to pay for projects, what happens? 18

Can a county or municipality change its mind and not fund one or more of the SPLOST projects despite voter approval in a referendum? 18

What happens if the county or municipality proposes an ineligible project and the voters approve it anyway? 19

What happens if an approved SPLOST project becomes “infeasible”? 19

Can SPLOST revenue be used to acquire unimproved land? 19

Can property purchased with SPLOST revenue later be converted to a different use? 19

Since the county can enter into an intergovernmental agreement to allocate SPLOST funds so long as municipalities representing 50 percent or more of the total municipal population also sign the agreement, how can the capital outlay needs of the remaining municipalities be addressed? 22

Can projects be prioritized and constructed according to different time frames? 22

Can a county and municipalities agree that certain projects will be funded only if sufficient revenues are available? 22

What happens if a municipality refuses to give the county any projects to be included on the SPLOST ballot? 24

If there is no intergovernmental agreement, can the county refuse to include a particular municipal project or type of municipal project in the resolution calling for the SPLOST? 24

If the county takes some portion of the proceeds for Level One projects off the top, can it take 20 percent of the remainder for Level Two projects and then distribute the balance pro rata between itself and the municipalities? 24

Can a county terminate its SPLOST early? 25

Can a consolidated government collect SPLOST revenues for more than five years? 25

If a municipality has completed its projects and has SPLOST revenue remaining, can it give this revenue to another municipality that needs additional revenues to complete its approved projects? 28

Can excess proceeds be used to pay authority debt? 28

Where should interest earned on SPLOST proceeds be deposited? 29

Must the required annual report address unexpended SPLOST funds held from a prior SPLOST? 31

Introduction

The unpopularity of property taxes and the simplicity and perceived fairness of sales taxes have made the County Special Purpose Local Option Sales Tax (SPLOST) a popular method for financing needed capital projects. The following guide has been developed to assist county officials and staff with their questions about SPLOST requirements and to help ensure that counties do not run afoul of the requirements of the SPLOST law.

WHAT IS A SPLOST?

A SPLOST is an optional one percent county sales tax used to fund capital outlay projects proposed by the county government and participating qualified municipal governments. In general, county and municipal governments may not use SPLOST proceeds for operating expenses or maintenance of a SPLOST project¹ or any other county or municipal facility or service.

SPLOST is levied in what the law refers to as a “special district,” which is comprised of the entire territory of the county calling for the SPLOST. By using special districts, the revenue of a county tax can be constitutionally shared with participating municipalities.²

The tax is imposed when the board of commissioners calls a local referendum (i.e., vote) in conformance with O.C.G.A. § 48-8-111 and the referendum is subsequently passed by the voters within that special district (i.e., county). The tax is collected on items subject to the sales and use tax within the county. The SPLOST is also imposed on the sale of food and nonalcoholic beverages, which are not subject to the state sales tax, and is also imposed on the sale of alcoholic beverages.³ SPLOST also applies to sales of motor fuels as “prepaid local tax” (meaning it is collected at the distributor level) under O.C.G.A. § 48-8-2.

Several factors determine the length of time that a SPLOST may be imposed. In general, the tax may be levied for up to five years. If the county and municipalities enter into an intergovernmental agreement, the tax may be imposed for six years. If no intergovernmental agreement exists and a “Level One” project (see explanation on p. 21) is included, then the tax must run (1) for five years, if the estimated cost of all “Level One” projects is less than 24 months of estimated revenues, or (2) for six years, if the estimated cost of all “Level One” projects equals more than 24 months of estimated revenues.

PLEASE NOTE

To provide uniformity throughout the guide, whenever the term “municipality” or “municipal government” is used, it means a qualified municipality as defined by O.C.G.A. § 48-8-110(4). Qualified municipalities are explained in detail beginning on page 10.

For convenience, the term “board of commissioners” will be used throughout this guide to reflect the county governing authority regardless of whether the county governing authority for a specific county is a board of commissioners, a sole commissioner, or the governing body of a consolidated government.

- 1 Although SPLOST funds generally cannot be used for maintenance and repair, the funds can be used to repair roads, streets, and bridges. Both repairs and capital outlay projects repairs are allowed in a natural disaster per Official Code of Georgia Annotated (O.C.G.A.) § 48-8-111(a)(1)(L).
- 2 City Council of Augusta v. Mangelly, 243 Ga. 258 (1979).
- 3 O.C.G.A. §§ 48-8-110.1; 48-8-3(57)(D)(i); 48-8-2(16).

SPLOST can be continued without a gap in collections if a new referendum seeking voter approval of the new SPLOST is held prior to the expiration of the current SPLOST.

HISTORY

The SPLOST law was enacted in 1985 at the request of ACCG. The SPLOST was conceived and enacted as a county tax for funding capital projects. It is not a municipal tax, nor is it a joint county-municipal tax like the regular Local Option Sales Tax (LOST). As a county tax, a SPLOST can only be initiated by the board of commissioners.⁴

(See Resources, p. 36 for a copy of the SPLOST law, inclusive of changes through the 2016 regular session.)

Planning a SPLOST Program

Although not a legal requirement, both counties and municipalities are encouraged to develop capital improvements plans (CIP) which represent their respective short-term and long-term program goals.⁵ A capital improvements planning program should include the development of cost estimates for each element. Projects identified in the CIP are logical candidates for SPLOST funding.

A very important aspect of any capital improvements planning process is the involvement of citizens in all phases of CIP development. This involvement can ultimately build a base of community support necessary to pass a SPLOST referendum. Although the ballot in a SPLOST referendum does not require detailed project descriptions, citizen support may increase if they are well informed. Sufficient detail describing the proposals and their impact on the community can be provided through various meetings and writings before voting on the SPLOST.

Promoting the Approval of a SPLOST

Georgia law strictly prohibits governmental agencies from expending public funds to support any campaign committee, political action committee, or other political organizations for any purpose.⁶ More importantly, the board of commissioners and the city councils are further prohibited from spending public funds for advertisements, flyers, mailings, or any other direct promotion in support of passage of the SPLOST.⁷

On the other hand, local officials may use county or municipal funds to prepare descriptions of the SPLOST proposal and the impact of the SPLOST projects on the county and its citizens. It is critical, however, that such descriptions do not express an opinion regarding the SPLOST proposal or advocate for which way a person should vote.

In many cases, chambers of commerce or other business or civic groups can provide the leadership necessary to promote SPLOST approval. If these organizations engage in promoting the approval, they must register with the Georgia Government Transparency and Campaign Finance Commission (formerly named the State Ethics Commission) and meet that agency's reporting requirements for campaign financing.⁸ For details, including further information on permissible campaign activities under Georgia law, contact the commission by telephone at (404) 463-1980 or (866) 589-7327 or access the commission's website at <http://ethics.ga.gov>.

5 The subject of capital improvements planning by counties is covered in detail in Chapter 20 of the *Handbook for Georgia County Commissioners*, Fifth Edition.

6 O.C.G.A. § 21-5-30.2(b).

7 *Harrison v. Rainey*, 227 Ga. 240 (1971); *McKinney v. Brown*, 242 Ga. 456 (1978).

8 O.C.G.A. § 21-5-30.

FAQ

Are there requirements, such as contribution limits, that apply to private SPLOST public relations campaigns?

While counties may not expend public revenues to support a SPLOST public relations campaign, private citizens and independent groups, like chambers of commerce, can lobby and spend money to generate citizen support for or against the SPLOST initiative. Although such organizations must register with the Georgia Government Transparency and Campaign Finance Commission, there are no limits on the amounts that they can expend.

Municipalities Eligible to Receive Funding

While any county which levies SPLOST is automatically eligible to receive SPLOST funds, a municipality must be a “qualified municipality,” as defined in O.C.G.A. § 48-8-110(4), to be eligible.

QUALIFIED MUNICIPALITIES

To be “qualified,” a municipality must provide no less than three of the following twelve services directly or by contract:

- Law enforcement
- Fire protection (which may be furnished by a volunteer fire force) and fire safety
- Road and street construction or maintenance
- Solid waste management
- Water supply or distribution or both
- Wastewater treatment
- Stormwater 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
- Library services

Given the definition of “qualified municipality,” virtually all municipalities that are functioning should qualify.

Required Steps to Levy the Tax

The law is specific as to the series of steps that must be taken in order to levy a SPLOST, as well as the time frame within which the county must proceed. This section of the guidebook provides a detailed description of these necessary steps (also see Resources, SPLOST Timeline, p. 50 and SPLOST Checklist, p. 51). Failure to adhere to the procedures could result in a SPLOST levy being susceptible to legal challenge.

STEP 1. MEET AND CONFER

At least 30 days before the county election superintendent issues the call for a SPLOST referendum, the board of commissioners must set up a meeting with all municipalities within the county to discuss and consider possible capital projects for presentation to the public in the referendum. The participants should discuss the inclusion of municipally owned or operated projects, as well as county projects. The meeting notice must be sent to the municipalities at least 10 days prior to the date of the meeting and must contain the date, time, place, and purpose of the meeting.⁹

During the initial meeting and any subsequent meetings, the county and municipalities may negotiate an intergovernmental agreement, which would apportion the estimated SPLOST proceeds among the county and municipal participants and set forth the proposed capital projects to be funded.¹⁰ Alternatively, the county may call for the referendum without first entering into an intergovernmental agreement if negotiations with the cities fail, if it is unlikely that one can be successfully negotiated, or if only “Level One” projects are to be financed through the SPLOST.¹¹

STEP 2. ADOPT RESOLUTION

Once the board of commissioners has compiled a proposed list of local projects to be funded with the SPLOST, the board must adopt an ordinance or resolution calling for imposition of the tax. The ordinance or resolution must include

- a list of county and municipal projects for which proceeds of the tax are to be used;
- the estimated cost of each project to be funded from the proceeds of the tax; and
- the time period of the levy stated in calendar years or calendar quarters.

(See Resources, Model Resolution Calling for an Election to Impose a County SPLOST, p. 62.)

STEP 3. CALL FOR THE REFERENDUM

Following adoption of the resolution or ordinance calling for SPLOST to be levied, the board of commissioners must send the resolution or ordinance to the county election superintendent, who issues the call for the election and conducts the SPLOST election. The county voters must approve the tax by simple majority for the SPLOST to take effect. All elections, including SPLOST referenda, must comply with state election laws. O.C.G.A. § 21-2-540(c)(2) specifies the two or three days per year on which special elections may be held to present a question to the voters. (See Resources, Special Election Dates and Call Requirements, p. 67.)

9 O.C.G.A. § 48-8-111(a).

10 O.C.G.A. § 48-8-115(b)(1).

11 O.C.G.A. § 48-8-115(b)(2).

STEP 4. PROVIDE PUBLIC NOTICE

The public must be notified about the holding of a SPLOST referendum. The requirements for providing notice are set forth in O.C.G.A. § 48-8-111(b). The election superintendent must publish the date and purpose of the referendum once a week for four weeks immediately before the election in the newspaper approved for county legal notices. If general obligation debt is to be issued in conjunction with the tax, then the notice published by the elections superintendent must also contain the same information regarding the proposed debt as adopted in the resolution calling for the election.

FAQ

Can the SPLOST ballot be designed to authorize voter approval on some, but not all, projects on the SPLOST ballot?

No. The law sets forth the specific language to be used in seeking approval of the voters in a SPLOST referendum.¹² It does not authorize any alternative ballot questions or form that would allow for a “pick and choose” ballot.

Must the SPLOST resolution/ballot question be precleared by the U.S. Justice Department?

Preclearance is no longer required, based on the United States Supreme Court decision in *Shelby County v. Holder* in 2013.¹³ Prior to the decision in *Shelby*, the county attorney would be required to submit the SPLOST resolution/ballot question to the U.S. Department of Justice for preclearance under the federal Voting Rights Act of 1965. As a result of the decision in *Shelby*, this step is no longer required. If you have any questions about this former requirement, contact your county attorney.

How much detail is needed on the ballot in describing proposed SPLOST projects?

The SPLOST law requires that the purpose or purposes (i.e., the capital outlay projects) for which the SPLOST revenues will be used be specified on the ballot. The degree of specificity required is not addressed in the law. However, the Attorney General of Georgia has concluded that:

“There is no necessity that the description of the purpose or purposes for the tax be in exacting detail. Rather, the description and the purposes must be only so specific as to place the electorate on fair notice of the projects to which the tax will be devoted.”¹⁴

The opinion suggests that a brief statement is sufficient (e.g., “county judicial facility” or “recreational facility to be constructed within the City of _____”). In *Dickey v. Storey*, 262 Ga. 452, 455 (1992), the referendum question described county “recreational facilities and multi-purpose governmental facilities.” The Georgia Supreme Court found these descriptions adequate.

12 O.C.G.A. § 48-8-111.

13 *Shelby County v. Holder*, 133 S. Ct. 2612 (2013).

14 Op. Att’y Gen. U90-18.

FAQ

Who establishes the revenue estimate and the project costs specified in the resolution and on the ballot?

The county is responsible for estimating the SPLOST revenues expected to be collected over the life of the SPLOST, as well as the costs of all projects to be financed. The county should also ensure that the sum of all project costs, including those submitted by municipalities, equals the estimated revenues.¹⁵ Because all approved projects must be funded as provided under the *Dickey* case, counties should be careful not to overestimate SPLOST revenues, thereby requiring the use of other county funds to make up any shortfalls.

STEP 5. PREPARE BALLOT LANGUAGE

O.C.G.A. § 48-8-111(c) specifies the ballot language that must be used. The ballot language must include the total estimated revenue amount, a general list of all proposed projects, and the time period of tax imposition in calendar years or quarters.

STEP 6. ALL PROJECTS MUST BE APPROVED

The SPLOST law sets forth the specific language to be used in seeking approval of the voters in a SPLOST referendum.¹⁶ As previously noted, it does not authorize any alternative ballot questions or form that would allow for a “pick and choose” ballot. In essence, the public is asked to vote up or down on the entire package of projects proposed by the county and municipalities.

ADDITIONAL STEPS

Additional steps will be needed if your county chooses to issue general obligation debt in conjunction with a SPLOST levy or has an infeasible project that requires approval from the voters. An overview of the procedures necessary for each category is provided below.

WHEN GENERAL OBLIGATION DEBT IS TO BE ISSUED¹⁷

General obligation debt is debt that will not be paid back within a year, typically in the form of a bond incurred by a county and backed by the full faith and credit of its taxing power. If the board chooses to ask the voters to approve the issuance of general obligation debt in conjunction with the SPLOST levy, the resolution must also include the

- principal amount of the debt;
- purpose for which the debt is to be issued;
- local government issuing the debt;

¹⁵ O.C.G.A. § 48-8-111(a)(3).

¹⁶ O.C.G.A. § 48-8-111.

¹⁷ O.C.G.A. § 36-82-1(d) requires that, if GO bonds are to be issued in conjunction with a SPLOST election, legal advertisements of a bond election must contain a reference that any brochures, listings, or other advertisements issued by the governing body or a person or group acting on behalf of the governing body shall be deemed a statement of intent concerning the use of funds, and any such statements are binding upon the governing body. Although not specifically referring to SPLOST elections, prudence dictates that county officials ensure that any pronouncements or explanations on the uses of SPLOST funds are made with this requirement for bond elections in mind.

- interest rate or rates or the maximum interest rate or rates which the debt will bear; and
- amount of principal to be paid in each year during the life of the debt.

There are also special ballot requirements for general obligation debt. The ballot must contain the language specified in O.C.G.A. § 48-8-111(c)(2), including the name of the county or municipalities issuing the debt and the principal amount of the debt.

INFEASIBLE PROJECTS

If projects approved in a prior SPLOST referendum have become infeasible, counties and municipalities can provide for a modified purpose with voter approval. To be infeasible, a project must, in the judgment of the governing authority, have become impractical, unserviceable, unrealistic, or otherwise not in the best interest of the county or the municipality.

A determination of infeasibility must be provided in an ordinance or resolution and include the modified purpose for the SPLOST proceeds and an estimate of the amount of proceeds available for that purpose. If it is a county project, then the board of commissioners must adopt the infeasibility ordinance or resolution. If it is a municipal project, the municipality must adopt the infeasibility ordinance or resolution and transmit it to the board of commissioners, who may then rely upon their determination that the municipal project is infeasible. If it is a joint project, all jurisdictions involved must adopt the infeasibility ordinance or resolution. The only allowable modified purposes are reducing debt or ad valorem taxes, or both.

Before the SPLOST proceeds intended for the infeasible project can be redirected to the modified purpose, a separate referendum question regarding that modification must be conducted in conjunction with the next SPLOST election (i.e., on the same ballot as a SPLOST approval referendum, but with a separate ballot question for infeasibility). If the voters approve, funds may be reallocated to the stated modified purpose. If debt has been incurred or financing entered into with respect to an infeasible project, an infeasibility ordinance or resolution is prohibited until that obligation has been discharged or defeased in full.¹⁸

APPROVAL/DISAPPROVAL OF LEVY

If approved, the SPLOST is imposed on the first day of the next calendar quarter beginning more than 80 days after the election. If properly timed, an existing SPLOST levy would be continued without break. If the public fails to approve the SPLOST proposal, a subsequent SPLOST election cannot occur for 12 months following the month in which the SPLOST referendum failed.¹⁹ For example, if a SPLOST fails in November, a subsequent SPLOST election could not be held until the following November or thereafter. The state Election Code governs the available dates on which referenda may be conducted. (See Resources, Special Election Dates and Call Requirements, p. 67.) Procedures for the reimposition of a SPLOST are provided in Reimposition/Continuation of SPLOST, p. 26.

18 O.C.G.A. § 48-8-123.

19 O.C.G.A. § 48-8-111(d).

Projects Eligible for Funding

SPLOST proceeds can only be used to fund capital outlay projects. With some exceptions, SPLOST proceeds may not be used for maintenance and operation costs related to the proposed SPLOST projects or any previously approved projects. The primary intent behind SPLOST is to pay for specifically enumerated projects, not to balance the government's books or to pay for other governmental expenses.²⁰

CAPITAL OUTLAY DEFINED

Capital outlay projects are defined by law as major projects which are of a permanent, long-lived nature, such as land and structures. They are expenditures that would be properly chargeable to a capital asset account as distinguished from current expenditures and ordinary maintenance expenses. The term expressly includes without limitation roads, streets, bridges, police cars, fire trucks, ambulances, garbage trucks, and other major equipment.²¹

AUTHORIZED PROJECTS

O.C.G.A. § 48-8-111(a)(1) contains a list of specific types of projects which are eligible for SPLOST funding. However, counties and municipalities are not limited to that list and may fund any capital project located within the special district that is owned or operated by a county, municipality, a local authority,²² or the state.²³ Essentially, this provision gives counties and municipalities complete discretion over the type of capital project selected.

ROADS, STREETS, AND BRIDGES

O.C.G.A. § 48-8-121(b) defines which expenditures are eligible under the roads, streets, and bridges project category. The SPLOST law expressly allows the expenditure of SPLOST funds on certain maintenance and repair activities in addition to capital outlay. The following are examples of road, street, and bridge projects:

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

²⁰ Where a county or municipality pays employee salaries and benefits out of their SPLOST account, good accounting records should be kept to demonstrate that the portion of the employees' compensation paid with SPLOST proceeds is attributable to eligible SPLOST projects (see also the "soft costs" FAQ, p. 16).

²¹ O.C.G.A. § 48-8-110.

²² O.C.G.A. § 48-8-111(a)(1)(D).

²³ O.C.G.A. § 48-8-111(a)(1)(M).

STORMWATER AND DRAINAGE

In addition, stormwater and drainage capital outlay projects may be funded as SPLOST projects as either a component of a road, street, and bridge project or as a general capital outlay project.

DAMAGE FROM NATURAL DISASTERS

SPLOST proceeds can be used for the repair of capital outlay projects located in the special district that may have been damaged as a result of a natural disaster, including roads, streets and bridges that may have been damaged as a result of a natural disaster.

FAQ

Can SPLOST funds be used for state-owned projects?

Yes. SPLOST funds can be designated for capital outlay projects owned, operated, or administered by the state that are partially or entirely located within the special district.²⁴

Can “soft costs” such as professional fees, engineering fees, or attorneys’ fees be paid with SPLOST proceeds?

Yes, but only if the fees are directly attributable to a capital outlay project—for example, attorneys’ fees that are associated with capital outlay project land acquisition (see footnote 20 on p. 15).

Can SPLOST revenues be used to build local schools?

No. A separate Education SPLOST (ESPLOST) for school construction is available to boards of education. A school system’s one percent ESPLOST levy does not count against the county’s two percent local option sales tax cap.

Can a project be funded jointly from ESPLOST and SPLOST?

Yes, a county and a school board may coordinate expenditures from their respective SPLOST and ESPLOST levies for a joint facility, provided that the completed project is jointly owned by the county and the school board. So, while a county cannot finance a classroom building owned by the school board, a county and a school could, for example, agree to finance a jointly owned recreation or arts facility.

Can SPLOST funds be used to construct projects for local charities or other nonprofit organizations?

No. The gratuities clause of the Georgia Constitution bars local governments from using SPLOST revenues or any other public funds to fund the capital outlay projects for non-public entities. This restriction applies to for-profit organizations as well as not-for-profit organizations, including charitable organizations.²⁵

24 Id.

25 Georgia Constitution 1983, art. IX, § II, para. VIII.

FAQ

Can capital outlay projects supporting enterprise services be funded through SPLOST?

Yes. The law allows counties and municipalities to use SPLOST revenues to fund capital outlay projects supporting enterprise operations, such as water or sewer system improvements.

Can capital projects serving more than one county or municipality or a regional authority be funded through SPLOST?

Yes. Several types of regional facilities may be financed through SPLOST, including development authorities, regional jails, regional correctional institutions and other detention facilities, regional solid waste handling facilities, and regional recovered material processing facilities. Where a proper intergovernmental agreement is entered into, SPLOST revenues may be used to finance a county's portion of a project owned or operated by a regional authority.

Can SPLOST proceeds be used to pay for a SPLOST election?

This matter is not addressed directly in the statute. Although the cost of administering the referendum is not a capital outlay, it is a necessary prerequisite to levying the tax. As such, it is reasonable to assume that counties may expend SPLOST proceeds for this purpose (as, in fact, many counties have done).

Can SPLOST funds be used to reduce property taxes?

Although counties cannot directly include a property tax rollback as an eligible expenditure on the referendum, counties can use SPLOST funds to pay for capital outlay projects that would otherwise be funded through property tax revenues. Also, if excess proceeds remain after SPLOST projects have been completed and there is no county debt, the excess proceeds must go to the general fund of the county to reduce county property taxes (see Disposition of Excess Proceeds, p. 27).

Can SPLOST proceeds be used to pay off revenue bonds that are outstanding at the time of the SPLOST referendum?

No. While SPLOST proceeds can be used to retire existing general obligation debt, the proceeds cannot be used to pay off existing revenue bonds. However, counties may issue revenue bonds after the referendum is approved to provide funds to get projects initiated before all revenues are collected.

Can SPLOST funds be borrowed to pay for other county services or projects and paid back later from the general fund?

No. SPLOST funds may only be used for capital outlay projects approved by the voters in a SPLOST referendum. Furthermore, SPLOST funds must be held in a separate account from other funds of the county or municipality and cannot, in any manner, be commingled with any other funds until spent on the approved projects.²⁶ The Attorney General has opined that SPLOST proceeds cannot be borrowed from the SPLOST account to pay for other county obligations, even if the funds are paid back.²⁷ (See Resources, Borrowing SPLOST Proceeds not Authorized, p. 69).

26 O.C.G.A. § 48-8-121(a).

27 Op. Att'y Gen. 07-05.

FAQ

After the SPLOST referendum has passed, may a county use other available revenue to begin construction on the SPLOST-approved projects and to reimburse itself once the SPLOST revenues start to come in?

Yes. Counties may issue debt or borrow from their general fund to get projects underway promptly (see Financing SPLOST Projects, p. 32).

Is the Department of Revenue responsible for preclearing or approving SPLOST projects either before or after a referendum is held?

No. The Department of Revenue (DOR) has no responsibility for determining the validity of any SPLOST levy or the validity of any SPLOST projects funded. The SPLOST law allows DOR to rely upon the opinion of the county attorney or the county itself that the tax has been validly imposed. Furthermore, the state revenue commissioner cannot be held liable for collection of any SPLOST which has not been validly imposed.²⁸ Nonetheless, counties must provide DOR a copy of the resolution calling for the referendum, the ballot question, and any intergovernmental agreement to be used by DOR in establishing the initiation and termination date of the tax.

Can SPLOST revenues be moved between voter-approved projects to accommodate greater costs in one or more of the projects?

Yes. Since project costs are estimates, each local government receiving SPLOST revenues may shift funds between their approved projects (as long as all projects are completed). Be aware that this flexibility could be lost if the ballot language presented to the voters designates specific dollar amounts for each project rather than the total estimated cost for all proposed SPLOST projects.

In case of a “shortfall” of SPLOST funds to pay for projects, what happens?

The approved projects could be scaled back, but not abandoned. A local government must make up any shortfall from their general fund or other funding sources.

Can a county or municipality change its mind and not fund one or more of the SPLOST projects despite voter approval in a referendum?

No. The Georgia Supreme Court has ruled that the governing authority is obliged to use proceeds from the SPLOST for the projects approved in the SPLOST referendum. The court held that the governing authority “... is bound by the SPLOST budget and accounts report to complete all projects listed therein unless circumstances arise which dictate that projects which initially seemed feasible are no longer so. In this regard, the governing authority has discretion to make adjustments in the plans for these projects, but may not abandon the projects altogether.”²⁹ In the same case, the court recognized that the county could not use SPLOST funds for a project that had not been approved by the voters, noting that under O.C.G.A. § 48-8-121(a) proceeds from the SPLOST “... shall be used exclusively for the purpose or purposes specified in the resolution or ordinance calling for imposition of the tax.”³⁰ While the court has recognized that counties retain discretion to alter SPLOST projects, no such alterations may contravene the terms of the referendum.³¹

28 O.C.G.A. § 48-8-113.

29 Dickey v. Storey, 262 Ga. 452, 455 (1992).

30 Id.

31 Rothschild v. Columbus Consolidated Government, 291 Ga. App. 531 (2008); Johnstone v. Thompson, 280 Ga. 611 (2006).

FAQ

What happens if the county or municipality proposes an ineligible project and the voters approve it anyway?

Litigation can occur and the courts have invalidated the results of otherwise successful referenda on SPLOST projects. Counties should have their county attorney review proposed projects for legal sufficiency to guard against this possibility.

What happens if an approved SPLOST project becomes “infeasible”?

The Georgia Supreme Court has recognized that circumstances outside the control of a county or municipality could subsequently make previously viable projections for SPLOST projects unworkable, even though the project was considered feasible when it was proposed and approved. The court said that in this situation, the governing authority may make adjustments to the project to enhance its feasibility, but the project cannot be abandoned. Generally, higher costs, diminished SPLOST revenues, lack of support among the elected officials, and technical problems that can be fixed would not amount to infeasibility.³²

In 2012, the SPLOST law was amended to address “infeasibility” that arises due to situations in which projects become impractical or not in the best interest of the county (see Infeasible Projects, p. 14).

Can SPLOST revenue be used to acquire unimproved land?

Yes.

Can property purchased with SPLOST revenue later be converted to a different use?

There is nothing in the SPLOST law that prevents conversion to a different use.

Allocation of Revenues Between the County and Qualified Municipalities

The SPLOST law provides that the proceeds of the SPLOST collected by the Department of Revenue (DOR) on behalf of the county are to be disbursed as soon as practicable after collection. The DOR retains one percent of the proceeds to defray the cost of collecting the SPLOST.³³ The balance is distributed to the county to be used for projects approved by the voters in the SPLOST referendum.

There are two methods for determining how and whether SPLOST revenues will be shared with municipalities:

Method 1. By intergovernmental agreement³⁴

Method 2. According to a population-based formula in absence of an intergovernmental agreement³⁵

Regardless of which method is used, where projects of a municipality are to be funded through a SPLOST levy, the board of commissioners will disburse the designated SPLOST proceeds to the municipal governments. The disbursement will be in accordance with the distribution schedule outlined in an intergovernmental agreement, if one has been executed, or on a monthly basis if there is no intergovernmental agreement. Where there are no approved municipal projects, all of the SPLOST proceeds will be allocated to the county.

METHOD 1. INTERGOVERNMENTAL AGREEMENTS

The SPLOST law authorizes counties to apportion SPLOST proceeds between and among county and municipal capital outlay projects by negotiating an intergovernmental agreement between the county and municipalities within the county. To use this method, the county must reach a consensus with one or more municipalities within the county representing at least 50 percent of the county's municipal population.³⁶ The primary objective of the agreement is to specify how the SPLOST proceeds would be disbursed among the parties of the agreement and in what priority. Where an intergovernmental agreement has been entered into, O.C.G.A. § 48-8-115 requires that the agreement address, at a minimum, the following matters:

- The specific capital outlay project or projects to be funded
- The estimated or projected dollar amount allocated for each project from the SPLOST proceeds
- Procedures for distributing SPLOST proceeds to the municipalities
- A schedule for distributing proceeds to the municipalities that includes the order or priority in which the projects will be fully or partially funded
- A provision providing that all projects in the agreement will be funded, unless otherwise agreed

³³ O.C.G.A. § 48-8-115(a)(1).

³⁴ O.C.G.A. § 48-8-115(b)(1).

³⁵ O.C.G.A. § 48-8-115(b)(2).

³⁶ O.C.G.A. § 48-8-110(3).

- A provision stating that proceeds from the tax shall be kept in separate accounts and used exclusively for the specified purposes
- Record-keeping and audit procedures necessary to meet the requirements of the law
- Any other provisions the county and participating municipalities choose to address

MODEL INTERGOVERNMENTAL AGREEMENT

See Resources, Model Intergovernmental Agreement, p. 52 and Model Resolution Authorizing Execution of an Intergovernmental Agreement, p. 60.

BENEFITS OF THE INTERGOVERNMENTAL AGREEMENT METHOD

Choosing the intergovernmental agreement method provides benefits to both the county and municipalities. The negotiation process allows the county and the municipalities to work together and discuss which projects are best for the community. This cooperation should increase support among the participating local governments and help ensure approval of the SPLOST referendum.

From a financial standpoint, the intergovernmental agreement method provides several important advantages. In particular, the law allows the SPLOST to be levied for a term of up to six years when an intergovernmental agreement has been reached, thus permitting the county and participating municipalities up to one additional year of revenue collections before having to go back to the public in a new referendum to continue the SPLOST. Also, if the intergovernmental agreement option is chosen, the SPLOST will not expire until the full time approved by the voters is reached, even if the revenues exceed the estimated cost of all projects. In addition, an intergovernmental agreement can address such things as project priority or partial funding of projects if sufficient proceeds are not generated.

METHOD 2. POPULATION DISTRIBUTION

If a county and the municipalities representing no less than 50 percent of the aggregate municipal population do not reach an agreement under Method 1, the SPLOST law authorizes the county to proceed with the SPLOST under Method 2.

Under Method 2, a board of commissioners, within the limitations described in the three-step procedure below, may allocate SPLOST proceeds for the construction of county-wide projects “off the top.” Proceeds remaining after allocations are made to county-wide projects must be divided among the county and municipalities based on population.

STEP 1. SELECT “LEVEL ONE” COUNTY-WIDE PROJECTS, IF APPLICABLE

Level One projects are capital projects for the use and benefit of the citizens of the entire county that are needed to implement state-mandated county responsibilities. Level One projects are specifically limited to the following:

- A courthouse
- An administrative building for elected officials or constitutional officers
- A county or regional jail, correctional institution, or detention facility
- A county health department facility
- Any combination of the foregoing

The board of commissioners can place as many Level One projects as it deems appropriate on the SPLOST ballot. Collectively, these Level One projects may consume up to 100 percent of the total estimated SPLOST revenues.

In addition to constructing new facilities, the Level One category allows for renovations to existing facilities, debt repayment on existing facilities, and capital equipment needed to furnish or equip new facilities.

FAQ

Since the county can enter into an intergovernmental agreement to allocate SPLOST funds so long as municipalities representing 50 percent or more of the total municipal population also sign the agreement, how can the capital outlay needs of the remaining municipalities be addressed?

If a municipality or municipalities representing 50 percent or more of the total municipal population in a county reach an intergovernmental agreement with the county, other municipalities must become party to that agreement in order to receive a distribution of SPLOST proceeds.

Can projects be prioritized and constructed according to different time frames?

Yes. Where a county and municipalities enter into an intergovernmental agreement pursuant to O.C.G.A. § 48-8-115(b)(1), the agreement must specify a schedule for distributing the SPLOST proceeds and the priority or order in which the projects are to be funded or partially funded. Time frames for the individual projects should reflect the priority (i.e., higher priority projects can be scheduled before lower priority projects). If all or some of the projects are deemed to be of equal priority, they may be funded simultaneously.

If there is not an intergovernmental agreement, the procedure is different. O.C.G.A. § 48-8-115(b)(2)(B) provides that funds “remaining” after the funding of any county-wide projects are to be distributed to the county and the municipalities according to population on a monthly basis. Therefore, the county may fund the county-wide projects first and then shift to the monthly population-based distribution for the balance of the SPLOST levy. As to the funds that each county and municipality receives from the monthly distribution, each governing authority sets its own project priority schedule.

Can a county and municipalities agree that certain projects will be funded only if sufficient revenues are available?

Yes. Where the county and municipalities enter into an intergovernmental agreement, O.C.G.A. § 48-8-115(b)(1) requires that the agreement specify the priority or order of approved projects. As such, the parties may agree that certain low priority projects will get funded only if sufficient revenues are generated by the SPLOST. Since agreements are entered into prior to the referendum, the public has an opportunity to ratify not only the priorities, but also any provision in the agreement to not fund certain projects due to insufficient funds. In the absence of an intergovernmental agreement, all projects must be funded.

STEP 2. IF NO LEVEL ONE PROJECTS ARE SELECTED IN STEP 1, SELECT LEVEL TWO COUNTY-WIDE PROJECTS

Level Two projects are capital projects benefiting the citizens of the entire county, other than the Level One projects described in Step 1.

Unlike the Level One projects, if the board of commissioners decides to allocate SPLOST proceeds to one or more Level Two projects, no more than 20 percent of the total estimated SPLOST revenues may be allocated to Level Two projects off the top. Nonetheless, additional SPLOST proceeds may be applied to these projects, but those proceeds would have to come from the county's prorated population share described in Step 3. Funding allocated to Level Two projects, like funding for Level One projects, may be used for building and renovating existing facilities, repaying debt on existing facilities, and equipping and furnishing facilities.

STEP 3. ALLOCATE REMAINING PROCEEDS BASED ON POPULATION

After the county has allocated the appropriate amount of funds to Level One or Level Two projects, the remaining SPLOST proceeds must be allocated between the county and the municipalities

- as specified in an intergovernmental agreement³⁷ or
- to the county and each municipality, pro rata based on population with the county's share of the SPLOST proceeds equal to the ratio of the unincorporated population of the county relative to the total county population (each municipality is allocated a share of the proceeds equal to the ratio of the municipality's population relative to the total county population).³⁸

Municipality located in more than one county. If any municipality is located in more than one county, only that portion of the municipality within the county levying the SPLOST is counted towards the municipality's share.

Population estimates. Although the SPLOST law does not specify the basis for determining population, the only accepted population figures officially recognized by the state are the decennial census figures compiled by the U.S. Census Bureau.³⁹

MUNICIPALITY SHARES NOT GUARANTEED

Depending on the allocation method selected, not all municipalities are guaranteed a share of the SPLOST funds. Examples:

- If the board of commissioners proposes to fund one or more Level One county projects using SPLOST, and the Level One projects would consume 100 percent of the estimated SPLOST revenues, no municipality would receive SPLOST funds.
- If the board of commissioners negotiates an intergovernmental contract to determine the distribution of SPLOST funds, the agreement is effective so long as the agreement is between the county and one or more municipalities representing 50 percent or more of the municipal population in the county. Any municipalities that are not included in the intergovernmental agreement would not be entitled to share in the SPLOST funds.

³⁷ O.C.G.A. § 48-8-115(b)(2)(B)(i).

³⁸ O.C.G.A. § 48-8-115(b)(2)(B)(ii).

³⁹ O.C.G.A. § 1-3-1(d)(2).

FAQ

What happens if a municipality refuses to give the county any projects to be included on the SPLOST ballot?

The SPLOST law is silent on this point. If a municipality that is entitled to SPLOST revenues refuses to specify any SPLOST project to be included on the ballot, a possible approach might be that the county would have the discretion to select a project on behalf of the uncooperative municipality. Another approach might be that in the absence of any guidance from the municipality, the county might specify road, street, and bridge improvements to the municipal road system since it is broad enough to give the municipality flexibility on how and when the funds are spent within the municipality. In the event that the other municipalities (i.e., those having submitted projects) comprise more than 50 percent of the municipal population, another option may be to enter into an intergovernmental agreement with those municipalities to exclude the uncooperative municipality.

If there is no intergovernmental agreement, can the county refuse to include a particular municipal project or type of municipal project in the resolution calling for the SPLOST?

If a municipality proposes a SPLOST project that the county considers ineligible, frivolous, or harmful to the successful passage of the referendum, the county should try to work with the municipality to select another project that is acceptable or, at least, eligible. If that fails, there is no express authority for the county to reject a municipal project regardless of its merits or eligibility. However, given that the county has sole responsibility for adopting the SPLOST resolution, and given that municipalities are guaranteed a share of the revenues but not specific projects, it is reasonable to infer from the law that counties, in exercising their fiduciary responsibilities to all the citizens of the county, have the discretion to delete ineligible projects and substitute other municipal capital outlay projects in lieu of the ineligible projects.

If the county takes some portion of the proceeds for Level One projects off the top, can it take 20 percent of the remainder for Level Two projects and then distribute the balance pro rata between itself and the municipalities?

No. If any Level One projects are included in the SPLOST referendum, the county cannot take any funding for Level Two projects off the top. The county can, however, take funding off the top for Level One projects and then use some or all of its pro rata share of the balance of the SPLOST funds for Level Two or other county projects.

Termination of the Tax

A SPLOST levy is terminated by the state revenue commissioner depending on which of the following circumstances apply:

- Where there is an intergovernmental agreement, the tax will terminate at the end of the time period stated on the ballot, not to exceed six years.
- Where there is not an intergovernmental agreement and a Level One project is included on the ballot that consumes less than 24 months of estimated revenues, the tax will terminate at the end of five years of collections.
- Where there is not an intergovernmental agreement and a Level One project is included on the ballot that consumes more than 24 months of estimated revenues, the tax will terminate at the end of six years of collections.
- Where there is no intergovernmental agreement and no Level One project is included on the ballot, the tax will terminate at the end of the term stated on the ballot, not to exceed five years or when the estimated SPLOST proceeds stated on the ballot are collected, whichever comes first.
- Where a consolidated government issues general obligation bonds in conjunction with the SPLOST referendum, the tax will terminate when the estimated amount of SPLOST proceeds stated on the ballot is collected.

If the tax terminates at the end of the maximum time period stated on the ballot, the state revenue commissioner requires retailers to stop collecting the tax on the final day of the maximum period. If the tax terminates when the estimated revenues stated on the ballot are reached, the state revenue commissioner requires retailers to stop collecting the tax at the end of the calendar quarter during which the estimated revenues have been collected.⁴⁰

In most cases, termination at the end of a calendar quarter will produce a small amount of excess revenues (see Disposition of Excess Proceeds, p. 27).

FAQ

Can a county terminate its SPLOST early?

No. Only the state revenue commissioner can terminate a SPLOST and only in accordance with the time or revenue limits authorized by the SPLOST law.

Can a consolidated government collect SPLOST revenues for more than five years?

If a consolidated government issues general obligation debt in conjunction with the SPLOST referendum, it can collect SPLOST revenue until the estimated total revenues stated on the ballot are collected.

For those consolidated governments that have at least one municipality within the county boundaries, an intergovernmental agreement can be reached allowing the consolidated government to collect the SPLOST for up to six years. If the consolidated government does not have any municipalities within its county boundaries, it cannot collect the SPLOST for more than five years.⁴¹

40 O.C.G.A. § 48-8-112(b).

41 O.C.G.A. § 48-8-111.1.

Reimposition/Continuation of SPLOST

A SPLOST may be reimposed following the termination of an existing SPLOST by following the same procedures followed for the levy of the initial SPLOST.⁴² However, the board of commissioners does not have to wait until an existing SPLOST expires to proceed with reimposition. In order to continue the SPLOST without a gap in collections, the board of commissioners may, while an existing SPLOST is still in place, adopt a resolution calling for the reimposition of a SPLOST upon termination of the tax then in effect.⁴³

In order to be sure there is sufficient time to accommodate all procedural steps necessary for the reimposition of a SPLOST, the board of commissioners should decide whether or not they will want to renew the SPLOST well in advance of the expected termination date of the existing SPLOST. If the board of commissioners decides to reimpose the SPLOST, they must then determine if there should be a seamless transition between the existing SPLOST and the new SPLOST. Most retailers prefer a seamless transition, since it allows them to avoid having to reset or reprogram their registers and computers or change their accounting procedures.

If the board of commissioners chooses to have the new SPLOST begin immediately after the existing tax expires, the referendum must be held on an election date that will allow passage of at least the election before the existing tax terminates and for sufficient time necessary to meet the requirements of O.C.G.A. § 48-8-112(a), which provides for the tax to take effect or be continued on the first day of the next calendar quarter beginning more than 80 days after the election. (See Resources, Special Election Dates and Call Requirements, p. 67).

To prepare for this referendum, county officials are required to meet with their municipal officials to discuss projects for the new SPLOST at least 69 days before the scheduled election. However, out of an abundance of caution, counties should plan on holding the meeting at least 75 days beforehand.

To seamlessly transition from an existing SPLOST to a reimposed SPLOST, it is recommended that the board of commissioners initiate the renewal process about two years before their current SPLOST is set to expire. In the event the voters reject a SPLOST renewal, this window provides enough time to try again before the current tax expires.

POSTPONEMENT OF SPLOST ELECTION DUE TO EMERGENCY

If a SPLOST election is scheduled for the continuation of an existing SPLOST, but it cannot be held due to a natural disaster or other emergency, the board of commissioners may request the state revenue commissioner to waive the requirement that a new SPLOST cannot take effect until the next succeeding quarter which begins more than 80 days after the date of election. The waiver, if granted by the state revenue commissioner, would allow continuation of the existing SPLOST until the new SPLOST can begin. The state revenue commissioner may grant the waiver request “if administratively feasible.” Of course, continuation of the SPLOST would be subject to approval of the new SPLOST in the rescheduled election.⁴⁴

42 O.C.G.A. § 48-8-112(c)(3).

43 O.C.G.A. § 48-8-112(c)(2).

44 Id.

Disposition of Excess Proceeds

Excess proceeds are those proceeds of a SPLOST that remain after all approved SPLOST projects listed on the ballot have been completed. More particularly, the excess proceeds are defined as proceeds in excess of the estimated cost of the projects or in excess of the actual cost of the projects.⁴⁵

If one of the approved projects is completed under budget, the law allows counties and municipalities to shift proceeds from the under budget project to one that may be experiencing cost overruns. Proceeds saved on one project and used on another would not be considered excess proceeds. In essence, all SPLOST proceeds must be used to complete the projects for which the tax was imposed before any revenue derived from the SPLOST can be deemed to be “excess” and available for use in reducing debt or property taxes as discussed below.⁴⁶

If an intergovernmental agreement exists, the agreement can define how excess proceeds will be allocated among the parties to the agreement and how they will be utilized. If no intergovernmental agreement exists or the agreement does not address excess funds, all excess proceeds, including any excess proceeds from municipal projects, must be paid to the county.⁴⁷

Where there are excess proceeds, the law requires that they be used solely to reduce or pay off existing county debt. However, if general obligation debt was approved on the SPLOST ballot, that debt could not be paid with these excess proceeds.

If there is no existing county debt, any excess proceeds must be paid into the general fund of the county to reduce property taxes.⁴⁸ This may be accomplished by (1) showing the excess proceeds as a property tax credit or offset, or (2) expending those proceeds for some other public purpose that would otherwise have to be paid for with property taxes, thereby having the effect of reducing property taxes as the law requires.

45 O.C.G.A. § 48-8-121(g)(1)(B).

46 Haugen v. Henry County, 277 Ga. 743 (2004).

47 O.C.G.A. § 48-8-121(g)(2).

FAQ

If a municipality has completed its projects and has SPLOST revenue remaining, can it give this revenue to another municipality that needs additional revenues to complete its approved projects?

No. Any funds remaining after a municipality has completed all of its approved projects become “excess proceeds.” O.C.G.A. § 48-8-21(g) provides that all excess proceeds are to be used to reduce county debt to the extent such debt exists. If there is no debt, the excess proceeds must go to the general fund of the county to reduce county property taxes for all property owners in the county, including property owned by municipal residents. Therefore, if a municipality has excess proceeds, the funds must be transferred back to the county from the municipality. The law, however, does allow the county and municipalities to agree to some other scheme for disposing of excess proceeds, so long as the alternative is reflected in an intergovernmental agreement. Presumably, such an agreement should include the transfer of unused SPLOST funds from one participating local government to another jurisdiction that needs additional funds to complete its SPLOST projects.

Can excess proceeds be used to pay authority debt?

No. Excess proceeds may not be used to reduce existing debt of an authority, whether it is a development authority, water authority, housing authority, or any other type of local authority.

Exclusive Use/Separate Accounts

SPLOST proceeds must be used by the county and any municipalities exclusively for the purposes specified in the resolution calling for the imposition of the tax. Proceeds must be kept in separate accounts from other county or municipal funds and cannot in any manner be commingled with other county or municipal funds prior to their expenditure.⁴⁹ Good accounting practices suggest that a separate account should be kept for each SPLOST levy. If only one SPLOST account is kept, then internally within that account, there should be a separation of the proceeds of different SPLOST levies.

FAQ

Where should interest earned on SPLOST proceeds be deposited?

The interest earned from SPLOST collections must be treated the same as other revenues generated by the tax: the interest (1) must be separately accounted for, (2) must be annually audited to ensure that it is properly expended, and (3) may only be used for purposes specified in the SPLOST ordinance or resolution.⁵⁰ Counties keep interest earned on funds held in their SPLOST accounts, while municipalities keep the interest on funds held in their accounts, unless otherwise agreed in an intergovernmental agreement.

Record Keeping, Audits, and Reports

The county and each municipality receiving SPLOST funds must maintain a record of each project for which the SPLOST proceeds are used.⁵¹

AUDIT

A schedule must be included in the annual audits of the county and each municipality receiving SPLOST funds with the following information for each approved project:

- Original estimated cost
- Current estimated cost
- Amounts expended in prior years
- Amounts expended in the current year

The auditor is required to verify and test expenditures and provide assurances that the schedule described above is fairly presented in relation to the financial statements. The auditor's report must include an opinion, or disclaimer, as to whether the schedule is presented fairly in all material respects related to the financial statements taken as a whole.⁵²

ANNUAL REPORTING

Prior to December 31 of each year, the county and each municipality receiving SPLOST funds must publish a non-technical report in a local newspaper of general circulation and in a prominent location on the local government website (if it maintains one). The report must include the following information on each approved project:

- Original estimated cost
- Current estimated cost if different from the original estimated cost
- Amount expended in prior years
- Amount expended in the current year
- Any excess proceeds which have not been expended for a project or purpose (including all unexpended SPLOST funds held from a prior SPLOST)
- Estimated completion date
- Actual completion cost of each project completed during the current year

The annual report must also include a statement of what corrective action the local government intends to implement for each project that is underfunded or behind schedule and the statement of any surplus funds that have not been expended for a project.⁵³

The county is not responsible for reporting information on municipal projects. The report may be published at any time during the calendar year and in the form determined by the local government issuing the report. Road, street, and bridge projects can be reported collectively and do not have to be broken down by specific project. (See Resources, Sample Annual Report, p. 66.)

51 O.C.G.A. §§ 48-8-121(a)(2); 48-8-122.

52 O.C.G.A. § 48-8-121(a)(2).

53 O.C.G.A. § 48-8-122.

FAQ

Must the required annual report address unexpended SPLOST funds held from a prior SPLOST?

Yes. O.C.G.A. § 48-8-122 provides that an annual report must be published addressing each project for which SPLOST proceeds are used and that ANY excess proceeds must be disclosed. SPLOST law does not limit this disclosure only to proceeds of a current SPLOST.

County Protection from Liability

The SPLOST law specifically provides that counties may not be held liable for any municipality's failure to comply with the requirements of the statute.⁵⁴

The State's Role in Administering SPLOST

A SPLOST is administered by the state in essentially the same manner as the state sales and use tax and other local option sales taxes such as LOST, except all revenue distributions are made solely to county governments. The state retains one percent of SPLOST funds collected to cover its administrative costs. The state also retains all interest income earned on the SPLOST proceeds from the date of collection until they are dispersed back to the county governments.

The SPLOST and LOST are levied at one percent of the purchase price and are applied on the same sales base, but the monthly receipts may differ. SPLOST collections are typically lower than LOST, perhaps by as much as 10 percent. Differences can occur for the following reasons:

- Unlike SPLOST, municipal shares of the LOST proceeds are sent directly to the municipalities from the Department of Revenue.
- Despite local publicity, some vendors failed to begin collections of the SPLOST when the law requires.
- Purchasers pay sales tax as of the date of purchase, even though the vendor may be paid long after that date. One of the sales taxes may take effect in the intervening period.

Financing SPLOST Projects

Projects can be paid for on a cash basis (i.e., as the SPLOST proceeds are collected by the state and transferred to the county). However, years may pass after a SPLOST is approved before a local government can begin building the project if they are trying to pay on a cash basis. Financing SPLOST projects provides an important alternative and can have significant financial and other benefits.

BENEFITS OF FINANCING A SPLOST PROJECT

The longer construction is delayed, the higher project costs can climb due to inflationary increases in materials and labor. If the project is delayed for too long, the SPLOST proceeds may not be able to cover these cost increases. When a local government finances projects, the savings in construction inflation usually exceeds any interest paid on borrowed money. A second benefit to financing is that all projects can begin at the same time, instead of having to fund them in priority. It is sometimes difficult for elected officials to prioritize projects, because prioritization is subjective and what is a priority for some in the community may not be for others. Finally, and maybe most importantly, voters are more satisfied when they see quick results after approving a SPLOST.

OPTIONS AVAILABLE FOR FINANCING SPLOST PROJECTS

Several financing opportunities are available to counties and municipalities that may want to move up the construction schedule as a way of assuring taxpayers that they will get the benefits for which they voted.

BORROWING FROM THE GENERAL FUND

Counties and municipalities may have reserve funds or fund balances in their general fund that they may be willing to “borrow” from. Although not expressly authorized in the SPLOST law, so long as strict accounting for SPLOST funds is maintained and the purposes are solely those which were ratified by the electorate, borrowing from the general fund would be proper.

BORROWING FROM THE STATE

Local governments can use loans from the state to advance SPLOST projects and repay these loans with SPLOST revenue. Loans to local governments through the Georgia Environmental Finance Authority (GEFA) are probably the most common form of state loans.

GENERAL OBLIGATION DEBT FINANCING

To utilize general obligation (GO) debt financing or a loan from a bank, the local government must be specifically authorized by the voters, through the SPLOST referendum, to issue GO debt. This form of debt typically provides the local government with a lower interest rate than revenue bonds or lease-purchase financing.

REVENUE BONDS AND INTERGOVERNMENTAL AGREEMENTS

A county may finance revenue-producing projects, such as water and sewer improvements, through revenue bonds and rely on the SPLOST proceeds to retire the bonds or, if the local government has a public authority that can issue revenue bonds, the local government can enter into an intergovernmental agreement with the authority to do so. The authority will issue revenue bonds utilizing the proceeds from the bond sale to finance the SPLOST project. The purchasers of the bonds are guaranteed repayment through the intergovernmental agreement that has been established between the local government and the authority. This form of financing does not require voter approval in a referendum.

LEASE-PURCHASE

Financing SPLOST projects through lease-purchase agreements and certificate of participation (COPs) is not directly authorized in the SPLOST law. However, the use of lease-purchase transactions is specifically provided for by law⁵⁵ and has been validated by the courts.⁵⁶ This approach has developed into a common method of financing SPLOST projects. Lease-purchase obligations are not general obligation debt of the county. The use of lease-purchase financing does not have to be approved in the SPLOST referendum or even contemplated before the referendum.

Restrictions on the use of lease-purchase financing may make it unsuitable for some SPLOST projects. Because the projects serve as the collateral in a lease-purchase financing, the project must be a discreet project that could be repossessed if the county does not meet its obligation. For example, renovations of a courthouse would not qualify. Also, lenders may be unwilling to participate in lease-purchase financing if the lender regards the project as not “essential” (i.e., a project that the county might cease payments on later because it is not necessary to meet a governmental obligation).

The structure of lease-purchase financing differs from other types of financing. First, the interest rate on lease-purchase financing may be higher than general obligation debt, because the risk for the lender is greater. Second, lease payments are subject to annual renewal. If the county fails to renew, the lease is terminated and the project being financed becomes the property of the financing institution. Finally, counties must finance 100 percent of the project being leased. The maximum term of the lease will vary according to the lenders estimated useful life of the equipment or facility being leased. When the lease is paid in full, the county will take ownership of the property.

GEORGIA TRANSPORTATION INFRASTRUCTURE BANK

The “Georgia Transportation Infrastructure Bank (GTIB) Act”⁵⁷ was enacted in order to assist local governments in financing a wide variety of eligible transportation and transit projects and eligible costs⁵⁸ that would provide public benefits by enhancing mobility and safety, promoting economic development, or increasing the quality of life and the general welfare of the public. The State Road and Tollway Authority serves as the governing board of the GTIB.⁵⁹ The governing board of the GTIB has final discretion to determine eligibility.⁶⁰ Preference may be given to eligible projects which have local financial support.⁶¹ The term of the loan or other financial assistance cannot exceed the useful life of the project and the governing board of the GTIB sets the loan obligations, including term and interest rate.⁶² For further details see the GTIB Guidelines: www.georgiatolls.com/gtib/loan-program-guidelines/#gra.

55 O.C.G.A. § 36-60-13.

56 *Bauerband v. Jackson County*, 278 Ga. 222 (2004).

57 O.C.G.A. § 32-10-120, *et seq.*

58 O.C.G.A. §§ 32-10-122(4) and (5).

59 O.C.G.A. § 32-10-121(b).

60 O.C.G.A. § 32-10-127(b).

61 *Id.*

62 O.C.G.A. § 32-10-127(a).

Enforcement

Superior courts have jurisdiction to enforce compliance with the SPLOST law.⁶³ This may take the form of injunctions or other equitable relief. In addition to any action that may be brought by any person or entity, the attorney general is granted authorization to bring civil or criminal actions to enforce SPLOST compliance.⁶⁴

Frivolous or Meritless Challenges to SPLOST Levies

If a taxpayer challenges the implementation of a county SPLOST levy in superior court and the claim is dismissed, the county may seek an appeal bond as a condition precedent to any further pursuit of an appeal by the plaintiff under the Public Lawsuits statute.⁶⁵ The purpose of the Public Lawsuits statute is to protect the public from increased financial costs resulting from meritless or frivolous lawsuits against public improvement projects. The Georgia Court of Appeals has determined that a SPLOST levy qualifies as a public improvement project under the Public Lawsuits Act.⁶⁶

63 O.C.G.A. § 48-8-124.

64 *Id.*

65 O.C.G.A. § 50-15-1 et seq.

66 *Mattox v. Franklin County et al.*, 316 Ga. App. 181 (2012).