T-SPLOST, GRTA and the Need for Regional Transit Governance in Metro Atlanta: A Proposal for a Politically Palatable Regional Transit Governance Bill
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INTRODUCTION

On April 21, 2010, the Georgia State Legislature passed the Georgia Transportation Investment Act (TIA). The TIA culminated four years of tense political negotiation and was aimed at providing a regional funding mechanism for transportation infrastructure projects; particularly mass transit projects which were ineligible for funding through the state gas tax. Signed into law by Governor Sonny Perdue in June of 2010, the TIA divided up the state into twelve regions and authorized each region to develop a list of transportation projects which would be funded by a one percent sales tax. The tax would have to be approved in a voter referendum and the tax would last for ten years or until all the projects on the regional transportation list were funded, whichever period is shorter.

The TIA is the largest mechanism for funding mass transportation projects in the history of the state of Georgia. The MARTA Act of 1965, which put in place a sales tax to finance and construct metro Atlanta’s subway system, applies only to Fulton and DeKalb counties. The TIA, on the other hand, will institute a one cent sales tax and will use that tax to construct road

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2 For a summary of one attempt by the Georgia Legislature to fund transportation initiatives but which ultimately failed see Jonathan Morris & Adam Winger, SR 845, Transportation Funding: Proposing an Amendment to the Constitution so as to Provide for State-Wide and Regional Funding Mechanisms for Transportation Purposes, 25 Ga. St. U. L. Rev. 277 (2008).
3 State gas tax funds can only be used to build roads and bridges. See GA. CONST. Art. 3, § 9, par. VI(b).
5 Id.
projects throughout ten metro Atlanta counties. Unlike the MARTA Act, however, the TIA was meant only to be a financing tool for the various projects. It did not set up a regional transit governance entity (like that which governs the MARTA system) to operate and/or oversee the transit projects which will be built using the TSPLOST funds. Metro Atlanta leaders are aware that the lack of a regional transit governance agency to oversee the TSPLOST mass transit projects could potentially derail the upcoming TSPLOST referendum and have been anxious to push through legislation to remedy the problem. This article will analyze the recent regional transit governance legislation proposed by Governor Deal, argue why it is politically and practically inappropriate, and propose an alternative legislative fix for the TIA’s lack of any regional transit governance which is both politically palatable and practical.

BACKGROUND

On September 7, 2011, Governor Deal, in an attempt to prepare regional transit governance legislation to be considered during the 2012 Georgia State legislative session, commissioned the Transit Governance Task Force (TGTTF). The TGTTF, made up of various legislators, county commissioners, and mayors, was tasked with 1) establishing a clear vision for transit governance reform efforts, 2) creating a “decision-making structure that includes representatives from the state and from local governments,” 3) designating a state agency or authority to oversee transit services in the metro Atlanta region, and 4) drafting legislation to

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7 For an informative look at the projects which will be constructed if the TIA is passed go to: [http://www.metroatlantatransportationvote.com/](http://www.metroatlantatransportationvote.com/) (last visited March 29, 2012).


9 Georgia Executive Order of September 7, 2011.
implement its recommendations and findings to be submitted by January of 2012.\textsuperscript{10} On January 23, 2012, the Commission released its final report which included draft legislation for regional transit governance.\textsuperscript{11} In that legislation, the TGTF recommended that the Georgia Regional Transit Authority (GRTA)\textsuperscript{12} be responsible for regional transit governance.\textsuperscript{13} It would have jurisdiction for setting transit governance policy whenever an origin or destination of a transit route existed within one of the thirteen non-attainment counties over which GRTA has existing jurisdiction, a transit route anywhere in the state crosses county lines, or where the transit operator receives (or is eligible to receive) federal transit funds.\textsuperscript{14}

In an attempt to appease fears by some groups, particularly residents of Fulton and DeKalb counties, direct policy-making and oversight of transit governance would come from a Transit Governance Council, a thirty-five member council made up of thirteen county commission chairmen, two at-large county commissioners to be chosen by the Governor, thirteen mayors, the Mayor of Atlanta, one at-large mayor or elected city official to be chosen by the Governor, three of the governor’s appointments to the GRTA board, one of the Speaker of the House’s appointments to the GRTA Board, and one of the Lieutenant Governor’s appointments to the GRTA Board.\textsuperscript{15} The Transit Governance Council would have the authority to approve decisions made by the Transit Governance Director of GRTA, who would be appointed by the

\footnotesize{\textsuperscript{10} Id.  
\textsuperscript{12} GRTA was originally formed in 1999 as a state agency with broad regulatory power over transportation and land use. Its purpose was to help the metro Atlanta region combat air pollution in order to comply with the Clean Air Act.  
\textsuperscript{15} Id.}
Governor. However, any decision made by the Transit Governance Council could be vetoed by a two-thirds vote of the GRTA Board. Additionally, the makeup of the GRTA Board would be retooled under the proposed legislation to include nine members appointed by the Governor, three members by the Speaker of the House, and three members by the Lieutenant Governor.

Finally, as an inducement for MARTA to enter into an intergovernmental agreement with GRTA in order to cede governance of its system, the TGTF’s proposed legislation would remove the decades old restriction that MARTA has to spend 50% of its revenue on operating expenses while preserving the other 50% for capital investments.

The TGTF’s proposed legislation caused immediate distress among policymakers, particularly in the metro Atlanta region. At the groundbreaking ceremony for the Atlanta Streetcar, the first streetcar system in Atlanta since the original system was shut down in the late 1940s, the Mayor of Atlanta, Kasim Reed, stated that the TGTF’s proposed legislation was “not the path to success.” Commenting further, he said that he “wanted to be in support of the transit governance bill . . . [but that] I don’t think that when we are going to need to work cooperatively that we should begin the conversation with that kind of tactic,” referring to the provision of the bill giving ultimate oversight to a state run agency. And Mayor Reed was not the only esteemed policy maker to speak out against the bill. Maria Saporta, a respected commentator on metro Atlanta politics and the lead author/editor of the Saporta Report, blasted the TGTF’s

16 Id.
17 Id.
18 Id.
19 Id.
21 Id.
proposed legislation for giving the State of Georgia ultimate control over transit in the metro region while not contributing any funding to it.\textsuperscript{22} Not one typically known for using harsh words, Maria Saporta minced no words in her description of the TGTF’s proposed legislation, calling it “insulting” and “disappointing.”\textsuperscript{23}

Despite the cry of “foul” by many in the metro Atlanta region, Governor Deal pressed ahead to get the TGTF’s proposed legislation passed. On February 21, 2012, the TGTF’s proposed legislation was introduced in the Senate as Senate Bill (SB) 474.\textsuperscript{24} A companion bill, House Bill (HB) 1199, was introduced in the Georgia House of Representatives only a few days later on February 28, 2012.\textsuperscript{25} The initial outpouring of concern left its mark, however, and, a few days after SB 474 was introduced, the \textit{Atlanta Journal-Constitution} ran an article claiming that the TGTF’s proposed legislation was “immediately condemned” upon its introduction to the Senate.\textsuperscript{26} Even the bill’s sponsor, Senate Transportation Committee Chairman Jeff Mullis of Chickamaugua, acknowledged that the bill would probably not move forward that term and that the fight to get it passed would likely take more than one legislative session.\textsuperscript{27} Similar comments


\textsuperscript{25} \textit{Id}.


\textsuperscript{27} \textit{Id}.
were levied against HB 1199, the House companion bill, and indeed, by crossover day in the Georgia Legislature, neither bill had made any progress meaning that they will almost certainly not be passed.  

The vast majority of the criticism surrounding SB 474 and HB 1199 centers around the control that the state government would have over transit governance in the metro region without contributing any money towards mass transit. Though the state government’s position is that the state government should be in charge of any transit system which crosses county lines and thus extends beyond any one local government’s jurisdiction, metro Atlanta local governments, including the City of Atlanta, Fulton County, DeKalb County, and, to a lesser extent, Cobb and Gwinnett counties, feel that local elected officials, rather than state officials, should have primary control over transit policy in the metro region. The reasoning behind this is two-fold. First, there is a long history of mistrust between Atlanta and the state government. Many Atlanta leaders and residents simply do not trust the state government to have the city’s best interests at heart. And the opposite is true as well, with many state government leaders, who hail from outside the metro Atlanta region, not trusting Atlanta. The reasons behind this mutual antipathy are numerous. Atlanta is cosmopolitan and urban while the rest of the state is overwhelmingly rural. Atlanta is also a bastion of Democratic politics while the rest of the state primarily votes

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29 See supra notes 20–28 and accompanying text.
31 See supra notes 20–28 and accompanying text.
Republican. Finally, and perhaps most sensitively, is the issue of race. While the population of Georgia is majority white, the City of Atlanta is primarily black and has been controlled by black politicians since Maynard Jackson took over the mayorship from Sam Massell in 1974.

No matter the numerous and complex reasons behind the mistrust, however, there is no question that it exists. And one of the most oft cited examples of the state antipathy toward Atlanta is the fact that the state neither contributed any money toward the construction of MARTA during the 1970s, 80s and 90s nor does it presently contribute any funding toward its operation today. This is notable because MARTA is, in fact, the only major transit agency in the United States which receives no funding from its state government. Additionally, MARTA is often hauled into the state legislature by the Metro Atlanta Regional Transit Oversight Committee.

(MARTOC) and berated for its financial irresponsibility, particularly when Rep. Jill Chambers (R-Dekalb) was chair of the committee.\textsuperscript{37}

Another, and perhaps less biased reason for the objection to SB 474 and HB 1199, the bills nominating GRTA as the transit governance agency in metro Atlanta, is that metro Atlanta residents believe it to be inequitable for the state government to control the policies of a metro Atlanta regional mass transit system when the state does not itself contribute financially to the system.\textsuperscript{38} Currently, all mass transit in the metro area is funded entirely by local governments. MARTA is funded by a one cent sales tax in Fulton and DeKalb counties and by some federal grant money.\textsuperscript{39} Transit systems in the outlying counties, such as Cobb and Gwinnett counties, are funded by allocations from the counties’ general fund. If the TIA list is passed in the general election then all of these preexisting funding mechanisms will remain in place except that any new capital projects which were included on the list would be funded using a ten year one cent sales tax.\textsuperscript{40} Paying all the expenses of a regional transit system without having the final say in how the system is run is highly objectionable to many in the metro Atlanta region.\textsuperscript{41}


\textsuperscript{38} Maria Saporta, \textit{Atlanta Region Standing Strong on Regional Transit Governance and Changes to MARTA Act}, SAPORTA REPORT (Feb 27, 2012), available at \url{http://saportareport.com/blog/2012/02/atlanta-region-standing-strong-on-regional-transit-governance-and-marta/}.

\textsuperscript{39} Metropolitan Atlanta Rapid Transit Authority, Fact Sheet, available at \url{http://www.itsmarta.com/uploadedFiles/News_And_Events/Newsletters/MARTA%20Fact%20Sheet%20%20010611.pdf} (last visited March 29, 2012).

\textsuperscript{40} See \textit{supra} notes 1–8 and accompanying text.

\textsuperscript{41} See \textit{supra} notes 38–39 and accompanying text.
In that vein, in-town Democrats introduced their own legislation, HB 1200, on the same day that HB 1199 was introduced.\(^4^2\) HB 1200 found its genesis in the work of the Atlanta Regional Commission’s Regional Transit Committee (RTC), which in early 2011 drafted conceptual legislation based on three principles it considered necessary for a successful regional transit governance system. Those principles included: 1) the creation of a single entity that plans, finances, builds, owns, operates and maintains cross-jurisdictional transit infrastructure and services; 2) a pay-to-play requirement that any entity to have voting rights in the decision making process of a regional transit system must contribute financially to the system’s operation; and 3) that the weight of an entity’s vote should be proportional to the value of its contribution to the system.\(^4^3\) As such, HB 1200 recognized MARTA as the backbone of the metro Atlanta transit system and would have allowed it to extend its heavy rail service into other counties besides Fulton and DeKalb counties.\(^4^4\) The bill would also create an entirely new “metropolitan transit authority” which would serve as an umbrella governance agency for all existing transit operations in the metro region and, in some cases, would operate certain components of the


regional transit system.\textsuperscript{45} The authority would be controlled by a board of directors which would be made up of the CEO or chairperson of each transit-supporting county within the jurisdiction of the authority, one mayor of a municipality located within each transit-supporting county other than the mayor of the most populous city within the jurisdiction of the authority which would be selected by a caucus of all mayors within that county, the mayor of the most populous city within the authority’s jurisdiction,\textsuperscript{46} and one member each to be appointed by the Governor, Lieutenant Governor and Speaker of the House.\textsuperscript{47} The purpose of HB 1200 was to retain MARTA as the transit provider within Fulton and DeKalb counties and to give local governments, rather than state appointed representatives from GRTA, final say over regional transit policy in the metro Atlanta region.\textsuperscript{48}

Like HB 1199 and SB 474, HB 1200 failed to gain any traction in the 2012 legislative session. The failure of all three of these transit governance bills means that, when voters go to the polls in July of 2012 to vote on the TIA list of transit projects, they will have little information on who will end up operating and governing the capital transit projects they will be voting on. This levies a severe blow to the TIA list’s chance of being passed and has many politicians, business leaders and other interested parties worried.\textsuperscript{49} As those leaders keep

\textsuperscript{45} HB 1200, as introduced, 2012 Ga. Gen. Assem.
\textsuperscript{46} For the metro Atlanta region, this will undoubtedly be the Mayor of Atlanta. The legislation is written this way to avoid the State Constitution’s ban on special legislation. GA. CONST. Art. III, Sec. VI, Para. 14.
\textsuperscript{47} HB 1200, as introduced, 2012 Ga. Gen. Assem.
\textsuperscript{49} Jonathan Shapiro, \textit{Key Lawmaker Says Transit Governance Bill Shelved Until Next Year}, WABE PUBLIC RADIO, available at
repeating, they have “no plan B” for the alleviation of traffic in the metro Atlanta region. However, the failure of transit governance legislation during the 2012 legislative session does not necessarily mark an end to the fight for regional transit governance in the metro Atlanta region. State Senator Jeff Mullis (R–Chickamauga), who introduced SB 474 and is chairman of the Senate Transportation Committee, stated that it was better to get “perfect policy” rather than move forward with SB 474 out of fear that it may affect passage of the TIA referendum. “We are going to keep working on it,” he stated, “bring more people on board before we move forward. We’ll just keep on working even if it takes more than a year.”

ANALYSIS

Due to the political discord surrounding the development of acceptable regional transit governance legislation for the metro Atlanta region, it is necessary to return to the drawing board and evaluate all possible solutions for regional transit governance in the metro region. An appropriate analysis should consist of two steps: the first being an examination of other major regional transit governance systems in the United States and the second being an analysis of the unique issues surrounding the development of a regional transit system in the metro Atlanta region. Only then can an appropriate solution be found.


52 Id. 
I. A COMPARATIVE LOOK AT TRANSIT GOVERNANCE IN THE UNITED STATES

A. Chicago

Chicago’s transit system was the inspiration for the ARC’s conceptual transit legislation which was introduced as HB 1200.53 In 1974, the Regional Transit Authority (RTA) was set up to finance, oversee and, in some instances, operate mass transit systems throughout the metro Chicago area.54 At the time of its creation, RTA was tasked with distributing sales tax revenue to the Chicago Transit Authority (CTA), which operates the subway and bus system within the City of Chicago, and operating the suburban bus system as well as the commuter rail system.55 In 1983, the Illinois State Legislature passed legislation which clarified RTA’s role as that of an umbrella agency which coordinated transit among the various Chicago transit agencies, provided oversight, and funded transit agency capital projects through its taxation and bonding power.56 In furtherance of this policy, RTA was then stripped of any role in the operation of transit and the operation of the commuter rail system was given to METRA while the suburban bus system, operating in Cook, Lake, Will, Kane, McHenry and DuPage counties, was carved off and called

54 An excellent resource for the history of the Chicago Transit System can be found at www.chicago-l.org.
56 Id.
PACE. All three metro Chicago transit agencies—CTA, METRA, and PACE—were then placed under RTA.

RTA policy decisions are made by the RTA Board which consists of sixteen directors: five appointed by the Mayor of Chicago, four by the members of the Cook County Board elected outside of Chicago, one of the Cook County Board President, and one each by the county board chairman of Lake, Will, Kane, McHenry and DuPage counties (the “collar counties”). The final member of the RTA Board is the Chairman of the Board and is elected by a vote of eleven of the other board members, including at least two from the City of Chicago, two from Cook County outside the boundaries of the City of Chicago, and two from the collar counties. This ensures that the policies of the RTA are driven by the local governments themselves, rather than the state government. In fact, it is notable that the state government has no appointment power to the RTA’s Board despite contributing significant financial resources toward the RTA.

B. Los Angeles

57 Id.


Los Angeles’s regional transit system, the Los Angeles County Metropolitan Transportation Authority (LACMTA), is unlike Chicago’s RTA in that it is both the regional transportation planning agency as well as the actual operator of transit throughout the region. A major reason for this structure has to do with jurisdictional ease as LACMTA’s service area is located entirely within a single county, Los Angeles County.62

LACMTA is funded through a complex mix of federal, state, county and city funds, including two half cent sales taxes approved by voter referendum. LACMTA is controlled by the LACMTA Board which is composed of thirteen members: the five Los Angeles County Supervisors, the Mayor of Los Angeles, three appointees of the Mayor of Los Angeles, and four city council members from cities other than Los Angeles.63 The Governor of California has the power to appoint one non-voting board member.64

C. Washington D.C.

The Washington D.C. Transit System is operated by the Washington Metropolitan Area Transit Authority (WMATA).65 It operates Metrorail, the area’s subway system, Metrobus, the bus system, and MetroAccess, the transport service for disabled individuals who cannot use the regular mass transit services.66 The WMATA is an interstate agency and operates inside

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63 Metro, Who We Are, Board of Directors & Executives, available at http://www.metro.net/about/board/executives/ (last visited March 29, 2012). The four city council members are chosen from among the eighty seven different Los Angeles County cities by the Los Angeles County City Selection Committee.
64 Metro, Who We Are, Board of Directors & Executives, available at http://www.metro.net/about/board/executives/ (last visited March 29, 2012).
66 Id.
Washington D.C. and select parts of Maryland and northern Virginia.\footnote{Id.} Unlike the RTA in Chicago, the WMATA actually operates Washington D.C.’s mass transit system.\footnote{Id.} Policy decisions are made by the WMATA Board of Directors which is made up of seven voting members and seven nonvoting members.\footnote{Washington Metropolitan Area Transit Authority, Board of Directors, available at http://www.wmata.com/board_of_directors/ (last visited March 29, 2012).} The city government of Washington D.C. and the state governments of Virginia and Maryland all have the authority to appoint four members, two voting and two nonvoting, while the Federal Government appoints one voting member and one nonvoting member.\footnote{Id. It should be noted, however, that the Federal Government has the authority to appoint two voting members and two nonvoting members just like Washington D.C. and the two states. However, as of yet, it has not exercised this power.} The WMATA Board then appoints a General Manager to run the day-to-day transit operations and uses its own power to make big policy decisions and to either approve or veto the system’s annual budget.\footnote{Washington Metropolitan Area Transit Authority, General Manager and Chief Executive Officer Richard Sarles, available at http://www.wmata.com/about.Metro/general_manager/ (last visited March 29, 2012).}

Unlike Chicago’s transit system, the WMATA’s Board is heavily occupied by representatives selected by the Virginia and Maryland state governments. This arrangement is necessitated due to the interstate nature of the Washington D.C. transit system. Typically, from a federal constitutional perspective, local governments such as cities and counties are simply divisions of administrative convenience and have no rights or authority outside of the state in which they exist.\footnote{See Hunter v. City of Pittsburgh, 207 U.S. 161 (1907).} As such, to enforce any interstate rights, the state is the best political entity to

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\textsuperscript{67} Id.  
\textsuperscript{68} Id.  
\textsuperscript{70} Id. It should be noted, however, that the Federal Government has the authority to appoint two voting members and two nonvoting members just like Washington D.C. and the two states. However, as of yet, it has not exercised this power.  
\textsuperscript{72} See Hunter v. City of Pittsburgh, 207 U.S. 161 (1907).
have enter into interstate agreements. Additionally, unlike any other major transit system in the United States, WMATA has no dedicated source of state or local government funding. Outside of fares and federal grants, the WMATA’s operations are funded by yearly appropriations by the Washington D.C. city government and the states of Maryland and Virginia. Each appropriation, though calculated for each political entity according to a fixed formula based on the number of stations in that jurisdiction, average weekday ridership in that jurisdiction, and the population density of that jurisdiction, the appropriations are nonbinding on any of the states or the City of Washington D.C. Rather, they are viewed by courts as moral obligation bonds.

D. Boston

The Boston mass transit system is operated by the Massachusetts Bay Transportation Authority (MBTA). It is in charge of both transit governance throughout the Boston metro area and acts as an operator of transit systems in the area. Unlike many other regional transit systems, the MBTA, like the WMATA, is controlled by the state government. The MBTA is actually a sub-agency of the Massachusetts Department of Transportation and is run by a board made up of five people appointed by the Governor of Massachusetts. One of the primary reasons for this is that mass transit in the Boston area is funded through a state-wide sales tax, of

See UNITED STATES CONST. Art. I, Sec. 10 (“[N]o state shall enter into an agreement or compact with another state” without the consent of Congress.”). Since any interstate agreement will necessarily become an issue fought out at the national level, a state government has the best chance to enforce its rights.

Note that MARTA’s dedicated source of funding is the 1% sales tax levied in Fulton and DeKalb counties.


which it receives 16% of gross revenues.\textsuperscript{80} This is highly unusual as most mass transit systems which are funded through sales taxes are funded through locally imposed sales taxes applicable only in the counties and municipalities in which transit is operated.

E. Denver

Denver’s transit system is governed and operated by the Regional Transit District (RTD) which operates public transportation services in the geographically broad Denver metropolitan area. In an unusual twist, neither the state nor general local governments have control over the RTD as each of its fifteen member Board of Directors are elected to four year terms by public election.\textsuperscript{81} This gives the RTD an amount of autonomy from local and state government policy decisions which is unusual for a regional transit system.

II. The Types of Regional Transit Governance Systems and Where the Various Proposals for Metro Atlanta Rank Among Them.

A review of the above discussed cities’ regional transit governance structure draws out a few defining characteristics which are worth noting. First, regional transit systems can be divided into either operator systems or oversight systems. A prime example of an operator system is WMATA, the Washington D.C. metro system. WMATA directly operates the interstate mass transit infrastructure which spans Washington D.C., Maryland and Virginia.\textsuperscript{82} On the other end of the spectrum, and representative of an oversight system, is RTA, the Chicago regional transit system. RTA does not actually operate any transit infrastructure.\textsuperscript{83} Rather, it uses its taxing and

\textsuperscript{80} Id.


\textsuperscript{82} See supra note 68 and accompanying text.

\textsuperscript{83} See supra note 56–58 and accompanying text.
bonding power to fund the three transit operator systems in Chicago—CTA, METRA and PACE—and otherwise coordinates and oversees those three transit agencies’ operations.\(^8^4\)

The development of an operator system in Washington D.C. and, alternatively, an oversight system in Chicago is more the result of politics than it is of a belief that an oversight system was better than an operator system, or vice versa. When Washington D.C. began planning its transportation system in the late 1950s, neither the city nor the surrounding suburbs or states had a significant public transportation system.\(^8^5\) Thus, it seemed expedient to set up a single, regional agency which operated subway and bus systems throughout the metro Washington D.C. area.\(^8^6\) Strangely enough, WMATA and MARTA were constructed at about the same time and are relatively similar. Like WMATA, MARTA, of which the acronym stands for the Metro Atlanta Rapid Transportation Authority, was meant to be a regional transportation agency which both formulated regional transit policy and which actually operated the transit system.\(^8^7\) However, unlike WMATA, the eventual plan for MARTA was never realized. Per MARTA’s organic legislation, in order for MARTA to operate in a county, a majority of that county’s population had to vote for joining the transit system.\(^8^8\) While Fulton and DeKalb counties did vote in favor of joining the system, Gwinnett, Cobb and Clayton counties all famously voted

\(^8^4\) *Id.*
\(^8^6\) *Id.*
down becoming part of the MARTA system.\textsuperscript{89} This is why MARTA today operates less as a regional transportation agency and more as an intra-city subway system similar to systems like CTA, the intra-city subway system of Chicago.

Contrast Washington D.C.’s system to that of Chicago’s which, in 1974 when the RTA was formed, already had a large and well established transit system within the city of Chicago—the CTA. Rather than deconstruct the transit system as it then existed, political leaders found it more expedient to create the RTA, which oversaw CTA and operated the suburban bus and commuter rail systems in the metro region.\textsuperscript{90} In 1983, realizing that RTA’s dual role as operator of commuter rail and suburban bus lines and overseer and funding provider of CTA was not working, legislators reformed the system to give RTA a purely supervisory role.\textsuperscript{91} This is the situation as it currently exists today. Thus, the operator model of regional transit governance tends to come about when an existing transit system is either non-existent or otherwise small and not well established. Political entities seem to adopt the oversight model of regional transit governance when there is already a well established, largely intra-city transit network in existence.

Though the issue is somewhat confused,\textsuperscript{92} all three of Atlanta’s proposed transit governance bills, the first two being the proposed legislation by the TGTF and introduced as SB 474 and HB 1199 and the third being HB 1200, the bill based on the ARC’s concept legislation,\textsuperscript{89} MARTA, About MARTA, A Brief History of the Metropolitan Atlanta Rapid Transit Authority, available at http://www.itsmarta.com/marta-past-and-future.aspx (last visited March 29, 2012).
\textsuperscript{91} See supra note 56 and accompanying text.
\textsuperscript{92} Some of the bills actually do authorize the newly created regional transit agency to operate some mass transit systems. However, any operations would be minor as none of the bills propose dismantling MARTA or any other existing transit operating agencies.
propose that Atlanta adopt the oversight model of transit governance rather than the operator model. And this makes sense because, in MARTA, Atlanta already has a large and well established transit system that would be hard to dismantle and assign to an entirely new agency. Additionally, MARTA already has the statutory authority to levy a 1% sales tax in Fulton and DeKalb counties and which, in today’s political climate of staunch opposition to raising taxes, likely could not be put in place again if removed. Thus, it is politically convenient to keep MARTA in place as the primary transit operator and simply create a new regional oversight governance structure on top of it.

The operator versus oversight model is not the only important distinction among transit governance systems, however. Also important, and perhaps more relevant to the current problems associated with developing a transit governance system in metro Atlanta, is the issue of state versus local control. Existing regional transit systems can be broken down into three different types: those systems with heavy or predominant levels of state control, those with either no state control or a minor level of state representation or input, and those regional transit systems which are entirely independent of both local or state control.

Both the MBTA, Boston’s regional transit agency, and WMATA, Washington D.C’s transit agency, are prime examples of systems which are predominately controlled by state governments. However, having overwhelming or predominant state control is relatively unusual in regional transit governance agencies and both MBTA and WMATA are controlled by their respective state governments for a reason. In Washington D.C., the metro area contains a federal district (Washington D.C. proper) and two states, Maryland and Virginia. WMATA’s unique structure, as an agency created by interstate compact and whose operation is dependent on

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93 See supra note 38 and accompanying text.
annual federal and state appropriations, requires heavy state involvement because all policy and funding decisions are made on an interstate level.\textsuperscript{94} In a similar vein, the MBTA is funded not by a locally imposed sales tax, as many regional transit agencies are, but primarily through a dedicated percentage of a statewide sales tax.\textsuperscript{95} Thus, in Massachusetts, mass transit is considered to be of equal importance with road transit and is thus funded and maintained by the state’s department of transportation.

The TGTF’s recommended legislation, and introduced in the Georgia Legislature as SB 474 and HB 1199, is most similar to the regional transit governance system set up in Boston. Though there are some relatively superficial differences, such as the MBTA in Boston being under the control of the Massachusetts Department of Transportation while the metro Atlanta transit governance system would be within the administrative umbrella of GRTA, the primary important difference between the system set up in Boston and the system which would be set up by SB 474 and HB 1199 is funding. The MBTA exists as a sub agency of the Massachusetts Department of Transportation because the state sales tax is the primary source of funding.\textsuperscript{96} In other words, it is in the state’s interest to control MBTA policy because the state is the political entity paying the bills. SB 474 and HB 1199, however, would create a disconnect between the source of funding and the political entity which exercises political control. That political control would rest with state controlled GRTA. Yet the funding source would come from a complex mix of federal grants, locally imposed sales taxes, and county appropriations. None of that funding though would come from the state.

\textsuperscript{94} See supra notes 65–75 and accompanying text.

\textsuperscript{95} MBTA, MBTA Fare and Service Changes, Joint the Discussion, available at http://mbta.com/uploadedfiles/About_the_T/Fare_Proposals_2012/MC12149%20Fare%20Increase%20Booklet_v7.pdf (last visited March 29, 2012).

\textsuperscript{96} See supra notes 76–80 and accompanying text.
And the unique situation that WMATA is in, being an agency formed by interstate compact and deriving its funding from a number of states, does not apply to Atlanta either. Rather, Atlanta lies over a hundred miles in any direction from a state boundary and none of the counties considered to be in the metro region lie on the border with another state. There is no interstate political reason, therefore, for the state taking such a heavy hand in metro Atlanta’s regional transit system. As such, despite there being precedent for regional transit governance similar to that proposed in SB 474 and HB 1199, none of the reasons which normally compel state control of a regional transit system apply in the case of Atlanta.

The second type of transit governance systems are those with regional transit systems which give state governments either no influence or representation in regional transit governance or a minimum level of representation in the policy decisions of those systems. Prototypical examples of such a system are RTA and LACMTA, the Los Angeles regional transit agency. Both RTA and LACMTA’s boards are selected entirely by the local governments in the region, though, in LACMTA’s case, the Governor of California has the right to appoint one non-voting member to the LACMTA Board.97

HB 1200 roughly follows LACMTA and RTA in giving the state of Georgia a secondary role to play in influencing regional mass transit policy. However, unlike both the LACMTA and RTA, HB 1200 does give the state some actual power in influencing transit policy by giving the Governor, the Lieutenant Governor, and the Speaker of the House the power to each appoint one member to the board of the regional transit agency, regardless of state contribution.98

97 See supra notes 53–64 and accompanying text.
98 HB 1200, as introduced, 2012, 50-38-5(b).
appointment power, however, is still a minority appointment power as the majority of the board is made up of individuals appointed by the counties or municipalities within the transit region.\textsuperscript{99}

The third and final form of transit governance systems are those systems which are entirely independent of both state and local government control. The RTD, Denver’s regional transit governance system, is the primary example of this type of governance structure. Under Denver’s system, the RTD is controlled by a board of directors which is made up of publicly elected figures, each serving four year terms.\textsuperscript{100} Such a system has both benefits and detriments. Of all the types of transit governance systems, it is the one most directly amenable to the popular will. However, this same responsiveness to the people means that policy decisions are made by people who have no level of insulation from electoral politics and such a system could have the effect of making it difficult for the agency to carry out expensive, multi-decade capital improvement projects if those projects become unpopular. This potential problem does not seem to have occurred in Denver though as the RTD has successfully engaged in a massive and expensive expansion of its light rail system since the mid-1990s with notably little political turmoil.\textsuperscript{101}

PROPOSAL

HB 1199 and SB 474, the legislation proposed by TGTF and which nominates GRTA as the regional transit agency for the metro Atlanta region, should remain dead legislation. As multiple metro Atlanta leaders note, the placement of a state agency in control of a transit system which is financed entirely by local governments is simply bad policy.\textsuperscript{102} Not only is it inequitable

\textsuperscript{99} Id.

\textsuperscript{100} See supra note 81 and accompanying text.


\textsuperscript{102} See supra notes 20–23 and accompanying text.
but it also decouples the governance side of regional transit from the funding side of it.\textsuperscript{103} In other words, GRTA, which does not fund the regional mass transit system at all, will therefore not be responsive to the local regional population, which pays the taxes. Rather, its loyalty, when setting policy, will be to the state government and the policies it advocates for. In Atlanta, where the division between the state and metro Atlanta is often divisive and fraught with mistrust, such a situation is a recipe for failure.

Equally problematic is HB 1200.\textsuperscript{104} Though HB 1200 does give the state government some appointment power on the regional transit agency’s board of directors, this appointment power only gives the state government a minority controlling interest—something pushed for by metro Atlanta local governments but also something which likely will prove politically unpalatable to the state legislature due to the state’s divisive relationship with metro Atlanta. Not only will the state government likely be reluctant to hand over the reins of a regional transit agency to a locally elected body, but added to this history of divisiveness is the party divide. The state government, which is overwhelmingly controlled by Republicans, is simply not likely to create a system which will likely be controlled by Democrats, the traditional ruling political party of the City of Atlanta. Like most pieces of legislation introduced by Georgia Democrats, the theories behind HB 1200 will die with the bill.

What’s needed, therefore, is some compromise that appeases the interests of both the state government and the local governments of metro Atlanta. Interestingly enough, that solution can be found by marrying the ideas of all three of the above discussed bills. Naming a state agency like GRTA as the regional transportation authority should be abandoned. Rather, a new regional transit agency should be created just as HB 1200 proposes. Additionally, in order to

\textsuperscript{103} See \textit{supra} note 36 and accompanying text.

\textsuperscript{104} See \textit{supra} notes 47–50 and accompanying text.
appropriately balance state and local control of the agency, the board of directors of this new regional transit agency should consist of the mayor of the most populous city in the metro Atlanta region,\textsuperscript{105} plus twenty directors appointed by the counties, divided up with each county’s representation based on population, five board positions chosen by the Governor, and a fluctuating number of board positions (with the potential to get a majority of board positions) also given to the Governor based on how much the state contributes to mass transit. In other words, if the state contributes 60\% of total funding toward mass transit in the region, then the Governor will get 60\% of the voting power on the regional mass transit agencies’ board of directors. However, if the state government contributes no funding toward mass transit, then the state government is limited to five board position appointments, a clear minority voting power. In this way, the regional transit agency both encourages state investment and control in a regional mass transit governance system, if its investment is large enough, but also stays true to the ARC’s “pay-to-play” guiding principle for regional transit governance.\textsuperscript{106} It guarantees that, if the state continues not to invest in mass transit, then metro Atlanta’s regional transit system will be controlled by metro Atlanta local governments which, right now contribute all the funding towards such a system.

CONCLUSION

The metro Atlanta region is at a crossroads. It can invest in a regional transit system and the political entities necessary to run such a system, or it can continue to sit in traffic and watch as other cities pass it by in job creation and quality of life. Georgia and the metro Atlanta region took a bold step when it passed the Transportation Investment Act in 2010 but has floundered in

\textsuperscript{105} This should be phrased this way to avoid a challenge to the law based on it being specific legislation (as opposed to general legislation).

\textsuperscript{106} See supra note 43 and accompanying text.
its efforts to set up a sorely needed regional transit governance structure. The state government’s insistence that it control any regional transit governance system which is created and the metro Atlanta region’s contrary position has left the needed reform sitting in the doldrums. A politically palatable compromise is what is needed—and one can only be found by looking at what each side wants. The state wants control of such a system and metro Atlanta local governments want the state to control regional transit policy making only if it funds it. The above discussed proposal creates a system which appeases both sides—by tying state control to state funding—and thus provides a path forward in the never ending battle to create a true regional mass transit system in metro Atlanta.

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