

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

AS PASSED SENATE

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~~ shall 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 and any designated representative of any participating local
98 governing authority shall then negotiate with ranked respondents. At the conclusion of
99 such discussions, on the basis of evaluation factors published in the request for proposal
100 and all information developed in the selection process, the department, with the input of
101 any participating local governing authority, shall select in the order of preference two or
102 more respondents whose qualifications and proposed services are deemed most
103 meritorious. Negotiations shall then be conducted with two or more respondents and with
104 the participation of the designated representative of any participating local governing
105 authority.

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

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

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

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

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

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

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

146 (e)(h) Any contract for a public-private partnership shall require the private partner or each
147 of its prime contractors to provide performance and payment security. Notwithstanding
148 any other provision of law, the penal sum or amount of such security may be less than the
149 price of the contract involved, based upon the department's determination on a
150 project-by-project basis of what sum may be required to adequately protect the department,
151 the state, and the contracting and subcontracting parties."

152

SECTION 5.

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

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

171 ~~pursuant to Code Section 32-2-78~~ under any provisions of Code Sections 32-2-78 through
172 32-2-80."

173 **SECTION 6.**

174 Said title is further amended in Code Section 32-10-63, relating to powers of the State Road
175 and Tollway Authority generally, by revising paragraph (5) as follows:

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

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

193 (B) In the location and design of any project, avoid the taking of or disruption of
194 existing public parkland or public recreation areas unless there are no prudent or
195 feasible project location alternates. The determination of prudence and feasibility shall

196 be the responsibility of the authority as part of the consideration of the overall public
197 interest;

198 (C) Not approve and proceed with acquisition of rights of way and construction of a
199 project until: (i) there has been held, or there has been offered an opportunity to hold,
200 a public hearing or public hearings on such project in compliance with requirements of
201 the Federal-aid Highway Act of 1970, as amended, except that neither acquisition of
202 right of way nor construction shall be required to cease on any federal-aid project which
203 has received federal approval pursuant to the National Environmental Policy Act of
204 1969, as amended, and is subsequently determined to be eligible for construction as an
205 authority project utilizing, in whole or in part, a mix of federal funds and authority
206 funds; and (ii) the adequacy of environmental considerations has been approved by the
207 Governor, for which said approval of the environmental considerations may come in
208 the form of the Governor's acceptance of a federally approved environmental document;
209 and

210 (D) Let by public competitive bid upon plans and specifications approved by the chief
211 engineer or his or her successors all contracts for the construction of projects, except
212 as otherwise provided for projects authorized under any provisions of Code Sections
213 32-2-78 through 32-2-81;"

214 **SECTION 7.**

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

219 "(b) The nine members of the authority in office immediately prior to May 1, 2000, shall
220 serve out the remainder of the terms for which they were appointed, all of such terms
221 expiring on June 30 of the year of expiration. In addition to said nine members, the

222 Governor shall appoint three members for terms to expire June 30, 2004. The director of
223 the Office of Planning and Budget or his or her designee as approved by the Governor and
224 the commissioner of transportation or his or her designee shall serve as an ex officio
225 ~~member~~ members of the authority."

226

SECTION 8.

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