

Senate Bill 98

By: Senators Beach of the 21st, Jones of the 25th, Gooch of the 51st, Ginn of the 47th and  
Watson of the 1st

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges,  
2 and ferries, so as to provide for eligible expenditures for the Georgia Freight Railroad  
3 Program of the Georgia Department of Transportation; to provide for procedures, conditions,  
4 and limitations for public and private financing of projects; to revise definitions; to amend  
5 Code Section 52-2-5 of the Official Code of Georgia Annotated, relating to composition of  
6 the Georgia Ports Authority; appointment, terms, and qualifications of members generally;  
7 filling of vacancies; election of chairperson, vice chairperson, and secretary-treasurer; and  
8 quorum, so as to add the commissioner of transportation as an ex officio member of the  
9 Georgia Ports Authority; to provide for related matters; to repeal conflicting laws; and for  
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,  
14 is amended in Code Section 32-2-41.3, relating to the Georgia Freight Railroad Program,  
15 definition, eligible projects, reporting, and funding, by revising subsection (f) as follows:

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16 "(f) Prior to the expenditure of state funds, the commissioner shall make a determination  
 17 whether such expenditure is ample consideration for a substantial public benefit in  
 18 compliance with Article III, Section VI, Paragraph VI (a) of the Georgia Constitution.  
 19 Such determination may be made upon consideration of such project to enhance mobility  
 20 and safety, promote economic development, or increase the quality of life and general  
 21 welfare of the public."

22 **SECTION 2.**

23 Said title is further amended by revising Code Section 32-2-78, relating to definitions relative  
 24 to certain types of projects, as follows:

25 "32-2-78.

26 As used in this Code section and in Code Sections 32-2-79 and 32-2-80, the term:

27 (1) 'Participating local governing authority' includes the governing authority of any  
 28 county or municipality whose geographical jurisdiction includes the project.

29 (2) 'Project' means ~~a project~~ an undertaking which the department deems appropriate for  
 30 letting pursuant to the procedures of Code Section 32-2-79 and Code Section 32-2-80."

31 **SECTION 3.**

32 Said title is further amended by revising Code Section 32-2-79, relating to reporting on  
 33 congestion mitigation and letting of projects, as follows:

34 "32-2-79.

35 (a) The staff of the department shall jointly identify and report to the board by July 31 of  
 36 each odd-numbered year ~~those projects on the state-wide transportation improvement~~  
 37 ~~program or otherwise identified that afford the greatest gains in congestion mitigation or~~  
 38 ~~promotion of economic development~~ potential undertakings that would provide a public  
 39 benefit by either enhancing mobility and safety, promoting economic development, or  
 40 increasing the quality of life and general welfare of the public.

41 (b) Any project identified pursuant to subsection (a) of this Code section that will not be  
42 initiated within two years of the reporting date or that does not have specific available and  
43 complete funding may be let and constructed utilizing the procedures of this Code section  
44 and Code Section 32-2-80. All personnel of the department shall cooperate in all respects  
45 in the letting, construction, maintenance, and operation of such projects, including without  
46 limitation providing such access and control of portions of the state highway system as may  
47 be requested or required from time to time for such purposes.

48 (c) Projects wholly or partly in a metropolitan planning area shall be included in a fiscally  
49 constrained transportation improvement program."

50

#### SECTION 4.

51 Said title is further amended by revising Code Section 32-2-80, relating to public and private  
52 financing of projects, prohibitions, request for proposed process, no delegation of eminent  
53 domain, and performance and payment security, as follows:

54 "32-2-80.

55 (a)(1) The department shall evaluate a project to determine, in the judgment of the  
56 department, appropriate or desirable levels of state, local, and private participation in  
57 financing such project. In making such determination, the department shall be authorized  
58 and encouraged to seek the advice and input of the affected local governing authorities,  
59 applicable metropolitan planning organizations, and the private financial and construction  
60 sectors.

61 ~~(1.1)~~(2) No constitutional officer or member of the State Transportation Board shall  
62 serve as an agent, lobbyist, or board member for any entity directly or indirectly under  
63 contract with or negotiating a contract with the department under this Code section for  
64 one year after leaving his or her position as a constitutional officer or member of the State  
65 Transportation Board.

66 ~~(2)~~(b)(1) For projects that are funded or financed in part or in whole by private sources,  
67 the department shall be authorized to issue a written request for proposal indicating in  
68 general terms the scope of the project, the proposed financial participations in the project,  
69 and the factors that will be used in evaluating the proposal and containing or  
70 incorporating by reference other applicable contractual terms and conditions, including  
71 any unique capabilities or qualifications that will be required of the contractor. Public  
72 notice of such request for proposal shall be made at least 90 days prior to the date set for  
73 receipt of proposals by posting the legal notice on a single website that shall be procured  
74 and maintained for such purposes by the Department of Administrative Services or in  
75 substantially the same manner utilized by the department to solicit requests for proposals.

76 ~~(3)~~(2) Upon receipt of a proposal or proposals responsive to the request for proposals,  
77 the department shall accept written public comment, solicited in the same manner as  
78 provided for notice of proposals, for a period of 30 days beginning at least ten days after  
79 the date set for receipt of proposals. In addition, the department shall hold at least one  
80 public hearing on such proposals not later than the conclusion of the period for public  
81 comment.

82 ~~(4)~~(3) The department ~~shall engage in individual discussions with~~ may select two or  
83 more respondents ~~deemed fully qualified, responsible, and suitable on the basis of initial~~  
84 ~~responses and with emphasis on~~ to engage for informal interview and discussion based  
85 upon responses submitted pursuant to paragraph (1) of this subsection which demonstrate  
86 professional competence and ability to meet the level of private financial participation  
87 called for by the department. Repetitive informal discussions and interviews shall be  
88 permissible. In the event that any local governing authority has agreed to consider  
89 financial participation in the project, a representative of such local governing authority,  
90 appointed by such local governing authority, may participate in such discussions and  
91 interviews. ~~At the discussion~~ During this stage, the department may discuss estimates of  
92 total project costs, including, but not limited to, life cycle costing and nonbinding

93 estimates of price for services. Proprietary information from competing respondents shall  
94 not be disclosed to the public or to competitors.

95 (4) Upon conclusion of discussions described in paragraph (3) of this subsection, the  
96 department shall rank respondents based upon satisfaction of factors in the request for  
97 proposal. The department shall then negotiate with ranked ~~At the conclusion of such~~  
98 ~~discussions, on the basis of evaluation factors published in the request for proposal and~~  
99 ~~all information developed in the selection process, the department, with the input of any~~  
100 ~~participating local governing authority, shall select in the order of preference two or more~~  
101 ~~respondents whose qualifications and proposed services are deemed most meritorious.~~  
102 ~~Negotiations shall then be conducted with two or more respondents and with the~~  
103 ~~participation of the designated representative of any participating local governing~~  
104 ~~authority.~~

105 (5) Upon approval by the department, the commissioner shall select the respondent for  
106 project implementation based upon contract terms that are the most satisfactory and  
107 advantageous to the state and to the department based upon a thorough assessment of  
108 value and the ability of the final project's characteristics to meet state strategic goals and  
109 investment policies as provided for by Code Section 32-2-41.1. Before making such  
110 selection, the commissioner shall consult with any participating local governing authority  
111 or authorities.

112 (6) Notwithstanding the foregoing, if the terms and conditions for multiple awards are  
113 included in the request for proposal, the department may award contracts to more than  
114 one respondent. Should the department determine in writing and in its sole discretion that  
115 only one respondent is fully qualified, or that one respondent is clearly more highly  
116 qualified and suitable than the others under consideration, a contract may be negotiated  
117 and awarded to that respondent.

118 ~~(5)(c)~~ (c) Nothing in this Code section shall require the department to continue negotiations  
119 or discussions arising out of any request for proposal.

120 ~~(6)~~(d) The department shall be authorized to promulgate reasonable rules or regulations  
121 to assist in ~~its evaluation of the proposal~~ evaluations and to implement the purposes of this  
122 Code section. The department shall report the content of such rules or regulations to the  
123 Transportation Committees of the Senate and House of Representatives for their approval  
124 by majority vote prior to the promulgation thereof and shall make quarterly reports to the  
125 same chairpersons of all of its activities undertaken pursuant to the provisions of this Code  
126 section.

127 ~~(b)~~(e) Any contracts entered into pursuant to this Code section may authorize funding to  
128 include tolls, fares, or other user fees and tax increments for use of the project that is the  
129 subject of the proposal. Such funding may be distributed by contract among the  
130 participants in the project as may be provided for by contract. The department may take  
131 any action to obtain federal, state, or local assistance for a qualifying project that serves the  
132 public purpose of this Code section and may enter into any contracts required to receive  
133 such assistance. The department may determine that it serves the public purpose of this  
134 Code section for all or any portion of the costs of a qualifying project to be paid, directly  
135 or indirectly, from the proceeds of a grant or loan made by the federal, state, or local  
136 government or any instrumentality thereof. The department may agree to make grants or  
137 loans to the operator from time to time from amounts received from the federal, state, or  
138 local government or any agency or instrumentality thereof.

139 ~~(e)~~(f) The commissioner shall be authorized to delegate such duties and responsibilities  
140 under this Code section as he or she deems appropriate from time to time; provided,  
141 however, that the final approval of contracts provided for in this Code section shall be by  
142 action of the State Transportation Board.

143 ~~(d)~~(g) The power of eminent domain shall not be delegated to any private entity with  
144 respect to any project commenced or proposed pursuant to this Code section.

145 ~~(e)~~(h) Any contract for a public-private partnership shall require the private partner or each  
146 of its prime contractors to provide performance and payment security. Notwithstanding

147 any other provision of law, the penal sum or amount of such security may be less than the  
148 price of the contract involved, based upon the department's determination on a  
149 project-by-project basis of what sum may be required to adequately protect the department,  
150 the state, and the contracting and subcontracting parties."

151 **SECTION 5.**

152 Said title is further amended in Code Section 32-10-60, relating to definitions relative to the  
153 State Road and Tollway Authority, by revising paragraph (5) as follows:

154 "(5) 'Project' means ~~land public transportation systems~~ transportation related  
155 undertakings which provide a public benefit, including: (A) one or more roads or bridges  
156 or a system of roads, bridges, and tunnels or improvements thereto included on an  
157 approved state-wide transportation improvement program on the Developmental  
158 Highway System as set forth in Code Section 32-4-22, as now or hereafter amended, or  
159 a comprehensive transportation plan pursuant to Code Section 32-2-3 or which are toll  
160 access roads, bridges, or tunnels, with access limited or unlimited as determined by the  
161 authority, and such buildings, structures, parking areas, appurtenances, and facilities  
162 related thereto, including but not limited to approaches, cross streets, roads, bridges,  
163 tunnels, and avenues of access for such system; (B) any program for mass transportation  
164 or mass transportation facilities as approved by the authority and the department and such  
165 buildings, structures, parking areas, appurtenances, and facilities related thereto,  
166 including, but not limited to, approaches, cross streets, roads, bridges, tunnels, and  
167 avenues of access for such facilities; ~~and~~ (C) buildings, structures, parking areas,  
168 appurtenances, and facilities related thereto used in connection with the movement of  
169 goods or persons; and (D) any project undertaken pursuant to a public-private initiative  
170 as authorized pursuant to Code Section 32-2-78 under any provisions of Code Sections  
171 32-2-78 through 32-2-80."

172

**SECTION 6.**

173 Said title is further amended in Code Section 32-10-63, relating to powers of authority  
174 generally, by revising paragraph (5) as follows:

175 "(5) To make such contracts, leases, or conveyances as the legitimate and necessary  
176 purposes of this article shall require, including but not limited to contracts for  
177 construction or maintenance of projects, provided that the authority shall consider the  
178 possible economic, social, and environmental effects of each project, and the authority  
179 shall assure that possible adverse economic, social, and environmental effects relating to  
180 any proposed project have been fully considered in developing such project and that the  
181 final decision on the project is made in the best overall public interest, taking into  
182 consideration the need for fast, safe, and efficient transportation, public services, and the  
183 cost of eliminating or minimizing adverse economic, social, and environmental effects.  
184 Furthermore, in order to assure that adequate consideration is given to economic, social,  
185 and environmental effects of any ~~tollway~~ project under consideration, the authority shall:

186 (A) Follow the processes required for federal-aid highway projects, as determined by  
187 the National Environmental Policy Act of 1969, as amended, except that final approval  
188 of the adequacy of such consideration shall rest with the Governor, as provided in  
189 subparagraph (C) of this paragraph, acting as the chief executive of the state, upon  
190 recommendation of the commissioner, acting as chief administrative officer of the  
191 Department of Transportation;

192 (B) In the location and design of any project, avoid the taking of or disruption of  
193 existing public parkland or public recreation areas unless there are no prudent or  
194 feasible project location alternates. The determination of prudence and feasibility shall  
195 be the responsibility of the authority as part of the consideration of the overall public  
196 interest;

197 (C) Not approve and proceed with acquisition of rights of way and construction of a  
198 project until: (i) there has been held, or there has been offered an opportunity to hold,



199 a public hearing or public hearings on such project in compliance with requirements of  
 200 the Federal-aid Highway Act of 1970, as amended, except that neither acquisition of  
 201 right of way nor construction shall be required to cease on any federal-aid project which  
 202 has received federal approval pursuant to the National Environmental Policy Act of  
 203 1969, as amended, and is subsequently determined to be eligible for construction as an  
 204 authority project utilizing, in whole or in part, a mix of federal funds and authority  
 205 funds; and (ii) the adequacy of environmental considerations has been approved by the  
 206 Governor, for which said approval of the environmental considerations may come in  
 207 the form of the Governor's acceptance of a federally approved environmental document;  
 208 and  
 209 (D) Let by public competitive bid upon plans and specifications approved by the chief  
 210 engineer or his or her successors all contracts for the construction of projects, except  
 211 as otherwise provided for projects authorized under any provisions of Code Sections  
 212 32-2-78 through 32-2-81;"

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**SECTION 7.**

214 Code Section 52-2-5 of the Official Code of Georgia Annotated, relating to composition of  
 215 the Georgia Ports Authority; appointment, terms, and qualifications of members generally;  
 216 filling of vacancies; election of chairperson, vice chairperson, and secretary-treasurer; and  
 217 quorum, is amended by revising subsection (b) as follows:

218 "(b) The nine members of the authority in office immediately prior to May 1, 2000, shall  
 219 serve out the remainder of the terms for which they were appointed, all of such terms  
 220 expiring on June 30 of the year of expiration. In addition to said nine members, the  
 221 Governor shall appoint three members for terms to expire June 30, 2004. The director of  
 222 the Office of Planning and Budget or his or her designee and the commissioner of  
 223 transportation or his or her designee as approved by the Governor shall serve as an ex  
 224 officio ~~member~~ members of the authority."

225

**SECTION 8.**

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