Georgia State University Law Review

Volume 28
Issue 1 *Fall 2011*

Article 13

2-1-2012

Revenue and Taxation HB 385 388

Georgia State University Law Review

Follow this and additional works at: http://digitalarchive.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation
Georgia State University Law Review (2011) "Revenue and Taxation HB 385 388," *Georgia State University Law Review*: Vol. 28: Iss. 1, Article 13.
Available at: http://digitalarchive.gsu.edu/gsulr/vol28/iss1/13

This Peach Sheet is brought to you for free and open access by the College of Law Publications at Digital Archive @ GSU. It has been accepted for inclusion in Georgia State University Law Review by an authorized administrator of Digital Archive @ GSU. For more information, please contact digitalarchive@gsu.edu.

REVENUE AND TAXATION

Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively, to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government, So as to Provide for Comprehensive Revisions of the Revenue Structure of the State of Georgia; Implement the Recommendations of the 2010 Special Council on Tax Reform and Fairness for Georgians as Provided for and Required by Chapter 12 of the Title 28 of the Official Code of Georgia Annotated; Provide for Comprehensive Revision of Personal Income Taxes; Redefine Taxable Net Income; Provide for a Flat Rate Structure; Eliminate Adjustments to Income Except for Personal Exemptions and Standard Deductions and Retirement Exclusions; Repeal Certain Income Tax Credits; Provide for Procedures, Conditions, and Limitations; Provide for Comprehensive Revision of Corporate Income Taxes; Reduce the Rate of Such Income Tax; Provide for Procedures, Conditions, and Limitations; Revise and Change Certain Adjustments to Income; Repeal Certain Income Tax Credits; Provide for the Comprehensive Revision of Exemptions from Sales and Use Taxes; Provide for the Repeal of Certain Exemptions at Various Points in Time; Provide for the Sales and Use Taxation of Certain Services and Digital Products; Provide for Conforming Amendments; Provide for an Exemption for Sales to, or Use by, a Qualified Agriculture Producer of Agricultural Production Inputs, Energy Used in Agriculture, and Agricultural Machinery and Equipment; Provide for Definitions; Provide for Procedures, Conditions, and Limitations; Provide for Powers, Duties, and Authority of the Commissioner of Agriculture; Provide for Qualified Agriculture Producer Annual License Fees; Provide for a New Exemption Regarding the Sale, Use, Storage, or Consumption of Machinery or Equipment Which is Necessary and Integral to the Manufacture of Tangible Personal Property and the Sale, Use, Storage, or Consumption of Energy, Industrial Materials, or Packaging Supplies; Provide for Definitions; Provide for Procedures,

Conditions, and Limitations; Provide that Every Purchaser of Tangible Personal Property Which is or Which is Required to be Titled or Registered by or in this State Shall Be Liable for Sales and Use Tax on the Purchase; Provide for Requirements, Procedures, Conditions, and Limitations; Provide for a Consolidated and Simplified Excise Tax on Communications Services in Lieu of Any Other State or Local Taxes, Charges, or Fees on Such Services; Provide for Legislative Findings and Intent; Provide for a Short Title; Provide for Comprehensive Procedures, Conditions, and Limitations; Provide for Powers, Duties, and Authority of the Department of Revenue and the State Revenue Commissioner; Provide for the Comprehensive Revision of Motor Fuel Taxation; Provide for the Rate of Such Taxation; Provide for Procedures, Conditions, and Limitations; Repeal the Second Motor Fuel Tax; Provide for Corresponding Changes to Sales and Use Taxes and Motor Fuel Taxes; Provide for Powers, Duties, and Authority of the Commissioner; Change Certain Provisions Regarding the Excise Tax on Cigarettes; Provide for Annual Adjustments with Respect to Such Excise Tax; Provide for Powers, Duties, and Authority of the Commissioner; Reduce the Rates of State and Local Insurance Premium Taxes; Repeal Article 3 of Chapter 5 of Title 28, Relating to Fiscal Bills Generally; Provide for the Comprehensive Regulation of Fiscal Impact Standards for General Bills or General Resolutions and for Nonfiscal Revenue Bills Enacting or Amending Tax Exemptions or Tax Credits; Provide for a Short Title; Provide for Legislative Purposes and Intent; Provide for Definitions; Provide for Procedures, Conditions, and Limitations; Provide for Powers, Duties, and Authority of the General Assembly and the State Auditor; Provide for the Creation and Operation of the Economic Development Trust Fund; Provide for Voluntary Programs and Contracts Regarding Collection of Sales and Use Taxes; Amend Certain Titles of the Official Code of Georgia Annotated so as to Correct Certain Cross-References and Make Conforming Changes; Provide for Effective Dates and Contingent Effective Dates; Provide for Automatic Repeal of Certain Provisions of this Act Under Certain Circumstances; Provide for Applicability; Provide that this Act Shall Not Abate or Affect Prosecutions, Punishments, Penalties, Administrative Proceedings

or Remedies, or Civil Actions Related to Certain Violations; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS: O.C.G.A. §§ 2-1-5 (amended); 20-2A-1, -2, -3, -4, -5, -6 (repealed); 28-5-40, -41, -42, -43, -44 (amended); 28-5-45, -46 (new); 28-5-46.1, 46.2, 46.3, 46.4 (new); 28-7-21 (amended); 33-1-18 (amended); 33-8-4, -8.1, -8.2 (amended); 36-62-5.1 (amended); 36-76-2, -4, -6, -10 (amended); 46-5-1 (amended); 48-2-6 (amended); 48-6-93, -95 (amended); 48-7-1, -20, -21, -26, -27 (amended); 48-7-27.1 (new); 48-7-28, -28.2 (amended); 48-7-29, -29.1, -29.2, -29.3, -29.4, -29.5, -29.6, -29.7, -29.8, -29.9, -29.10, -29.11, -29.12, -29.13, -29.14, -29.15, -29.16, -29.17 (repealed); 48-7-30, -31.1, -38 (amended); 48-7-40, -40.1, -40.2, -40.3, -40.4, -40.5, -40.6, -40.7, -40.8, -40.9, -40.10, -40.11, -40.12, -40.13, -40.14, -40.15, -40.15A, -40.16, -40.17, -40.18, -40.19, -40.20, -40.21, -40.22, -40.23, -40.24, -40.25, -40.26, -40.27, -40.28, -40.29, -40.30, -41, -42 (repealed); 48-7A-3 (amended); 48-8-2 (amended); 48-8-2.1 (new); 48-8-3 (amended); 48-8-3.2, -3.3 (new); 48-8-17 (amended); 48-8-17.1 (repealed); 48-8-30, -32, -39, -42, -49, -77 (amended); 48-8-78 (new); 48-8-82, -102, -110.1, -201, -241 (amended); 48-9-3, -14, -16 (amended); 48-11-2 (amended); 48-18-1, -2, -3, -4, -5, -6 (new); 50-7-100 (new); 50-16-41 (amended); 50-23-21 (amended)

BILL NUMBER:	HB 385–388
ACT NUMBER:	N/A
GEORGIA LAWS:	N/A
SUMMARY:	The bills would have enacted comprehensive tax reform that began with HB1405 in the 2010 legislative session, and would have lowered income tax rates while making various changes to deductions, exemptions, and credits.
EFFECTIVE DATE:	N/A

History

After the financial meltdown in late 2007 and early 2008, both state and federal governments faced unprecedented budgetary shortfalls. Unlike the federal government, which is permitted to run deficits, the Georgia Constitution mandates a balanced budget by requiring that the amount spent over a fiscal year cannot exceed the amount of money collected from taxes and other revenue sources for that same fiscal year.[1]

The Georgia General Assembly's response to these budgetary pressures has included various fits and starts. During the 2007 session, then-Speaker of the House Glenn Richardson introduced legislation[2]—dubbed "The GREAT Plan"[3]—that sought to shift much of the tax burden from property and income taxes to sales taxes.[4] The plan did not gain much traction, however, and ultimately did not pass.[5]

In 2010 the General Assembly passed a $17.9 billion annual budget, which was approximately $3 billion less than the state's 2007 annual budget.[6] In an attempt to provide the State with a more

1. GA. CONST. art. III, § IX, para. 4.
2. HB 900, as introduced, 2007 Ga. Gen. Assem.
3. Jay Bookman, *Tax Proposals May Go Nowhere*, ATLANTA J.-CONST., Jan. 11, 2011, at A14, *available at* 2011 WLNR 578894.
4. Jay Bookman, *Tax System Needs Revamp, But Don't Magnify Inequity*, Atlanta J.-Const., Mar. 19, 2010, at A22, *available at* 2010 WLNR 5761554.
5. *Id.*
6. Andre Jackson, *Lean Governance Will Keep Us Afloat*, Atlanta J.-Const., May 2, 2010, at A21,

consistent and stable source of revenue, the General Assembly passed legislation that mandated a comprehensive examination of the state's tax code.[7] Written decades previously and at a time when the state's economy relied heavily on agriculture and manufacturing,[8] Georgia's tax code is riddled with hundreds of exemptions for special interests,[9] including everything from sod and church bells to crab bait and aircraft parts.[10] These exemptions, which would prove to be a critical element of the 2011 tax bills' demise, are protected by roughly 200 registered lobbyists.[11] Additionally, some parties question whether the State has proper accountability measures in place to ensure whether such tax breaks and exemptions are fulfilling their stated purpose.[12] Although agriculture and manufacturing still play a pivotal role in Georgia's economy, the service industry has grown tremendously since the current tax code was originally drafted.[13] As noted by Senate Majority Leader Chip Rogers (R-21st), "[Georgia has] a sales tax system that exempts more products and services than it actually taxes."[14]

Besides general concerns about the State's ability to meet its financial obligations, preserving Georgia's AAA bond rating also was a major impetus for the proposed tax reform,[15] as it allows the State to borrow money at preferred rates.[16] However, bond rating companies warned in 2010 that states' reliance on unstable tax

---

available at 2010 WLNR 9078483; *see also* Sarah Beth Gehl, *Taxes Shift to Lower-Income Georgians*, Atlanta J.-Const., Apr. 25, 2010, at A19, *available at* 2010 WLNR 8542467 (noting that revenues had declined twenty-five percent while residents' needs for services and infrastructure continue to grow).

7. O.C.G.A. § 28-12-1(a) (2011). During this same session, the legislature also passed a bill requiring an annual report from the state auditor's office listing all tax breaks and their cost to the state. O.C.G.A. § 45-12-75 (2011).

8. James Salzer, *Council to Rewrite Georgia's Tax Code*, Atlanta J.-Const., June 2, 2010, at B5, *available at* 2010 WLNR 11256124.

9. *Id.*

10. James Salzer, *New Taxes Might Be Felt from Head to Toe*, Atlanta J.-Const., July 28, 2010, at A1, *available at* 2010 WLNR 14972946.

11. James Salzer, *Tax Council Dealing With "Half the Deck"*, Atlanta J.-Const., Aug. 15, 2010, at B3, *available at* 2010 WLNR 16245797.

12. Doug Stoner, *State Suffers from Revenue Problem*, Atlanta J.-Const., Jan. 8, 2010, at A17, *available at* 2010 WLNR 385657.

13. Salzer, *supra* note 8.

14. Jim Galloway, *Creative, Yet Creepy, Measures at Capitol*, Atlanta J.-Const., Mar. 21, 2010, at B1, *available at* 2010 WLNR 5891333.

15. *Id.*

16. *Id.*

revenue streams produces uncertainty, a risk factor abhorred by Wall Street.[17] To complicate matters even more, most states faced outcries from conservative citizen groups that rallied against the possibility of tax increases during a financial downturn.[18]

Introduced and passed in Georgia's 2010 legislative session, HB 1405 established two committees to facilitate the required examination of Georgia's tax code: the 2010 Special Council on Tax Reform and Fairness for Georgians (Special Council),[19] and the Special Joint Committee on Georgia Revenue Structure (Joint Committee).[20] The Special Council was instructed to "conduct a thorough study of the state's current revenue structure and make a report of its findings and recommendations for legislation to the Speaker of the House and the Lieutenant Governor no later than January 10, 2011."[21] HB 1405 further established that after receiving the Special Council's report, the Joint Committee "shall during the 2011 legislative session cause to be introduced in the House of Representatives one or more bills or resolutions incorporating without significant changes the recommendations of the council, and such legislation shall, after its introduction, be referred directly and only to the special joint committee."[22] The Joint Committee was authorized to pass the legislation as originally proposed or to make amendments as deemed necessary.[23] If approved by the Joint Committee, the legislation then would be presented "directly to the floor of the House and shall receive an up or down vote as reported from the special joint committee without amendment."[24] Should one or more of the bills or resolutions referred by the Joint Committee be passed by the House of Representatives, the "measure or measures

17. *Id.*

18. Jim Tharpe, *Protestors to Legislators: No New Taxes*, Atlanta J.-Const., Mar. 10, 2010, at B1, *available at* 2010 WLNR 4965408 (reporting on the state capitol rally led by Grover Norquist of Americans for Tax Reform, who called for no new taxes and improved transparency in state spending); *but see* Benita Dodd, Ken Mitchell & Kim Anderson, *Setting Priorities for Georgia's Growth and Fiscal Stability*, Atlanta J.-Const., Nov. 3, 2010, at A25, *available at* 2010 WLNR 21951044 (arguing for a "balanced approach" that does not solely focus on spending cuts).

19. O.C.G.A. § 28-12-2 (2011).

20. O.C.G.A. § 28-12-3 (2011).

21. O.C.G.A. § 28-12-1 (2011).

22. *Id.*

23. *Id.*

24. *Id.*

shall then be in order for consideration only by the Senate" and "shall be reported directly to the floor of the Senate and shall receive an up or down vote as reported from the House without amendment."[25]

The procedure prescribed by HB 1405, which bypassed the individual committees of both houses of the General Assembly and employed a special commission to make recommendations, was similar in structure to that used by the U.S. Congress to address the federal deficit.[26] Lieutenant Governor Casey Cagle and Speaker of the House David Ralston (R-7th) also noted that the procedure was modeled after the congressional approach used to close U.S. military bases across the country.[27]

The Joint Committee was formed of twelve members—the President Pro Tempore of the Senate (Tommie Williams (R-19th)); the Speaker Pro Tempore of the House of Representatives (Jan Jones (R-46th)); the majority leader of the Senate (Chip Rogers (R-21st)); the majority leader of the House of Representatives (Larry O'Neal (R-146th)); the minority leader of the Senate (Robert Brown (D-26th)); the minority leader of the House of Representatives (Stacey Abrams (D-84th)); the chairperson of the Senate Finance Committee (Bill Heath (R-31st)); the chairperson of the House Committee on Ways and Means (Mickey Channell (R-116th)); two members of the Senate to be appointed by the President of the Senate, one from the majority party (Bill Cowsert (R-46th)) and one from the minority party (Steve Thompson (D-33rd)); two members of the House of Representatives to be appointed by the Speaker of the House, one from the majority party (Allen Peake (R-137th)) and one from the minority party (Bob Bryant (D-160th)).[28] Additionally, HB 1405 prescribed that the "chairpersons of the Senate Finance Committee and the House Committee on Ways and Means shall serve as co-chairpersons of the special joint committee."[29]

---

25. *Id.*
26. Bookman, *supra* note 4.
27. Galloway, *supra* note 14.
28. O.C.G.A. § 28-12-3 (2011), 2010 Ga. Gen. Assem.; *see also* Georgia Revenue Structure – Joint Committee, Georgia House of Representatives, http://www1.legis.ga.gov/legis/2011_12/house/Committees/revenueStructure/garevstruc.html (last visited July 26, 2011) (listing the individual members of the Special Joint Committee on Georgia Revenue Structure).
29. O.C.G.A. § 28-12-3 (2011).

The Special Council was formed of eleven members—four state economists, then-Governor Sonny Perdue, the chairperson of the Georgia Chamber of Commerce, the Georgia chairperson of the National Federation of Independent Business and two members each appointed by the Lieutenant Governor and the Speaker of the House.[30] The ten additional positions besides Governor Perdue were later filled by the following persons: Roger Tutterow, economics professor, Mercer University; David Sjoquist, Director, Fiscal Research Center, Andrew Young School of Policy Studies, Georgia State University; Christine Ries, economics professor, Georgia Institute of Technology; Jeffrey Humphreys, Director, Selig Center for Economic Growth, Terry College of Business, University of Georgia; Suzanne Sitherwood, President, Atlanta Gas Light, and Chairwoman of the Georgia Chamber of Commerce; Gerry Harkins, former President, Southern Pan Services construction company and Georgia chairman of the National Federation of Independent Business; D.E. "Skeeter" Corkle (appointed by Lieutenant Governor Cagle), President and CEO, McCorkle Nurseries Inc.; Bradford Dickson (appointed by Lieutenant Governor Cagle), who manages and coordinates tax practice at Tarpley and Underwood, P.C., certified public accountants; Roy Fickling (appointed by Speaker of the House Ralston), President, Fickling & Co., a real estate development, management and consulting firm; A.D. Frazier (appointed by Speaker of the House Ralston); Partner, Affiance, LLC, a bank consulting firm, and previously chief operating officer of the Atlanta Committee for the Olympic Games.[31]

The Special Council began its work in earnest in late July 2010 under a cloud of suspicion from those representing lower-income constituencies.[32] House Minority Leader Stacey Abrams (D-84th), who would play a pivotal role in defeating tax reform legislation during the 2011 session, described taxes as a "zero sum" game where one group's tax break must be paid by another group.[33] Sarah Beth

30. O.C.G.A. § 28-12-2 (2011).

31. Salzer, *supra* note 10.

32. Salzer, *supra* note 10 (noting that the "makeup of the group has raised some concerns" due to a lack of "racial diversity and consumer interests").

33. *Id.* This sentiment was echoed by A.D. Frazier, Chairman of the Special Council, who stated, "Any change in the incidence of tax is going to create a winner on one side and loser on the other." Kyle Wingfield, *Broad Base, Flat Tax Equal Fairness*, Atlanta J.-Const., Sept. 2, 2010, at A18, *available at*

Gehl, a tax policy expert at the Georgia Budget and Policy Institute think tank, expressed concerns about the Special Council's objective by stating, "Hopefully the council members will consider the tax system from all perspectives, including how it affects low- and moderate-income Georgians and its effect on funding for essential services."[34]

To alleviate concerns of indifference, the Special Council held six meetings and eleven "fact finding" sessions across the state,[35] thereby providing citizens with the opportunity to express their opinions and ideas about the Special Council's work. Over 750 individuals attended the public meetings, and approximately 200 individuals presented their opinions.[36] The Special Council also conducted over sixty fact finding interviews with state representatives from the Department of Revenue, Department of Economic Development, Department of Treasure, and with stakeholders in the Legislature and private sectors.[37] In addition, the Special Council established a website in order to take comments from the general public.[38]

On January 7, 2011, the Special Council released its recommendations to the public. The report noted that the Special Council was charged to "examine the tax code of Georgia, review it for fairness, and then recommend a new structure that would be as growth-friendly and as job-friendly as we could make it."[39] Addressing the concern of Georgia's competitiveness in attracting businesses, the Special Council observed, "[W]hile corporate tax rates and tax credits are important to businesses interested in locating here, other economic factors have greater weight in the decision. These factors include quality of life, a trainable workforce, infrastructure . . . , inventory taxation, energy taxation . . . and quality

---

2010 WLNR 17445244.

34. Salzer, *supra* note 10.

35. 2010 Special Council on Tax Reform and Fairness for Georgians, Recommendations 6 (2011), *available at* http://fiscalresearch.gsu.edu/taxcouncil/downloads/FINAL_REPORT_Jan_7_2011.pdf [hereinafter Special Council]; *see also* James Salzer, *Tax Council Will Take Input from Across the State*, Atlanta J.-Const., July 29, 2010, at B1, *available at* 2010 WLNR 15048766.

36. Special Council, *supra* note 35, at 7.

37. *Id.*

38. Salzer, *supra* note 35. Comments from the general public could be submitted via the Council's website, http://fiscalresearch.gsu.edu/taxcouncil/contribute.htm (last visited July 26, 2011).

39. Special Council, *supra* note 35, at 3.

of public K-12 schools."[40] The Special Council also noted that it was not "charged with making this set of recommendations 'revenue neutral' although we have included it in our thinking."[41]

After reviewing Georgia's current revenue structure, the Special Council determined that its recommendations should "lead to the betterment of Georgia with the goal of changing the philosophy of taxation from income to consumption, increasing stability of tax revenues, and enhancing the perception of fairness for all."[42] At the outset, the Special Council established seven "Guiding Principles" that would "help in the evaluation and recommendation of a tax structure."[43] The principles ensured that all of the Special Council's tax recommendations would: (1) enhance economic growth; (2) promote efficiency; (3) promote stability between state revenue and the overall general economy; (4) provide clarity and make the tax structure simple, understandable, and predictable; (5) facilitate fairness and equity among the taxpayers; (6) result from a transparent and complete analysis of the underlying issue and options; and (7) promote a tax resolution system that is unbiased, transparent, cost-effective, and easily accessible.[44]

The Special Council focused its efforts on eleven different areas of state taxation. These areas included: the personal income tax; the corporate income tax; sales tax exemptions; food for home consumption exemption; casual sales of motor vehicles, watercraft, and aircraft; select personal and household services; energy used in manufacturing, mining, and agriculture; the cigarette tax; communications services; the motor fuel tax; and the insurance premium tax.[45]The Special Council noted that Georgia is heavily

---

40. *Id.*

41. *Id.* On February 3, 2011, the Special Council issued an amendment to its report that clarified its intent for its proposal to be "revenue neutral." 2010 Special Council on Tax Reform and Fairness for Georgians, Amendment to the Report Issued January 7th, 2011 (2011) [hereinafter Special Council Amendment], *available at* http://www.gscpa.org/Content/Files/Pdfs/News/Amendment%20Frazier%20Statement2311.pdf. This amendment came in response to questions at the February 2, 2011, hearing of the Special Joint Committee on Georgia Revenue Structure and to concerns as expressed by Grover Norquist, founder of Americans for Tax Reform. *See infra* note 78; Chris Joyner, *Tea Party Group Critical of Tax Plan*, Atlanta J.-Const., Feb. 10, 2010, at B3, *available at* 2011 WLNR 2626638.

42. Special Council, *supra* note 35, at 5.

43. *Id.* at 9.

44. *Id.* at 9–10.

45. Special Council, *supra* note 35, at 5.

reliant on the personal income tax, as it accounts for almost half of the state's total tax revenues.[46] In an effort to reduce volatility and increase diversity in the state's tax revenues, the Special Council recommended shifting the tax burden from the income tax to a consumption tax, specifically sales and use taxes.[47] The increased tax revenues from the broadened sales and use tax base should then be used to lower the state's personal income tax rates.[48] The Special Council recommended eliminating Georgia's six individual tax brackets and replacing them with a single flat tax rate not to exceed 4.0% by January 2014.[49] Additionally, the Special Council recommended that Georgia's current top marginal tax rate of 6.0% be reduced progressively over the next three years, such that the rate would not exceed 5.0% effective January 2012 and 4.5% effective January 2013.[50] To lessen the effect of the lower tax revenues that would result from the lower tax rate, the Special Council recommended that all itemized deductions, standard deductions, and personal exemptions be eliminated.[51]

In regards to the corporate income tax, the Special Council noted that "Georgia is regarded as having a business-friendly corporate income tax rate structure based on the relatively low rate and single sales factor apportionment."[52] The Special Council recommended that corporate income tax rates should maintain parity with the suggested personal income tax rates, with a cap of 5.0% effective in January 2012 and future reductions that match suggested personal rate reductions.[53] Of greater concern to the Special Council were the more than thirty tax credits that currently are offered to Georgia businesses.[54] The report noted that "[t]here is little research that has evaluated the value of economic development tax credits in general

46. *Id.* at 13.

47. *Id.* (noting that two of Georgia's neighboring states—Tennessee and Florida—have no personal income tax).

48. *Id.*

49. Special Council, *supra* note 35, at 15.

50. *Id.* The Special Council used the proposed personal income tax rate as a "balancing factor to achieve neutrality," meaning the proposed rate reduction could be expedited or slowed as necessary to achieve revenue neutrality. Special Council Amendment, *supra* note 41.

51. Special Council, *supra* note 35, at 16.

52. *Id.* at 17.

53. *Id.* at 19.

54. *Id.* at 17.

and in Georgia in particular."[55] As such, the Special Council recommended eliminating existing economic development tax credits in 2012 and all corporate tax credits in 2014.[56] The Special Council proposed replacing the economic development tax expenditures with an economic fund to be appropriated by the Legislature and administered by the Department of Economic Development.[57]

Georgia's sales and use tax regime received the lion's share of the Special Council's attention, as nine pages of the report's twenty-two pages of analysis are devoted to this issue. The Special Council observed, "The current sales and use tax base has not kept pace with changes in the Georgia economy, in particular, with the growing importance of services and remote sales. In addition, the State has adopted numerous sales tax exemptions that have eroded the base."[58] Georgia's tax code currently provides more than 110 sales tax exemptions, which reduce the sales tax base and require a higher tax rate [on other applicable state taxes] to generate the same revenue.[59] While noting that there are "public policy considerations beyond the economic principles which the [Special] Council employed in its review"[60] that justify some sales tax exemptions, the Special Council recommended that the Georgia legislature take the following actions: eliminate the food for home consumption sales tax exemption effective June 30, 2011;[61] retain the sales tax exemptions for government purchases[62] and business inputs,[63] while also creating a new sales tax exemption for energy used in manufacturing, mining,

55. *Id.*
56. *Id.* at 19.
57. Special Council, *supra* note 35, at 19.
58. *Id.*
59. *Id.* at 19–20.
60. *Id.* at 20.
61. *Id.* at 21. The Georgia legislature began exempting sales tax on food for home consumption in 1996. *Id.* The report noted that "as of January 1, 2010, at least 17 states impose state and/or local sales taxes on food." *Id.* The Council did recommend, however, retaining the exemption for food purchased through the Supplemental Nutrition Assistance Program (food stamps) and the Women, Infants, and Children program. *Id.*
62. The U.S. Constitution proscribes States from taxing the federal government. McCulloch v. Maryland, 17 U.S. 316 (1819). The Council also noted concerns of inefficiencies resulting from the taxation of services provided by the state and local governments. Special Council, *supra* note 35, at 22.
63. Special Council, *supra* note 35, at 22. The Council noted that "[w]hen sales tax is levied on inputs at each stage of production, and is therefore included in the price of the final product, tax pyramiding occurs," which create inefficiencies and could negatively impact the competitiveness of a business. *Id.*

and agriculture;[64] eliminate sales tax holidays;[65] sunset all non-government and non-business input exemptions so that the Legislature can determine if economic or non-economic justifications exist for renewing these exemptions;[66] adopt policies for enacting future exemptions that treat similar taxpayers the same way;[67] adopt the process used for legislation affecting the state's retirement system for any legislation that significantly impacts state revenue;[68]eliminate sales tax exemptions for casual sales of titled personal property (i.e., automobiles, boats, and airplanes);[69] expand the number of personal services that are subject to the state's sales and use tax;[70] pass legislation that will bring Georgia into full compliance with the Streamlined Sales and Use Tax Agreement;[71] increase the cigarette

---

64. *Id.* at 23. The report states that such exemptions are "necessary to the sustainability of these vital industries in our state." *Id.*

65. *Id.* Although economic literature about the effectiveness of sales tax holidays is limited, the Council noted that most studies found that such holidays do not increase overall consumption, but merely shift consumption to an earlier time. *Id.* at 23–24.

66. *Id.* at 24–25. Three specific industries identified by the Council were healthcare, education, and non-profits. *Id.* The Council stressed that its "recommendation to eliminate or reconsider the elimination of a sales/use tax exemption should not necessarily indicate that the state should not support an activity or organization. However, in many cases the cost to the state with said support can easily be overlooked or misjudged if hidden in the tax code." Special Council, *supra* note 35, at 25.

67. *Id.*

68. *Id.* The report notes that current Georgia law requires that a "fiscal note be prepared for all legislation with a significant revenue impact and that such fiscal notes be prepared within five days." *Id.* The Council considered that five-day period to be "inadequate to determine the full impact of tax legislation on the state's economy." *Id.* Instead, the Council recommended the legislature follow the established procedure for any legislation that affects the state's retirement system, which requires that such legislation be "introduced the first year of a legislative term and lay-over until the second year before passage." *Id.* Such a change would "enhance transparency, fairness, and maintain stability of the tax base." *Id.*

69. Special Council, *supra* note 35, at 26. The report noted that this exemption is contained in the Georgia Department of Revenue's rules and regulations, not in the state's official tax code. *Id.* The Council noted that "approximately 44 states currently tax casual sales of motor vehicles," and the current exemption places licensed new and used dealers of such titled personal property at a disadvantage. *Id.*

70. *Id.* The report observed that of the 166 personal services identified by the Federation of Tax Administrators as being taxed by at least one state, Georgia only taxes 36. *Id.* The Council avoided potential services that are purchased mainly by businesses, and instead chose to focus on personal services purchased by consumers. *Id.* at 27. Additionally, the Council recommended that the state avoid taxing personal services that would have a high cost of ensuring compliance relative to the potential revenue. *Id.* A comprehensive list of personal services that the Council recommended taxing is included in Appendix I of the report. *Id.*

71. *Id.* at 29. Subsequent to publication of the Council report, Georgia was approved by the Streamlined Sales Tax Governing Board as a full member effective August 1, 2011. Public Notices, Streamlined Sales Tax Governing Board, Inc., May 20, 2011, *available at* http://www.streamlinedsalestax.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=96&cntnt

tax from $0.37 per pack to $0.68 per pack;[72] convert the current 3% motor fuel tax on gasoline to a cents-per-gallon rate (with no recommendation for a change of the 1% state sales tax on gasoline) to be combined with the current 7.5 cents-per-gallon rate, with a provision to adjust this rate annually;[73] reduce from 2.25% to 1.75% the total insurance premium tax rate for both life and property-casualty insurance;[74] repeal existing sales and use taxes and franchise fees on video and telecommunications services; and institute a 7% excise tax on all "communication services."[75]

Bill Tracking

As prescribed by HB 1405,[76] the Special Council's proposal bypassed traditional consideration by the committees of the Georgia General Assembly and instead was presented to the Joint Committee.[77] The Joint Committee held a total of six public hearings to consider various aspects of the Special Council's recommendations.[78] At the outset, the Joint Committee decided the best procedure for the meetings would be to have members of the Special Council present a summary of the report's findings and recommendations from beginning to end.[79] Over the course of several days, Special Council members addressed their areas of expertise

---

01origid=15&cntnt01returnid=19.

72. Special Council, *supra* note 35, at 29. The Council arrived at the $0.68 per pack tax rate by calculating the average cigarette tax rate of the states surrounding Georgia. *Id.*

73. *Id.* at 29–30.

74. *Id.* at 30–31.

75. *Id.* at 31–32. The term "communication services" would not include Internet access services, which are exempt from state taxation by the Internet Tax Freedom Act. *Id.* at 31. In addition, to avoid tax pyramiding, the Council recommended an exemption from the sales and use tax for property and services used by communications service providers for the purpose of providing communications services. *Id.* at 32.

76. O.C.G.A. §§ 28-12-1(b)(1)–(2) (2011).

77. *See supra* note 22.

78. Video recordings of the six meetings are available on the official website for the Georgia General Assembly. The website is found at: http://www1.legis.ga.gov/legis/2011_12/house/Committees/GLN/boardcastIndex.htm (last visited June 12, 2011).

79. Video Recording of Special Joint Committee on Georgia Revenue Structure Hearing, Feb. 2, 2011 at 4 min., 37 sec. (remarks by Rep. Mickey Channell (R-116th)), http://media.legis.ga.gov/hav/11_12/2011/special/gaRevStructure020211EDITED.wmv [hereinafter February 2nd Joint Committee Video].

while fielding questions from the legislative members of the Joint Committee.[80]

The first public hearing of the Joint Committee was held on February 2, 2011. Dr. Roger Tutterow, economics professor at Mercer University, outlined the seven guiding principles the Special Council used as a foundation for its recommendations[81] and the purpose of the Special Council's actions.[82] Dr. Christine Ries, economics professor at the Georgia Institute of Technology, then presented the Special Council's recommendations regarding personal income taxes.[83] Adding to Dr. Tutterow's explanation of the Special Council's purpose, Dr. Ries noted that "it is not [the Special Council's] responsibility to take over items that are really the authority of the legislature," so "we intend that [the Georgia General Assembly] be the group that decide[s] what the tax rate is. We are simply recommending a structure."[84] Dr. Ries described the personal income tax as the "linchpin"[85] of the Special Council's recommendations, and explained that the "intent of the way [the recommendations are designed] is as revenue comes in and is available, it is used to reduce as far as possible the personal income tax and the corporate income tax."[86] Dr. Ries then addressed concerns of the state's current high level of unemployment, stating, "How do you get higher employment short term and especially long term? Lower the tax rate."[87]

Bradford Dickson, a CPA with Tarpley and Underwood, P.C., assisted Dr. Ries with the portion of the presentation dealing with personal and corporate taxes. Mr. Dickson described Georgia's current revenue structure as a "two-legged stool," in that the State has

---

80. Due to the length and complexity of these meetings, only the testimony that expanded concepts presented in the paper or that received the majority of the public's attention will be addressed in this paper.

81. *See supra* note 43 (for a list of guiding principles).

82. February 2nd Joint Committee Video, *supra* note 79, at 9 min., 29 sec. (remarks by Dr. Roger Tutterow, noting the Special Committee's goal was to "design a cohesive system that works as a whole to make sure that Georgia is a pro growth job friendly and fair state for all its citizens").

83. *See supra* note 49 and accompanying text.

84. February 2nd Joint Committee Video, *supra* note 79, at 22 min., 05 sec. (remarks by Dr. Christine Ries).

85. *Id.* at 21 min., 21 sec. (remarks by Dr. Christine Ries).

86. *Id.*

87. *Id.*

nine areas of taxation that provide it with revenues, but two of those—income taxes and sales taxes—make up the majority.[88] Addressing a key concern of those who represent lower- and middle-income citizens,[89] Mr. Dickson expounded on the Special Council's recommendations by stating, "flattening and widening the tax structure . . . would be most harmful to people in the lower income brackets, so . . . we're recommending that that be corrected via a low-income credit, which would assure . . . a credit sufficient to bring them up to what they would have paid in 2011."[90]

House Minority Leader Stacey Abrams (D-84th) responded to Dr. Ries' and Mr. Dickson's presentations by posing several questions concerning the regressive nature of the Special Council's recommendations, specifically in regards to the apparent tax increase to "middle class" citizens[91] and the inability of low-income citizens to wait for a refundable credit to subsidize their living expenses.[92] Addressing the Special Council's recommendation to repeal the existing sales tax exemption for food purchased for home consumption,[93] along with its proposed refundable credit for low-income citizens, Dr. Ries explained, "The other states on our borders that we are competing [against] with lower income tax rates do not have any such credit. And this credit, if enacted, would be one of the most generous—actually the most generous—of the surrounding states for this purpose."[94] Additionally, the council members

88. *Id.* at 33 min., 32 sec. (remarks by Bradford Dickson).

89. *See supra* note 34.

90. February 2nd Joint Committee Video, *supra* note 79, at 38 min., 01 sec. (remarks by Bradford Dickson).

91. *Id.* at 41 min., 20 sec. (remarks by Rep. Stacey Abrams (D-84th) ("[I]ndeed the analysis is that for those who make between forty-five thousand and seventy-five thousand dollars, there's a gross increase in their taxes of about five hundred dollars . . . and for those who make above [one hundred fifty seven thousand], there is a decrease of about five hundred dollars."]; *Id.* at 49 min., 45 sec. ("The analysis done by the Georgia budget and policy institute shows that the combined rate between the sales rate and the income tax comes to about five hundred and forty dollars a year [in increased annual taxes for those making between forty-five and seventy-five thousand per year].").

92. *Id.* at 46 min., 22 sec. (remarks by Rep. Stacey Abrams (D-84th)) ("[O]nly sixty percent of eligible Georgians actually receive food stamps."); *Id.* at 46 min., 42 sec. ("So you have those who are receiving social security who are eligible for food stamps but do not receive them and will not apply for them, so they will be negatively impacted, not because of eligibility, but because of access."); *Id.* at 47 min., 34 sec. ("You have very limited income, you have to make choices on a daily basis, and the additional cost of paying a tax cannot be accommodated from a long term prospect of a credit.").

93. *See supra* note 61.

94. February 2nd Joint Committee Video, *supra* note 79, at 51 min., 50 sec. (remarks by Dr.

responded in the affirmative to a question posed by Representative Allen Peake (R-137th) regarding whether a person currently receiving food stamps would be better off financially if the Special Council's recommendations were implemented.[95]

Gerry Harkins, the former President of Southern Pan Services Company and Georgia Chairman of the National Federation of Independent Businesses, presented the Special Council's recommendations regarding corporate income taxes.[96] Responding to Representative Abrams' question about requiring companies to file their state income taxes using the combined reporting format,[97] Mr. Harkins described combined reporting as a "mixed bag" that presents the state as being "anti-business."[98] Additionally, Roy Fickling, President of Fickling & Co., justified the Special Council's recommendation that all corporate tax credits be repealed by noting that "one of the problems that we ran into was measuring all of the different credits that were given and what evidence is there that they were doing what was intended, and what we came up with is there's very little evidence that they're doing what they intended."[99]

The Joint Committee held its second public hearing on February 8, 2011. Mr. Fickling began the Special Council's presentation by outlining the recommendations regarding sales taxes,[100] while also stating the council's belief that "[u]sing tax structure as a means to achieve social goals is a crude method that creates distortions, hidden costs, and unintended consequences."[101] The Special Council's recommendation to repeal the existing sales tax exemption for food purchased for personal consumption again was a point of contention. Dr. Tutterow justified the Special Council's recommendation by

---

Christine Ries).

95. *Id.* at 1 hr., 22 sec.

96. *See supra* note 53.

97. February 2nd Joint Committee Video, *supra note* 79, at 1 hr., 10 min., 22 sec. (remarks by Rep. Stacey Abrams (D-84th)).

98. *Id.* at 1 hr., 11 min. (remarks by Gerry Harkins).

99. February 2nd Joint Committee Video, *supra note* 79, at 1 hr., 22 min., 25 sec. (remarks by Bradford Dickson).

100. *See supra* notes 60–69.

101. Video Recording of Special Joint Committee on Georgia Revenue Structure hearing, Feb. 8, 2011 at 4 min., 22 sec. (remarks by Bradford Dickson), http://www1.legis.ga.gov/legis/2011_12/house/Committees/GLN/boardcastIndex.htm [hereinafter February 8 Joint Committee Video].

noting that "[a]dding sales tax back to food was an acknowledgment that it induces more stability in the sales tax base . . . . We also know it from empirical studies from around the nation that demonstrate that a sales tax with food in the base is much more stable than without."[102] Dr. David Sjoquist, the Director of the Fiscal Research Center at Georgia State University, explained the Special Council's selection of which services should be subject to a sales tax by stating, "What we tried to do was associate services that have either ties to some tangible personal property, or repair services, for example, that already collect taxes on the parts, that could simply collect it on the rest of the bill."[103] As she did in the February 2, 2011, meeting, Representative Abrams questioned the Special Council members about the recommendation to provide an income tax refund to low-income filers.[104]

The issue of "revenue neutrality" was a major focus of the meeting, as members of the Joint Committee questioned the council members about the underlying intent of the recommendations in regards to neutrality.[105] In addition, Representative Abrams noted the distinction between the terms "revenue neutral" and "revenue source neutral,"[106] an issue that would end up being a major factor in the tax bills' demise.[107]

HB 385, sponsored by Representative Mickey Channell (R-116th)[108] and House Majority Leader Larry O'Neal (R-146th), was first read on February 28, 2011.[109] HB 385 fulfilled the requirements of HB 1405,[110] specifically that a bill be introduced that reflected the

102. *Id.* at 18 min., 1 sec. (remarks by Dr. Roger Tutterow).

103. *Id.* at 20 min., 34 sec. (remarks by Dr. David Sjoquist).

104. *Id.* at 35 min., 40 sec. (remarks by Rep. Stacey Abrams (D-84th)) (noting that a repeal of the sales tax exemption on groceries would result in immediate higher costs, many low-income persons do not file tax returns, and such persons can ill afford to wait for a refund that only comes months later).

105. *Id.* at 26 min., 35 sec. (remarks by Sen. Tommie Williams (R-19th)).

106. February 8 Joint Committee Video, *supra* note 101, at 55 min., 50 sec. (remarks by Rep. Abrams (D-84th)) ("Revenue neutral can mean the same amount from the same sources, or revenue neutral can mean the same amount from different sources . . . . [Assuming the recommendation made by the Special Council], [s]ome taxpayers will be asked to pay more, while others will be asked to pay less . . . . In totality, [the Special Council's recommendations] may be revenue neutral, but [they are] not revenue source neutral.").

107. *See infra* notes 245–52 and accompanying text.

108. Representative Channel was the House Ways and Means Chairman at the time the bill was introduced and was Co-chairman of the Joint Committee along with Senator Bill Heath (R-31st).

109. State of Georgia Final Composite Status Sheet, HB 385, May 24, 2011.

110. *See supra* note 22.

formal proposals of the Special Council. Differing versions of this 127-page bill also were introduced as HB 386, HB 387, and HB 388. HB 385 was read a second time on March 1, 2011.

The Joint Committee met again on March 24, 2011. No Special Council members spoke at the meeting, and the purpose was to summarize legislation that was anticipated to be introduced the following week.[111] Representative Channell noted that many of the Special Council's recommendations would not be included in the legislation to follow,[112] and many of the proposed sales tax exemptions would not be repealed.[113] Representative Abrams questioned the Joint Committee's confidence in the revenue projections as contained in the Special Council's report, specifically in regards to whether the decrease in revenues could be offset by increased sales tax revenues in light of the Joint Committee's decision not to repeal most existing sales tax exemptions.[114] Responding to Representative Abrams' question, Representative O'Neal noted that the Joint Committee had reviewed all available information[115] and felt confident that its estimates were "conservative and sustainable."[116] However, Representative O'Neal did caution that the legislation expected to be introduced the following week would not be the final version of the bill due to the "overwhelming" amount of information that the Committee would need to digest.[117]

HB 387, sponsored by Representative Channell and House Majority Leader O'Neal, was first read on February 28, 2011.[118] The bill was read a second time on March 1, 2011. The bill was favorably reported out of the Joint Committee to the House on March 30, 2011, but was recommitted to Committee on April 14, 2011.[119]

---

111. Video Recording of Special Joint Committee on Georgia Revenue Structure Hearing, Mar. 24, 2011 at 3 min., 3 sec., http://www1.legis.ga.gov/legis/2011_12/house/Committees/GLN/boardcastIndex.htm [hereinafter March 24 Joint Committee Video].

112. *Id.* at 4 min., 44 sec. (remarks by Rep. Mickey Channell (R-116th)).

113. *Id.* at 5 min., 50 sec. (remarks by Rep. Mickey Channell (R-116th)).

114. *Id.* at 11 min., 30 sec.; *Id.* at 20 min., 55 sec. (remarks by Rep. Stacey Abrams (D-84th)).

115. *Id.* at 22 min., 5 sec. (remarks by Rep. Larry O'Neal (R-146th)).

116. March 24 Joint Committee Video, *supra* note 111, at 23 min., 15 sec. (remarks by Rep. Larry O'Neal (R-146th)).

117. *Id.* at 24 min., 45 sec. (remarks by Rep. Larry O'Neal (R-146th)).

118. State of Georgia Final Composite Status Sheet, HB 387, May 24, 2011.

119. *Id.*

HB 388, sponsored by Representative Channell and House Majority Leader O'Neal, was first read on February 28, 2011.[120] The bill was read a second time on March 1, 2011. The bill was favorably reported to the House on April 11, 2011, but was recommitted on April 14, 2011.[121]

The Bill: HB 385

Income Tax Changes

As required by HB 1405,[122] HB 385 closely reflected the Special Council's recommendations.[123] A key feature of this bill was its reduction and flattening of the tax rates. The progressive tax tables (which consisted of marginal rates of one percent for income under $1,000 up to six percent of income over $10,000) would have been eliminated starting in 2012.[124] Instead, individual taxpayers would have paid a flat rate on all income—5% in 2012, 4.5% in 2013, and 4% in 2014 and thereafter.[125] Corporate tax rates would similarly have been lowered and would have been the same as individual rates.[126]

To offset some of the loss in revenue caused by lowering individual tax rates, HB 385 would have reduced or eliminated many exclusions, exemptions and deductions. The dependent exemption would have been reduced from $3,000 to $2,000 per year.[127] Estates would have had their exemptions lowered from $2,700 to $2,000 per year and trusts would have had their exemptions lowered from $1,350 to $1,000 per year.[128] Itemized and standard deductions would have been eliminated entirely.[129] The retirement income exclusion of $35,000 would have been phased out over four years, disappearing

120. State of Georgia Final Composite Status Sheet, HB 388, May 24, 2011.
121. *Id.*
122. *See supra* note 22 and accompanying text.
123. Chris Joyner, *Changes to Tax System in Works*, Atlanta J.-Const., Feb. 26, 2011, at B3, *available at* 2011 WLNR 3789638.
124. HB 385, § 1-1, p. 2–5, ln. 56–167, 2011 Ga. Gen. Assem.
125. *Id.* § 1-1, p. 4–5, ln. 106–67.
126. *Id.* § 2-1, p. 28, ln. 963–77.
127. *Id.* § 1-2, p. 6, ln. 157–60.
128. *Id.* § 1-2, p. 6, ln. 164–67.
129. *Id.* § 1-3, p. 6, ln. 174–94.

entirely by 2016.[130] The earned income exemption of $4,000 for workers of retirement age would have been similarly phased out.[131] The exemption for a portion of payments to minority subcontractors allowed by Code section 48-7-38 would have been eliminated.[132] The exclusion of a dependent's income included in the parent's federal taxable income would also have been eliminated.[133] The exemption of up to $2,000 of contributions to a beneficiary's trust account would have been eliminated.[134] The exemption for up to $10,000 of organ donation expenses would have been eliminated, as would the exemption for 100 percent of premiums paid for high deductible health plans.[135] On the other hand, one "add-back"[136] to income also would have been eliminated—depreciation attributable to "qualified child care property," which is exempt from federal taxation and would likewise have been exempt from Georgia taxation pursuant to HB 385.[137]

Another way in which HB 385 would have offset the revenue losses caused by lowering tax rates would have been to repeal a wide variety of tax credits for individuals. Credits relating to the following would have all been repealed: rural physicians, accessibility feature retrofits of homes, qualified care giving expenses, federal qualified transportation fringe benefits, disaster assistance funds, private driver education courses of minors, qualified low-income buildings, depository financial institutions, rehabilitation of historic structures, qualified life insurance premiums for National Guard and Air National Guard members, qualified child and dependent care expenses, teleworking, donations of real property, qualified health insurance expenses, clean energy property, adoption of foster children, qualified education, and the purchase of eligible single-family residences.[138]

---

130. HB 385, § 1-3, p. 8, ln. 251–80, 2011 Ga. Gen. Assem.
131. *Id.* § 1-3, p. 10, ln. 295–315.
132. *Id.* § 1-3, p. 10, ln. 326–27.
133. *Id.* § 1-3, p. 11, ln. 330–31.
134. *Id.* § 1-3, p. 12, ln. 373–75.
135. *Id.* § 1-3, p. 12–13, ln. 395–409.
136. An add-back is an amount that is exempted from taxation at the federal level, but is "added back" into income for purposes of state income taxation.
137. HB 385, § 1-3, p. 14, ln. 458–61, 2011 Ga. Gen. Assem.
138. HB 385, §§ 1-4 to 1-21, p. 16–18, ln. 513–66, 2011 Ga. Gen. Assem.

Similarly, HB 385 also would have repealed many tax credits for businesses. Credits relating to the following would have all been repealed: business enterprises in certain designated less developed areas, existing manufacturing and telecommunications facilities or manufacturing and telecommunications support facilities, employers providing approved retraining programs, employers providing child care, water conservation facilities and qualified water conservation investment property, shifts from ground-water usage, qualified research expenses, tax credits for port traffic increases, low-emission vehicles, new or relocated quality jobs, establishing or relocating headquarters, diesel particulate emission reduction technology equipment, manufacture of cigarettes for export, business enterprises undergoing qualified expansion, purchase of vehicles for employee transportation, film, video, or digital production, qualified investments, qualified equipment reducing business or domestic energy or water usage, basic skills education programs, and assignment of corporate income tax credits.[139]

However, the enactment of future business tax credits clearly was contemplated. To allow more flexibility in implementing future tax credits to promote economic development,[140] HB 385 would have eliminated restrictions on the panel commissioned to determine the effects of tax credit proposals and allow it to use more discretion in determining whether a proposal has "significant beneficial economic effect."[141] HB 385 also would have created an "Economic Development Trust Fund" to be used with wide discretion by the Department of Economic Development to promote investment and job creation.[142]

HB 385 also addressed concerns that many of its proposals would hurt the poor.[143] To counteract the regressivity of the flat tax rate and the elimination of these exemptions, deductions, and credits,[144] HB 385 would have substantially increased the low-income tax credit, beginning in 2012.[145] However, this credit only would have

139. *Id.* §§ 2-7 to 2-40, p. 30–31, ln. 1026–50.
140. *See supra* note 57 and accompanying text.
141. HB 385, § 2-5, p. 30–31, ln. 1111–213, 2011 Ga. Gen. Assem.
142. *Id.* § 10-1, p. 123, ln. 4366–83.
143. *See supra* notes 90–95 and accompanying text.
144. *See supra* note 90 and accompanying text.
145. HB 385, § 1-22, p. 18–22, ln. 571–750, 2011 Ga. Gen. Assem.

applied against taxation of non-business income.[146] The credit—which would have been worth anywhere from $54 to $630, depending on income level and filing status—would have been phased out completely at an income level of $39,000 for married taxpayers filing separately, $48,000 for single taxpayers, $55,000 for heads of households, and $76,000 for married couples filing jointly.[147] The amounts of these credits would have been reduced in 2013, and then again in 2014 and thereafter,[148] to reflect the lower tax rates applicable to those years and the correspondingly lower tax liability of individuals who would have received the credit. Also, HB 385 would have changed Georgia law by enabling taxpayers who receive food stamps to receive this credit.[149]

Sales Tax Changes

To offset the reduction in revenue caused by lowering income tax rates and to generally stabilize the revenue stream,[150] HB 385 included a massive expansion of the sales tax base. This bill would have imposed sales taxes on a broad range of services, including: clothing services, household services, membership services, automotive maintenance, repair, and equipment installation services, residential moving, storage and freight services, professional photography, pet boarding, grooming, and training services, veterinary services, hair styling services, and safe deposit box rental.[151] Sales taxes also would have been imposed on products sold in digital form[152] and on communications services.[153] However, the tax increase on communications services would have been offset in some instances by the elimination of franchise fees for cable and video service providers.[154]

146. *Id.* § 1-22, p. 18, ln. 575.
147. *Id.* § 1-22, p. 18–22, ln. 571–750.
148. *Id.* § 1-22, p. 28, ln. 954–55.
149. *Id.* § 1-22, p. 18, ln. 575.
150. *See supra* notes 47–48 and accompanying text.
151. HB 385, § 3-3, p. 36–38, ln. 1216–83, 2011 Ga. Gen. Assem.
152. *Id.* § 3-3, p. 38, ln. 1284–301.
153. *Id.* § 4-10, p. 85–86, ln. 3033–72. However, these taxes would be capped at $25,000 per year for call centers. *Id.* § 4-10, p. 86, ln. 3073–76.
154. *Id.* § 4-13, p. 94–97, ln. 3346–447.

Also, a long list of sales and use tax exemptions would also have been eliminated by HB 385, including (among others) sales to: urban transit riders, hospitals and nursing homes, nonprofit health clinics for indigent persons, housing authorities, sporting and entertainment facilities authorities, the Society of the Daughters of the American Revolution, public and private schools, colleges, universities, and blood banks.[155] Exemptions for sales by schools, parent-teacher organizations, nonprofits benefitting libraries, the Rock Eagle 4-H Center, and the Girl Scouts would also have been eliminated.[156] HB 385 would also have eliminated exemptions for sales of many particular products, including (among others): school lunches, artifacts, religious paper, pipe organs and steeple bells for churches, the Holy Bible, water through water mains, agricultural products and machinery, vehicles sold to disabled veterans, transportation equipment manufactured for export, jet fuel, manufacturing machinery and replacement parts, construction materials for alternative fuel facilities, industrial materials, machinery for eliminating water or air pollution, machinery for water conservation facilities, cargo containers, military hardware components, motor vehicles, paper stock, prescription drugs, medical equipment, lottery tickets, food and food ingredients, food donated for hunger relief or following a natural disaster, funeral merchandise and cemetery markers, film production equipment, digital broadcast equipment, materials for constructing symphony halls, materials for renovating the zoo or a civil rights museum, airplane flight simulation training devices, and prewritten software.[157] Motor vehicles, boats, and planes would be subject to taxation regardless of where purchased.[158] The sales tax holiday would also have been cancelled.[159]

Although the existing exemptions for inputs for manufacturing and agriculture technically would have been eliminated,[160] HB 385 included new comprehensive exemptions for both manufacturing[161]

155. *Id.* § 3-4, p. 38–65, ln. 1302–2285.
156. HB 385, § 3-4, p. 38–65, ln. 1302–2285, 2011 Ga. Gen. Assem.
157. *Id.* § 3-4, p. 38–65, ln. 1302–2285.
158. *Id.* § 3-8, p. 73, ln. 2592–602.
159. *Id.* § 3-4, p. 60–61, ln. 2113–38.
160. *Id.*
161. *Id.* § 3-5, p. 65–69, ln. 2286–455.

and agriculture[162] inputs. New exemptions would also have been added for the sale of inputs to communications service providers (including equipment and anything to be retransmitted or rebroadcasted).[163]

Several other tax changes would have been effected by HB 385. A new excise tax would have been applied to gasoline sales at a rate of 15.1 cents per gallon.[164] The cigarette tax would have been raised from 37 to 68 cents per pack.[165] The tax on insurance premiums would have been lowered from 2.25% to .875%.[166]

HB 385 also addressed the process for future tax law changes, perhaps to prevent many of the challenges in changing the tax code that required establishing the process set forth in HB 1405.[167] This bill would have addressed procedural issues with what was termed the "Fiscal Impact Standards Law," which was a detailed list of rules providing for how future tax bills would have to be brought forward in the future, and how those bills would have to be structured.[168] Among these rules was a requirement that all tax credits and exemptions would have a sunset date on which they would expire.[169]

The Bill: HB 386

No changes were made to HB 386, and no other action was taken on it.

The Bill: HB 387

In response to an uproar from various constituencies,[170] HB 385 was essentially left to lie fallow,[171] and Republican lawmakers went

162. HB 385, § 3-6, p. 70–73, ln. 2456–579, 2011 Ga. Gen. Assem.
163. *Id.* § 4-4, p. 81, ln. 2873–92.
164. *Id.* § 3-5, p. 106, ln. 3808–09.
165. *Id.* § 6-1, p. 111, ln. 3984.
166. *Id.* § 7-1, p. 112, ln. 4000–01.
167. *See supra* notes 25–26.
168. HB 385, § 8-1, p. 114–19, ln. 4065–4267, 2011 Ga. Gen. Assem.
169. *Id.* § 8-1, p. 115, ln. 4099–101.
170. *See infra* notes 225–28 and accompanying text.
171. *See* Interview with Rep. Stacey Abrams (D-84th) (Apr. 26, 2011) [hereinafter Abrams Interview] (on file with the Georgia State University Law Review). Representative Abrams serves as the House Minority Leader.

back to the proverbial drawing board. In place of HB 385, a vastly altered HB 387 was favorably reported as substituted by the Joint Committee on March 30, 2011.[172] Amid intense lobbying from different groups, lawmakers had pared down the Special Council's recommendations dramatically[173] and added several changes of their own.

HB 387 would have addressed changes to the structure of the income tax quite differently than HB 385 would have. Rather than phase in lower tax rates over several years, HB 387 would have immediately dropped the individual tax rate to 4.5% in 2012.[174] Although rates would have been lowered for individuals, there was no provision for lowering corporate tax rates.[175] The dependent exemption still would have been reduced to $2,000, but a cap would have been added so that only taxpayers making less than $250,000 per year would be eligible.[176] HB 387 still would have done away with the standard deduction,[177] but, unlike HB 385, would not have eliminated itemized deductions.[178] There would have been a cap on itemized deductions, however. For married taxpayers filing jointly, their itemized deductions would have been capped at $17,000 per year and would have phased out dollar for dollar once their income reached $75,000.[179] For all other taxpayers, their itemized deductions would have been capped at $8,500 per year and would have phased out dollar for dollar once their income reached $37,500.[180] However, up to $8,000 per year of unreimbursed employee expenses would have been exempt from these limitations.[181] The phase-out of retirement income included in HB 385 was removed from this new bill. In fact, HB 387 would have made the retirement income

172. State of Georgia Final Composite Status Sheet, HB 387, May 24, 2011.

173. Chris Joyner, *AJC Exclusive Tax Bill's Final Days; How Tax Overhaul Fell Apart*, Atlanta J.-Const., Apr. 21, 2011, at A1, *available at* 2011 WLNR 7760236.

174. HB 387 (JCS), § 1-1, p. 4, ln. 86–88, 2011 Ga. Gen. Assem.

175. James Salzer, *Critical Week for Tax Code Changes*, Atlanta J.-Const., Apr. 11, 2011, at A1, *available at* http://www6.lexisnexis.com/publisher/EndUser?Action=UserDisplayFullDocument&orgId=574&topicId=25132&docId=l:1396241418&start=5.

176. HB 387 (JCS), § 1-2, p. 5, ln. 122–24, 2011 Ga. Gen. Assem.

177. *Id.* § 1-3, p. 5, ln. 142–47.

178. *Id.* § 1-3, p. 5, ln. 140–42.

179. *Id.* § 1-3, p. 6, ln. 164–67.

180. *Id.* § 1-3, p. 6, ln. 160–63.

181. *Id.* § 1-3, p. 6–7, ln. 182–87.

exclusion of $35,000—due to expire in 2012— permanent.[182] The exclusion for a portion of payments to minority subcontractors, which would have been eliminated by HB 385, was back in HB 387.[183] Also back in the bill was the exemption for up to $2,000 of contributions to a beneficiary's trust account.[184] The add-back for qualified child care property[185] had also been put back in.[186]

The long list of tax credits for individuals and businesses that would have been repealed by HB 385 was conspicuously absent from HB 387. However, this new bill did contain a new dependent tax credit that would have provided a credit of $150 to single or married taxpayers filing separately with $30,000 or less of income and to heads of households and married taxpayers filing jointly with $60,000 or less of income.[187] The credit would have been $75 for taxpayers earning above those thresholds, and the credit would not have been available for single or married taxpayers filing separately with $35,000 or more of income and to heads of households and married taxpayers filing jointly with $70,000 or more of income.[188] This credit would not have been refundable except to the extent of tax paid, and could not have been carried back or carried forward.[189] The low-income credits from HB 385 remained. However, unlike HB 385, the credits would have been fully implemented in 2012.[190] Also, HB 387 would have provided slightly less of a credit for taxpayers making less than $20,000 than HB 385 would have provided, but slightly more of a credit for those making between $20,000 and $50,000.[191] Also, a provision in the tax code denying these tax credits to prisoners would have been eliminated by HB 387.[192]

182. HB 387 (JCS), § 1-3, p. 8, ln. 244–46, 2011 Ga. Gen. Assem.
183. *Id.* § 1-3, p. 10, ln. 311–12.
184. *Id.* § 1-3, p. 11, ln. 358–60.
185. *See supra* note 136.
186. HB 387 (JCS), § 1-3, p. 14, ln. 443–46, 2011 Ga. Gen. Assem.
187. *Id.* § 1-4, p. 16, ln. 512–31.
188. *Id.*
189. *Id.* § 1-4, p. 16, ln. 525–31.
190. *Id.* § 1-6, p. 17, ln. 556.
191. *Id.* § 1-6, p. 17, ln. 568–673.
192. HB 387 (JCS), § 1-6, p. 21, ln. 687–89, 2011 Ga. Gen. Assem.

Due to opposition by a wide variety of interest groups,[193] nearly all of the Special Council's proposed sales tax increases were dropped and not included in HB 387, but a few remained. HB 387 would have added only one major service to the list of taxable services: auto repair.[194] Taxes on casual sales of automobiles, boats and planes also survived.[195] To clarify its goal of "leveling the communications playing field,"[196] HB 387 explicitly added "direct broadcast satellite service" and "mobile telecommunications service" to those that would be impacted by the proposed tax on communications services, which also remained.[197] Moreover, HB 387 would have made the tax of seven percent on satellite television providers explicit, while providing that other communications services would also be subject to that same seven percent rate between their state and local tax liabilities.[198] A major new category of sales tax exemptions introduced in HB 385—the exemptions for agriculture and manufacturing inputs—remained in HB 387.[199]

There were also several other recommendations of the Special Council that did not survive in HB 387. Increases in the gasoline tax and cigarette taxes were gone. The tax on insurance premiums would have been left the same. All of the rules providing for future tax law bill structure and passage—including mandatory sunset provisions for exemptions and credits—had disappeared. Also, the provision for the discretionary fund for the Department of Economic Development included in HB 385 did not make it into HB 387.

The Bill: HB 388

Amid concerns that HB 387 would cause a net tax increase on many middle-class taxpayers,[200] HB 387 was abandoned and a substituted version of HB 388 was presented in its place to the Joint

193. Joyner, *supra* note 174.
194. HB 387 (JCS), § 1-6, p. 21–22, ln. 703–29, 2011 Ga. Gen. Assem.; Jim Galloway, *A Deflated Ending to Tax Overhaul Plan*, Atlanta J.-Const., Mar. 27, 2011, at B1, *available at* 2011 WLNR 5935339.
195. HB 387 (JCS), § 2-8, p. 35, ln. 1210–19, 2011 Ga. Gen. Assem.
196. *See infra* note 242.
197. HB 387 (JCS), § 3-3, p. 37, ln. 1269–74, 2011 Ga. Gen. Assem.
198. *Id.* § 3-11, p. 46, ln. 1591–631.
199. *Id.* §§ 2-5–2-6, p. 26–34, ln. 885–1184.
200. *See infra* notes 245–52 and accompanying text.

Committee for discussion on April 6, 2011.[201] To prevent an excessive budget deficit, the tax cut would not have been as deep under HB 388 as it would have been under HB 387.[202] Under HB 388, individual tax rates would have been lowered to 4.6% in 2012 and 4.55% in 2013 and thereafter.[203]

In an effort to prevent a tax hike on the middle class, lawmakers adjusted several deductions and exemptions in HB 388. This bill would have provided for a higher cap on itemized deductions than HB 387 would have, and the higher cap would have been available to taxpayers in higher tax brackets. Single or married taxpayers filing separately with less than $37,500 of income would have had their itemized deductions capped at $15,000.[204] Single or married taxpayers filing separately with between $37,500 and $80,000 of income would have had their itemized deductions capped at $8,500.[205] Married taxpayers filing jointly and heads of households with less than $75,000 of income would have had their itemized deductions capped at $30,000.[206] Married taxpayers filing jointly and heads of households with between $75,000 and $160,000 of income would have had their itemized deductions capped at $17,000.[207] These deductions would have been phased out dollar-for-dollar by any income earned beyond the maximum thresholds.[208] Also, a few deductions that would have been eliminated by prior bills returned in HB 388; for example, this new bill would not have eliminated the organ donor deduction or the high deductible health insurance deduction.[209]

The dependent exemption would have been left unchanged at $3,000 up until 2012, and there would have been no cap preventing high-income taxpayers from claiming the exemption.[210] Beginning in 2012, new exemptions would have been added for dependents and phased out depending on income level. For a taxpayer earning

201. Abrams Interview, *supra* note 171.
202. *Id.*
203. HB 388 (JCS), § 1-1, p. 4, ln. 87–92, 2011 Ga. Gen. Assem.
204. *Id.* § 1-3, p. 6, ln. 179–82.
205. *Id.* § 1-3, p. 6–7, ln. 183–87.
206. HB 388 (JCS), § 1-3, p. 7, ln. 197–200, 2011 Ga. Gen. Assem.
207. *Id.*
208. *Id.* § 1-3, p. 7, ln. 187–216.
209. *Id.* § 1-3, p. 13, ln. 424–38.
210. *Id.* § 1-1, p. 4, ln. 131–33.

$60,000 or less, the exemption would have been $5,300, but a taxpayer earning over $200,000 would not have been eligible to claim the exemption at all.[211]

Compared to what was proposed in HB 387, several changes were made to the structure and availability of individual tax credits. The extra dependent credits that would have been added by HB 387 were not included in HB 388. The low-income tax credit tables were adjusted slightly to provide a slightly higher benefit for middle-class taxpayers.[212] The existing provision denying the low-income credit to prisoners, which would have been eliminated by HB 387, was retained in HB 388.[213]

In an effort to prevent large short-term budget deficits, lawmakers decided to phase in the manufacturing energy exemptions.[214] The sales and use tax exemption for energy used in manufacturing remained in HB 388, but would have been phased in over three years—33% exempt in 2013, 67% exempt in 2014, and then fully exempt in 2015.[215]

Primarily due to uneasiness with projections that indicated that HB 388 could have the net effect of higher taxes for a majority of taxpayers, the bill was not brought up for a vote and was instead shelved, possibly to be reconsidered in a later session.[216]

Analysis

Some would say that political realities doomed the tax reform process set in motion by HB 1405[217] to its ultimate failure. There are questions as to whether the process ever really had a chance after the November 2010 elections. The new Governor, Nathan Deal, took no part in the formation of the Special Council, and he was opposed to the tax on groceries from the start.[218] Some have suggested that many Republicans in the legislature who earlier may have been willing to

211. *Id.* § 1-1, p. 5, ln. 134–44.
212. *See* HB 388 (JCS), § 1-5, p. 17, ln. 569–820, 2011 Ga. Gen. Assem.
213. *Id.* § 1-5, p. 24, ln. 816–18.
214. Abrams Interview, *supra* note 171.
215. HB 388 (JCS), § 2-5, p. 32, ln. 1099–117, 2011 Ga. Gen. Assem.
216. *See infra* notes 265–85.
217. *See supra* notes 20–25 and accompanying text.
218. Galloway, *supra* note 195.

make tough decisions on taxes changed their minds after the "tsunami wind" swept them into control of all branches of government.[219] Seeing the opportunity to make further electoral gains in 2012 and to have complete control over the entire legislative process, which would have been less likely if they were to raise taxes on certain constituencies,[220] they may have been less willing to put their seats at risk than when the tax reform process had begun.[221] Faced with political realities, Republicans may have changed their minds about adopting the Special Council's recommendations wholesale.[222] Democrats—who had been "completely shut out of the process"[223] from the very beginning—had no stake in seeing the tax reform process succeed.

Legislators introduced HB 385 to the Joint Committee because that is what HB 1405 required them to do,[224] but the bill was essentially dead on arrival. Operating in a political vacuum, it had been relatively easy for economists on the Special Council to start with a clean slate and imagine an ideal tax system, but they failed to take many political realities into account.[225] For example, many constituents considered removing the exemption on Girl Scout cookies especially distasteful. Many constituents felt similarly about what Democrats termed the "God Tax," which would have imposed sales taxes on items such as pipe organs, steeple bells, and the Holy Bible.[226] While the idea of removing deductions and exemptions and going back to a baseline is generally considered a good idea in theory, the political reality is that, for a legislator, voting to remove certain exemptions is tantamount to committing "political suicide."[227]

---

219. Abrams Interview, *supra* note 171.

220. *Id.* ("You couldn't do that if you said you were going to put the tax back on groceries and tax God," Representative Abrams added.).

221. *Id.*

222. *Id.*

223. *Id.*

224. *See supra* note 22 and accompanying text.

225. Abrams Interview, *supra* note 171.

226. *Id.*

227. *Id.* Rep. Abrams elaborated, "Tax behavior, like all behavior, becomes ingrained after a while. There are some political realities that the economists didn't think about, so those exemptions would just get grandfathered back in because they are so much a part of who we are and how we think about our society." *Id.*

In response to constituents' concerns about various tax increases, legislators abandoned HB 385 and dropped most of the sales tax increases and exemption removals when crafting its replacement, HB 387.[228] Before introducing HB 387, Representative Mickey Channell (R-116th), Co-chairman of the Joint Committee, emphasized that the revised legislation would not impose most of the sales tax increases that the Special Council had recommended.[229] For example, one sales tax exemption with near-universal support—the exemption for groceries—was not included even though it would have raised an estimated $750 million in annual revenue.[230] Another exemption that had particularly widespread support was the proposed exemption for sales tax paid on energy by manufacturers.[231] This exemption stayed in HB 387, at an estimated cost to the state—and a gain to manufacturers, mining companies, and agriculture-related businesses—of $165 million annually.[232] Naturally, these deviations from the Special Council's proposals would have created revenue shortfalls that would need to be addressed.

There were, however, a few potentially large sources of revenue where legislators felt little resistance from interest groups (or were actually encouraged to tap by interest groups) and thus felt comfortable including in HB 387.[233] For example, auto mechanics do not have a strong lobby arguing against implementing a sales tax on their services, unlike many other service providers.[234] Therefore, the sales tax on auto repair labor survived in HB 387, which would have

228. *See* Galloway, *supra* note 195. Chairman Channell said, "'Part of what we had to do is introduce a bill that contained all the tax council's recommendations. We have done that. As a result of that, frankly, we heard from folks back home on some matters.'" *Id.*

229. *Id.* Chairman Channell explained, "We're not going to tax Girl Scout cookies. We aren't going to tax groceries. We aren't going to tax veterinary services. We're not going to tax haircuts, legal services, AAA memberships, Sam's Club [and] Costco memberships, dry cleaning, pedicures, prescriptions, cigarettes, and we're not going to eliminate the exemptions on Georgia's nonprofit organizations." *Id.*

230. Abrams Interview, *supra* note 171. Although Representative Abrams suggested that groceries are by far the largest possible source of new sales tax revenue, she also suggested that this is the "fairest" of the sales tax exemptions, since it applies to everyone fairly equally, and since people cannot choose whether or not to consume food, unlike many other products and services. *Id.*

231. Salzer, *supra* note 176.

232. *Id.*

233. *See* Abrams Interview, *supra* note 171 ("Generally, the goal in generating more revenue is to go to the biggest sources of revenue with the least amount of resistance.").

234. *Id.*

cost people getting their car repaired and benefitted the state treasury by an estimated $55 million annually.[235]

Also, private auto sales still would have been subject to sales tax under HB 387. Georgia is one of only six states that do not impose a sales tax on the sale of vehicles by non-dealers, and three of those states do not impose sales taxes at all.[236] Auto dealers, on the other hand, do collect sales taxes. Auto dealers are an influential lobby at the State Capitol,[237] and they have been fighting for years to "level the playing field" and force car buyers to pay sales tax regardless of where they buy their vehicle.[238] As a result of this new tax, the additional revenue to the state—and associated cost to vehicle buyers—would have been an estimated $162 million annually.[239]

Telecommunications taxes also would have increased under HB 387. Under existing law, satellite television companies were not required to collect sales taxes and were not subject to the franchise fees that cable television and phone companies had to pay.[240] HB 387 would have imposed a new seven percent excise tax on all types of communications services and "leveled the telecommunications playing field," according to supporters such as satellite television's major competitors.[241] This was one of the most heavily lobbied bills of the legislative session, and cable and phone companies were able to persuade lawmakers to keep this provision in the bill despite objections by their competitors who provide satellite services.[242] As a result, this expanded communications tax was included in HB 387, at an estimated cost to people paying for the services and a benefit to the state treasury of $277 million annually.[243]

---

235. Salzer, *supra* note 176. Apparently, this tax seemed like "no-brainer" for legislative leaders. *Id.*

236. Chris Joyner, *Plan Taxes Private Car Sales; Dealers Already Collect Fees; State Would Reap an Estimated $151 Million*, Atlanta J.-Const., Mar. 3, 2011, at A1, *available at* 2011 WLNR 4150007.

237. *Id.* Auto dealers made about $440,000 in political contributions to state candidates and committees in the 2010 election cycle. *Id.*

238. Salzer, *supra* note 176.

239. *Id.*

240. Pedro Marin & Sarah Beth Gehl, *Should Tax System Overhaul Include New Levies on Services?*, Atlanta J.-Const., Mar. 24, 2011, at A19, *available at* 2011 WLNR 5712235.

241. *Id.*

242. Salzer, *supra* note 176. Cable and phone companies spent big and hired huge teams of lobbyists to help them get what they wanted. Their lobbyists spent about $30,000 wining and dining lawmakers during the session. *Id.*

243. *Id.*

Ultimately, the cause of HB 387's demise was the fact that it would have increased taxes for many middle-class taxpayers. Although the baseline Republican legislators set when crafting tax reform legislation was to maintain revenue neutrality, they did not distinguish between revenue source neutrality from the perspective of each individual taxpayer and aggregate revenue neutrality from the perspective of the state.[244] Revenue source neutrality means that for any particular taxpayer, the individual's tax burden remains the same.[245] Aggregate revenue neutrality, however, means that one taxpayer actually pays more and another pays less, and the changes in benefits and burdens offset.[246] Critics of HB 387 argued that it would cause the tax burden to be shifted from the rich to the middle class.[247] House Minority Leader Stacey Abrams (D-84th) asked Georgia State University economist David Sjoquist to develop a spreadsheet showing how tax burdens would change for taxpayers at various income levels.[248] That spreadsheet indicated that HB 387 would actually have increased taxes on taxpayers with incomes between $20,000 and $180,000 per year, while higher-income taxpayers would have received a large reduction in their tax liability.[249] For example, taxpayers earning between $80,000–100,000 annually would have paid $356 more on average per year, and taxpayers earning between $100,000–120,000 would have seen an increase of $419.[250] Meanwhile, those making over $500,000 annually would have received an average tax cut of $11,000.[251]

Democrats were not the only critics of HB 387—many Republican constituencies opposed it as well. Conservative groups concerned about higher taxes, such as the Georgia Tea Party Patriots and Americans for Prosperity, also opposed this bill.[252] Also, religious and charitable groups opposed it because of the elimination of state

244. Abrams Interview, *supra* note 171.
245. *Id.*
246. *Id.*
247. *Id.*
248. Chris Joyner, *Scramble on Tax Reform Continues*, Atlanta J.-Const., Apr. 1, 2011, at B1, *available at* 2011 WLNR 6308271.
249. *Id.*
250. Chris Joyner, *House Nears Vote on Tax Changes*, Atlanta J.-Const., Mar. 30, 2011, at B1, *available at* 2011 WLNR 6120474.
251. *Id.*
252. Joyner, *supra* note 249.

tax deductions for charitable giving.[253] As a result of these criticisms, HB 387 was jettisoned and legislators turned to HB 388.

By the time legislators began crafting the revised HB 388, revenue neutrality was no longer the goal—the goal was to give everyone a tax cut.[254] Republican leaders said that if HB 388 were to pass, about ninety percent of Georgians would have seen their income tax bills decrease.[255] According to opponents, however, giving the bulk of the Georgia population a tax cut would have cost between $400–800 million and created a $250–500 million budget deficit.[256] Democrats raised the issue of whether it would be fiscally responsible to "blow a hole in our budget in a time of recession in order to give what would amount to a $25–90 tax cut to each taxpayer."[257] Ironically, budgetary shortfalls were what had set the whole tax reform process in motion in the first place.[258]

In response to this criticism, Republicans chose to introduce a substitute version of HB 388 that would not have provided for quite as deep a tax cut as HB 387—instead of reducing rates to 4.5% in 2012, rates would have been reduced to 4.6% in 2012 and 4.55% in 2013.[259] Also, the exemption of energy for manufacturers would have been phased in over time.[260] Sales taxes would have remained the same as in previous versions.[261] Democrats claimed that this new version of the bill still would have added $132.3–151 million in deficit to the 2012 budget.[262] In 2013, according to their estimates, this amount would have increased to over $200 million.[263]

---

253. *Id.*
254. Abrams Interview, *supra* note 171.
255. Salzer, *supra* note 176.
256. Abrams Interview, *supra* note 171.
257. *Id.*
258. *See supra* notes 1–14.
259. Abrams Interview, *supra* note 171. *See also* Aaron Gould Sheinin, *GOP Lawmakers Back Revised Tax Reform Plan*, Atlanta J.-Const., Apr. 8, 2011, at B1, *available at* http://www.ajc.com/news/georgia-politics-elections/gop-lawmakers-back-revised-903534.html ("House Majority Leader Larry O'Neal, a tax attorney, said Republicans had originally wanted to cut the rate to 4.5% immediately, but worries over the budget impact of such a move persuaded them to scale it back to 4.6% for now. The difference is about $100 million in tax revenue.").
260. Abrams Interview, *supra* note 171.
261. *Id.*
262. Special Joint Committee on Georgia Revenue Structure, Minority Report to HB 388 (Apr. 11, 2011) [hereinafter Minority Report] (on file with Georgia State University Law Review).
263. Sheinin, *supra* note 260.

More fatal to HB 388 was the fact that when the sales tax increases were taken into account, the net effect still actually would have been an overall increase in taxes paid by eighty-two percent of the Georgia population.[264] All taxpayers making less than $40,000 annually would have seen an overall tax increase due to a low income tax cut or none at all, coupled with a sales tax increase.[265] Taxpayers earning between $40,000–100,000 or between $180,000–240,000 and who itemize their deductions would have seen a tax increase as a result of the elimination of deductions.[266] Democrats released a spreadsheet illustrating these numbers, and suddenly the bill was dead.[267] On April 11, 2011, Republican leaders abandoned HB 388 without a vote.[268]

Republican leaders blamed the failure of the bill on their uneasiness with "shifting data" from the Georgia State University Fiscal Research Center.[269] Majority Leader Larry O'Neal (R-146th) claimed that a lack of timely, reliable data dogged the process from the beginning, and the problem only got worse.[270] He added that there was suspicion that the projections were influenced by these economists' philosophical objection to the plan.[271] Several Republicans have said that the plan needed to be reworked using an "independent" source.[272]

Georgia State University economist David Sjoquist admitted that errors were made along the way, but he said those errors were the result of being asked to quickly deliver complex answers to difficult questions.[273] Sjoquist and his team were asked to rework the numbers nearly forty times during the last two weeks of the legislative session.[274] In the final days of the legislative session, hundreds of

264. Abrams Interview, *supra* note 171.
265. Minority Report, *supra* note 263.
266. *Id.* Sixty percent of Georgia taxpayers earning between $40–60,000 per year itemize their deductions, as do 75.1% of those earning between $60–80,000, 86.2% of those earning between $80–100,000, and 97% of those earning between $180–240,000. *Id.*
267. Abrams Interview, *supra* note 171.
268. Chris Joyner, *Legislature Your Taxes; Hopes Dim on Overhaul of Tax System*, Atlanta J.-Const., Apr. 13, 2011, at A1, *available at* 2011 WLNR 7177239.
269. Joyner, *supra* note 174.
270. *Id.*
271. *Id.*
272. Joyner, *supra* note 269.
273. Joyner, *supra* note 174.
274. *Id.*

frantic emails were sent between legislative staffers and Georgia State University economists in a desperate attempt to rework the tax bill and make it match the promises of Republican leaders.[275] These emails usually demanded a same-day response.[276] Sjoquist suggested that this requirement of quick turnaround contributed to the number of uncaught mistakes.[277] Adding to the unreliability of the numbers was the fact that Sjoquist was forced to extrapolate 2005 data seven years into the future because he was blocked from obtaining more recent data due to privacy concerns.[278]

Some have suggested that Republicans' efforts to enact HB 387 and HB 388 were doomed to fail. House Minority Leader Abrams said the problem was that Republicans were fiddling with a complex economic problem in an attempt to get a predetermined result.[279] Ultimately, the process became unmanageably complicated because Republicans were trying to respond to all of the groups in Georgia and cut everyone's taxes while flattening the state tax code.[280] "That can't be done mathematically," said Christine Ries, a Georgia Tech economist and member of the Special Council.[281] Unsurprisingly, the effort to make everyone happy ended in failure.

Despite the failure of the legislature to pass a bill in the 2011 session, all indications were that tax reform would likely be an ongoing discussion. Speaker of the House David Ralston (R-7th) was quick to say that "tax reform is not dead. Tax reform is just delayed."[282] After the end of the 2011 legislative session, Speaker Ralston said that legislation could be considered in a special redistricting session in August 2011 or taken up during the 2012 legislative session.[283] House Minority Leader Abrams suggested that addressing taxation during a redistricting session, when legislators are literally fighting for their political lives, is the worst time to do

275. *Id.*
276. *Id.*
277. Joyner, *supra* note 269. (Sjoquist said, "In fact, we probably should have taken more time and let the numbers sit and then go back over them a couple of times to make sure we didn't make mistakes.").
278. *Id.*
279. Joyner, *supra* note 174.
280. *Id.*
281. *Id.*
282. Chris Joyner & April Hunt, *At the Capitol: Tax Reform in Georgia; Time Runs Out on Tax Overhaul*, Atlanta J.-Const., Apr. 12, 2011, at A1, *available at* 2011 WLNR 7034612.
283. *Id.*

so, since the tendency to pander is exacerbated.[284] Ultimately, it was not taken up during the special session. Thus, the debate will likely continue with the probable consideration of a tax reform bill in the 2012 legislative session.

Benjamin Keck & Reed White

284. Abrams Interview, *supra* note 171.