

Senate Bill 553

By: Senators Williams of the 19th and Kemp of the 46th

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

To amend Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries, so as to provide for an exception for design-build on the limitations on the power of the department to contract; to provide for the development of design-build procedures for the construction of any public road or other transportation purpose project; to define a term; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries, is amended by striking paragraph (1) of subsection (d) of Code Section 32-2-61, relating to limitations on power to contract, in its entirety and inserting in its place the following:

"(d)(1) The department is prohibited from negotiating any contract for the construction or maintenance of a public road involving the expenditure of \$50,000.00 or more except any contract:

(A) With counties, municipalities, and state agencies, provided that such negotiated contract shall be made at the average bid price of the same kind of work let to contract after advertisement during a period of 60 days prior to the making of the contract;

(B) With a railroad company or utility concerning relocation of its tracks or facilities where the same are not then located on a public road and such relocation is necessary as an incident to the construction or improvement of a public road. However, nothing contained in this subsection shall be construed as requiring the department to furnish a site or right of way for railroad or railway lines or tracks or utility facilities required to be removed from a public road. Furthermore, this subsection shall not prevent the department from assisting in the removal and relocation of publicly owned utilities from locations on public roads as provided in Code Section 32-6-170;

(C) For emergency construction or maintenance involving the expenditure of \$50,000.00 or more when the public interest requires that the work be done without the delay of advertising for public bids;

(D) For the procurement of business, professional, or other services from any person, firm, or corporation as an independent contractor; ~~or~~

(E) With the State Road and Tollway Authority; or

(F) Through the provisions of a design-build contract as provided for in Code Section 32-2-81."

SECTION 2.

Said title is further amended by adding a new Code Section 32-2-81 to read as follows:

"32-2-81.

(a) As used in this Code section, the term 'design-build procedure' means a method of contracting under which the department contracts with another party for the party to both design and build the structures, facilities, and other items specified in the contract.

(b) The department may use the design-build procedure for buildings, bridges and approaches, rail corridors, and limited or controlled access projects or projects that may be constructed within existing rights of way where the scope of work can be clearly defined or when a significant savings in project delivery time can be attained and when the estimated bid cost does not exceed \$10 million.

(c) When the department determines that it is in the best interests of the public, the department may combine any or all of the environmental services, right of way services, design services, and construction phases of a public road or other transportation purpose project into a single contract using a design-build procedure. Design-build contracts may be advertised and awarded notwithstanding the requirements of paragraph (1) of subsection (d) of Code Section 32-2-61. However, construction activities may not begin on any portion of such projects until title to the necessary rights of way and easements for the construction of that portion of the project has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed.

(d) The department shall adopt by rule procedures for administering design-build contracts. Such procedures shall include, but not be limited to:

(1) Prequalification requirements;

(2) Public advertisement procedures;

(3) Scope of service requirements;

(4) Letters of interest requirements;

(5) Request for proposals. Requests for proposal shall include the applicable percentage to be applied to each evaluation criterion and the relative weight to be assigned to each;

1 (6) Criteria for evaluating technical information and project costs;

2 (7) Criteria for selection and award process, provided that the rules shall specify that the
3 criteria for selection shall consist of the following minimum two components:

4 (A) A statement of qualifications from which the department will determine a list of
5 qualified firms for the project; and

6 (B) From the list of qualified firms as provided in subparagraph (A) of this paragraph,
7 a price proposal from each firm from which the department shall select the lowest, most
8 responsive bidder; provided, however, that a proposal will only be considered
9 nonresponsive if it does not contain all the information and level of detail requested in
10 the request for proposal. A proposal shall not be deemed to be nonresponsive solely on
11 the basis of minor irregularities in the proposal that do not directly affect the ability to
12 fairly evaluate the merits of the proposal. Notwithstanding the requirements of Code
13 Section 36-91-21, under no circumstances shall the department use a 'best and final
14 offer' standard in awarding a contract; and

15 (8) Criteria for resolution of contract issues.

16 (e) The department must receive at least three letters of interest in order to proceed with
17 a request for proposals. The department shall request proposals from no fewer than three
18 of the design-build firms submitting letters of interest. If a design-build firm withdraws
19 from consideration after the department requests proposals, the department may continue
20 if at least two proposals are received.

21 (f) In contracting for design-build projects, the department shall be limited to contracting
22 for no more than \$100 million per fiscal year.

23 (g) Not later than 90 days after the end of the fiscal year, the department shall provide to
24 the Governor, Lieutenant Governor, Speaker of the House of Representatives, and
25 chairmen of the House and Senate Transportation Committees a summary containing all
26 the projects awarded during the fiscal year using the design-build contracting method.
27 Included in the report shall be an explanation for projects awarded to other than the low bid
28 proposal. This report shall be made available for public information."

29 **SECTION 3.**

30 This Act shall become effective on July 1, 2004.

31 **SECTION 4.**

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