

House Bill 1136

By: Representatives Lunsford of the 85th, Post 2, Royal of the 140th, Westmoreland of the 86th, Graves of the 10th, Yates of the 85th, Post 1, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 10 of Title 32 of the Official Code of Georgia Annotated,
2 relating to the State Road and Tollway Authority, so as to enact the "Georgia Transportation
3 Infrastructure Bank Act"; to create the Georgia Transportation Infrastructure Bank as an
4 instrumentality of the state within the State Road and Tollway Authority; to provide for
5 governance of the bank by the board of the authority; to provide for the functions of the bank
6 in general and in particular with respect to the financing of transportation projects of
7 government units and private entities contracting with government units; to define terms; to
8 provide for the powers, duties, governance, and operations of the bank; to provide for
9 capitalization of the bank and funding sources; to authorize the issuance of bonds by the
10 authority for purposes of the bank; to provide for other related matters; to repeal conflicting
11 laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Article 2 of Chapter 10 of Title 32 of the Official Code of Georgia Annotated, relating to the
15 State Road and Tollway Authority, is amended by adding at its end a new Part 3 to read as
16 follows:

17 style="text-align:center">"Part 3

18 32-10-120.

19 This part shall be known and may be cited as the 'Georgia Transportation Infrastructure
20 Bank Act.'

21 32-10-121.

22 (a) There is created within the State Road and Tollway Authority an instrumentality of the
23 state to be known as the Georgia Transportation Infrastructure Bank.

1 (b) The bank is governed by the board of the State Road and Tollway Authority as
2 provided in this chapter.

3 (c) The corporate purpose of the bank is to select and assist in financing major qualified
4 projects by providing loans and other financial assistance to government units and private
5 entities for constructing and improving highway and transportation facilities necessary for
6 public purposes, including economic development. The exercise by the bank of a power
7 conferred in this part is an essential public function.

8 (d) The bank shall establish and maintain at least the four following accounts: state
9 highway account, state transit account, federal highway account, and federal transit
10 account.

11 32-10-122.

12 As used in this part, unless the context clearly indicates otherwise, the term:

13 (1) 'Bank' means the Georgia Transportation Infrastructure Bank.

14 (2) 'Board' means the board of the State Road and Tollway Authority.

15 (3) 'Department of Transportation' means the Georgia Department of Transportation and
16 its successors.

17 (4) 'Eligible costs' means as applied to a qualified project to be financed from the federal
18 accounts, the costs that are permitted under applicable federal laws, requirements,
19 procedures, and guidelines in regard to establishing, operating, and providing assistance
20 from the bank. As applied to a qualified project to be financed from the state highway
21 account, these costs include the costs of preliminary engineering, traffic and revenue
22 studies, environmental studies, right-of-way acquisition, legal and financial services
23 associated with the development of the qualified project, construction, construction
24 management, facilities, and other costs necessary for the qualified project. As applied to
25 any qualified project to be financed from the state transit account, eligible project costs
26 are limited to capital expenditures for transit equipment and facilities.

27 (5) 'Eligible project' means a highway, including bridges, or transit project which
28 provides public benefits by either enhancing mobility and safety, promoting economic
29 development, or increasing the quality of life and general welfare of the public. The term
30 'eligible project' also includes mass transit including, but not limited to, monorail and
31 monobeam mass transit systems.

32 (6) 'Federal accounts' means, collectively, the separate account for federal highway funds
33 and federal transit funds.

34 (7) 'Financing agreement' means any agreement entered into between the bank and a
35 qualified borrower pertaining to a loan or other financial assistance. This agreement may
36 contain, in addition to financial terms, provisions relating to the regulation and

1 supervision of a qualified project, or other provisions as the board may determine. The
2 term 'financing agreement' includes, without limitation, a loan agreement, trust indenture,
3 security agreement, reimbursement agreement, guarantee agreement, bond or note,
4 ordinance or resolution, or similar instrument.

5 (8) 'Government unit' means a municipal corporation, county, or other public body,
6 instrumentality, or agency of state or local government, including combinations of two
7 or more of these entities acting jointly to construct, own, or operate a qualified project,
8 and any other state or local authority, board, commission, agency, department, or other
9 political subdivision created by the General Assembly or pursuant to the Constitution and
10 laws of this state which may construct, own, or operate a qualified project.

11 (9) 'Loan' means an obligation subject to repayment which is provided by the bank to a
12 qualified borrower for all or a part of the eligible costs of a qualified project. A loan may
13 be disbursed in anticipation of reimbursement for or direct payment of the eligible costs
14 of a qualified project.

15 (10) 'Loan obligation' means a bond, note, or other evidence of an obligation issued by
16 a qualified borrower.

17 (11) 'Other financial assistance' includes, but is not limited to, grants, contributions,
18 credit enhancement, capital or debt reserves for bonds or debt instrument financing,
19 interest rate subsidies, provision of letters of credit and credit instruments, provision of
20 bond or other debt financing instrument security, and other lawful forms of financing and
21 methods of leveraging funds that are approved by the board, and in the case of federal
22 funds, as allowed by federal law.

23 (12) 'Private entity' means a private person or entity that has entered into a contract with
24 a government unit to design, finance, construct, and operate a highway, bridge, tunnel,
25 or approach within the jurisdiction of the government unit responsible for complying with
26 applicable federal requirements.

27 (13) 'Project revenues' means all rates, rents, fees, assessments, charges, and other
28 receipts derived or to be derived by a qualified borrower from a qualified project or made
29 available from a special source, and, as provided in the applicable financing agreement,
30 derived from any system of which the qualified project is a part or from any other
31 revenue producing facility under the ownership or control of the qualified borrower
32 including, without limitation, proceeds of grants, gifts, appropriations and loans,
33 including the proceeds of loans made by the bank, investment earnings, reserves for
34 capital and current expenses, proceeds of insurance or condemnation and proceeds from
35 the sale or other disposition of property and from any other special source as may be
36 provided by the qualified borrower.

1 (14) 'Qualified borrower' means any government unit or private entity which is
2 authorized to construct, operate, or own a qualified project.

3 (15) 'Qualified project' means an eligible project which has been selected by the bank to
4 receive a loan or other financial assistance from the bank to defray an eligible cost.

5 (16) 'State accounts' means, collectively, the separate account for state highway funds
6 and state transit funds.

7 32-10-123.

8 In administering the affairs of the bank, the board may exercise any or all of the powers
9 granted to the authority under Parts 1 and 2 of this article, as well as the powers granted in
10 this part. Without limiting the generality of the foregoing, the board is specifically
11 authorized to issue bonds for the purposes of the bank, in the same general manner
12 provided in Part 2 of this article.

13 32-10-124.

14 (a) In addition to the powers contained elsewhere in this article, the board has all power
15 necessary, useful, or appropriate to fund, operate, and administer the bank, and to perform
16 its other functions including, but not limited to, the power to:

17 (1) Have perpetual succession;

18 (2) Adopt, promulgate, amend, and repeal bylaws, not inconsistent with provisions in
19 this part for the administration of the bank's affairs and the implementation of its
20 functions, including the right of the board to select qualifying projects and to provide
21 loans and other financial assistance;

22 (3) Sue and be sued in the name of the bank;

23 (4) Have a seal and alter it at its pleasure, although the failure to affix the seal does not
24 affect the validity of an instrument executed on behalf of the bank;

25 (5) Make loans to qualified borrowers to finance the eligible costs of qualified projects
26 and to acquire, hold, and sell loan obligations at prices and in a manner as the board
27 determines advisable;

28 (6) Provide qualified borrowers with other financial assistance necessary to defray
29 eligible costs of a qualified project;

30 (7) Enter into contracts, arrangements, and agreements with qualified borrowers and
31 other persons and execute and deliver all financing agreements and other instruments
32 necessary or convenient to the exercise of the powers granted in this part;

33 (8) Enter into agreements with a department, agency, or instrumentality of the United
34 States or of this state or another state for the purpose of planning and providing for the
35 financing of qualified projects;

- 1 (9) Establish:
- 2 (A) Policies and procedures for the making and administering of loans and other
3 financial assistance; and
- 4 (B) Fiscal controls and accounting procedures to ensure proper accounting and
5 reporting by the bank, government units, and private entities;
- 6 (10) Acquire by purchase, lease, donation, or other lawful means and sell, convey,
7 pledge, lease, exchange, transfer, and dispose of all or any part of its properties and assets
8 of every kind and character or any interest in it to further the public purpose of the bank;
- 9 (11) Procure insurance, guarantees, letters of credit, and other forms of collateral or
10 security or credit support from any public or private entity, including any department,
11 agency, or instrumentality of the United States or this state, for the payment of any bonds
12 issued by it, including the power to pay premiums or fees on any insurance, guarantees,
13 letters of credit, and other forms of collateral or security or credit support;
- 14 (12) Collect or authorize the trustee under any trust indenture securing any bonds to
15 collect amounts due under any loan obligations owned by it, including taking the action
16 required to obtain payment of any sums in default;
- 17 (13) Unless restricted under any agreement with holders of bonds, consent to any
18 modification with respect to the rate of interest, time, and payment of any installment of
19 principal or interest, or any other term of any loan obligations owned by it;
- 20 (14) Borrow money through the issuance of bonds and other forms of indebtedness as
21 provided in this article;
- 22 (15) Expend funds to obtain accounting, management, legal, financial consulting, and
23 other professional services necessary to the operations of the bank;
- 24 (16) Expend funds credited to the bank as the board determines necessary for the costs
25 of administering the operations of the bank;
- 26 (17) Establish advisory committees as the board determines appropriate, which may
27 include individuals from the private sector with banking and financial expertise;
- 28 (18) Procure insurance against losses in connection with its property, assets, or activities
29 including insurance against liability for its acts or the acts of its employees or agents or
30 to establish cash reserves to enable it to act as a self-insurer against any and all such
31 losses;
- 32 (19) Collect fees and charges in connection with its loans or other financial assistance;
- 33 (20) Apply for, receive, and accept from any source, aid, grants, or contributions of
34 money, property, labor, or other things of value to be used to carry out the purposes of
35 this part subject to the conditions upon which the aid, grants, or contributions are made;
- 36 (21) Enter into contracts or agreements for the servicing and processing of financial
37 agreements;

1 (22) Accept and hold, with or without payment of interest, funds deposited with the bank
2 by government units and private entities; and

3 (23) Do all other things necessary or convenient to exercise powers granted or
4 reasonably implied by this part.

5 (b) The bank is not authorized or empowered to be or to constitute a bank or trust company
6 within the jurisdiction or under the control of this state or an agency of it or the
7 Comptroller of the Currency or the Treasury Department of the United States, or a bank,
8 banker, or dealer in securities within the meaning of, or subject to the provisions of, any
9 securities, securities exchange, or securities dealers' law of the United States or of this
10 state.

11 (c) The bank is subject to the provisions of Chapter 13 of Title 50, the 'Georgia
12 Administrative Procedure Act.'

13 32-10-125.

14 (a) The following sources may be used to capitalize the bank and for the bank to carry out
15 its purposes:

16 (1) Appropriations by the General Assembly;

17 (2) Federal funds made available to the state;

18 (3) Federal funds made available to the state for the bank;

19 (4) Contributions, donations, and deposits from government units, private entities, and
20 any other source as may become available to the bank;

21 (5) All monies paid or credited to the bank, by contract or otherwise, payments of
22 principal and interest on loans or other financial assistance made from the bank, and
23 interest earnings which may accrue from the investment or reinvestment of the bank's
24 monies;

25 (6) Proceeds from the issuance of bonds as provided in this part;

26 (7) Other lawful sources as determined appropriate by the board; and

27 (8) Loans from the Department of Transportation to the bank to be repaid from revenues
28 committed to the bank for the following year.

29 (b) Without limiting the provisions of subsection (a) of this Code section, it is specifically
30 provided that any local government may use the proceeds of any local motor fuel tax which
31 may be hereafter made available by law for the purposes of this part, including without
32 limitation the funding of eligible projects and contributions, donations, and deposits to the
33 bank.

34 (c) Neither the proceeds of the state motor fuel taxes nor any other state revenue source
35 currently dedicated to any particular purpose or program shall be diverted to the bank.

1 32-10-126.

2 (a) Earnings on balances in the federal accounts must be credited and invested according
3 to federal law. Earnings on state accounts must be credited to the state highway account or
4 state transit account that generates the earnings. The bank may establish accounts and
5 subaccounts within the state accounts and federal accounts as considered desirable to
6 effectuate the purposes of this part, or to meet the requirements of any state or federal
7 programs.

8 (b) For necessary and convenient administration of the bank, the board shall establish
9 federal and state accounts and subaccounts within the bank necessary to meet any
10 applicable federal law requirements or as the bank shall determine necessary or desirable
11 in order to implement the provisions of this part.

12 (c) The bank shall comply with all applicable federal laws and regulations prohibiting the
13 commingling of certain federal funds deposited in the bank.

14 32-10-127.

15 (a) The bank may provide loans and other financial assistance to a government unit or
16 private entity to pay for all or part of the eligible costs of a qualified project. The term of
17 the loan or other financial assistance shall not exceed the useful life of the project. The
18 bank may require the government unit or private entity to enter into a financing agreement
19 in connection with its loan obligation or other financial assistance. The board shall
20 determine the form and content of loan applications, financing agreements, and loan
21 obligations including the term and rate or rates of interest on a financing agreement. The
22 terms and conditions of a loan or other financial assistance from federal accounts shall
23 comply with applicable federal requirements.

24 (b) The board shall determine which projects are eligible projects and then select from
25 among the eligible projects those qualified to receive from the bank a loan or other
26 financial assistance. Preference must be given to eligible projects which have local
27 financial support. In selecting qualified projects, the board shall consider the projected
28 feasibility of the project and the amount and degree of risk to be assumed by the bank. The
29 board also may consider, but shall not be limited to, the following criteria in making its
30 determination that an eligible project is a qualified project:

31 (1) The local support of the project, expressed by resolutions by the governing bodies in
32 the areas in which the project will be located, and the financial or in-kind contributions
33 to the project;

34 (2) Maximum economic benefit, enhancement of mobility, enhancement of public safety,
35 acceleration of project completion, and enhancement of transportation services;

1 (3) The ability of the applicant to repay a loan according to the terms and conditions
2 established pursuant to this part, consideration of which may include, at the option of the
3 board, the existence of current investment grade rating on existing debt of the applicant
4 secured by the same revenues to be pledged to secure repayment under the loan
5 repayment agreement;

6 (4) The financial or in-kind contributions to the project;

7 (5) Greater weighting in recommending priorities for eligible projects to areas of the
8 state experiencing high unemployment; and

9 (6) Whether the governing body of the county or the incorporated municipality in which
10 the project is to be located provides to the bank a resolution which makes a finding that
11 the project is essential to its economic development.

12 32-10-128.

13 (a) Qualified borrowers are authorized to obtain loans or other financial assistance from
14 the bank through financing agreements. Qualified borrowers entering into financing
15 agreements and issuing loan obligations to the bank may perform any acts, take any action,
16 adopt any proceedings, and make and carry out any contracts or agreements with the bank
17 as may be agreed to by the bank and any qualified borrower for the carrying out of the
18 purposes contemplated by this part.

19 (b) In addition to the authorizations contained in this part, all other statutes or provisions
20 permitting government units to borrow money and issue obligations, including, but not
21 limited to Article 3 of Chapter 82 of Title 36, the 'Revenue Bond Law,' may be utilized by
22 any government unit in obtaining a loan or other financial assistance from the bank to the
23 extent determined necessary or useful by the government unit in connection with any
24 financing agreement and the issuance, securing, or sale of loan obligations to the bank.

25 (c) A qualified borrower may receive, apply, pledge, assign, and grant security interests
26 in project revenues to secure its obligations as provided in this part. A qualified borrower
27 may fix, revise, charge, and collect fees, rates, rents, assessments, and other charges of
28 general or special application for the operation or services of a qualified project, the system
29 of which it is a part, and any other revenue producing facilities from which the qualified
30 borrower derives project revenues to meet its obligations under a financing agreement or
31 to provide for the construction and improving of a qualified project.

32 32-10-129.

33 The bank is performing an essential governmental function in the exercise of the powers
34 conferred upon it and is not required to pay taxes or assessments upon property or upon its

1 operations or the income therefrom, or taxes or assessments upon property or loan
2 obligations acquired or used by the bank or upon the income therefrom.

3 32-10-130.

4 (a) If a government unit fails to collect and remit in full all amounts due to the bank on the
5 date these amounts are due under the terms of any note or other obligation of the
6 government unit, the bank shall notify the appropriate state officials who shall withhold all
7 or a portion of the funds of the state and all funds administered by the state and its
8 agencies, boards, and instrumentalities allotted or appropriated to the government unit and
9 apply an amount necessary to the payment of the amount due.

10 (b) Nothing contained in this section mandates the withholding of funds allocated to a
11 government unit or private entity which would violate contracts to which the state is a
12 party, the requirements of federal law imposed on the state, or judgments of a court binding
13 on the state.

14 32-10-131.

15 Neither the board nor any officer, employee, or committee of the bank acting on behalf of
16 it, while acting within the scope of this authority, is subject to any liability resulting from
17 carrying out any of the powers given in this part.

18 32-10-132.

19 Notice, proceeding, or publication, except those required in this part, are not necessary to
20 the performance of any act authorized in this part nor is any act of the bank subject to any
21 referendum.

22 32-10-133.

23 Following the close of each state fiscal year, the bank shall submit an annual report of its
24 activities for the preceding year to the Governor and make such report available to the
25 General Assembly. The bank also shall submit an annual report to the appropriate federal
26 agency in accordance with requirements of any federal program."

27 **SECTION 2.**

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