

House Bill 137

By: Representatives Lunsford of the 110th, Smith of the 129th, Keen of the 179th, Ehrhart of the 36th, O`Neal of the 146th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 23 of Title 50 of the Official Code of Georgia Annotated, relating to the
2 Georgia Environmental Facilities 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 Georgia Environmental Facilities Authority; to provide
5 for governance of the bank by the members of the authority; to provide for the functions of
6 the bank in general and in particular with respect to the financing of transportation projects
7 of government units and private entities contracting with government units; to define terms;
8 to 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 **SECTION 1.**

14 Chapter 23 of Title 50 of the Official Code of Georgia Annotated, relating to the Georgia
15 Environmental Facilities Authority, is amended by adding at its end a new Article 3 to read
16 as follows:

17 **"ARTICLE 3**

18 50-23-50.

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

21 50-23-51.

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

1 (b) The bank shall be governed by the members of the Georgia Environmental Facilities
2 Authority as provided in this chapter.

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

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

11 50-23-52.

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

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

14 (2) 'Board' means the members of the Georgia Environmental Facilities 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 highway accounts, the costs that are permitted under applicable federal laws,
19 requirements, procedures, and guidelines in regard to establishing, operating, and
20 providing assistance from the bank. As applied to a qualified project to be financed from
21 the state and local highway account, these costs include the costs of preliminary
22 engineering, traffic and revenue studies, environmental studies, right of way acquisition,
23 legal and financial services associated with the development of the qualified project,
24 construction, construction management, facilities, and other costs necessary for the
25 qualified project. As applied to any qualified project to be financed from the federal
26 transit account, these costs include the costs of preliminary engineering, traffic and
27 revenue studies, environmental studies, right of way acquisition, legal and financial
28 services associated with the development of the qualified project, construction,
29 construction management, equipment, facilities, and other nonoperating costs necessary
30 for the qualified project. As applied to any qualified project to be financed from the state
31 and local transit account, these costs include the costs of preliminary engineering, traffic
32 and revenue studies, environmental studies, right of way acquisition, legal and financial
33 services associated with the development of the qualified project, construction,
34 construction management, equipment, facilities, and other nonoperating costs necessary
35 for the qualified project.

1 (5) 'Eligible project' means a highway, including bridges, air transport, airport, rails, or
2 transit project which provides public benefits by either enhancing mobility and safety,
3 promoting economic development, or increasing the quality of life and general welfare
4 of the public. The term 'eligible project' also includes mass transit systems including, but
5 not limited to, monorail and monobeam mass transit systems. There may be included as
6 part of any such project all improvements necessary to the full utilization thereof,
7 including site preparation, roads and streets, sidewalks, water supply, outdoor lighting,
8 belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad,
9 automotive, and air transportation, transportation facilities incidental to the project, and
10 the dredging and improving of harbors and waterways, none of which foregoing
11 descriptive words shall be construed to constitute a limitation.

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

14 (7) 'Financing agreement' means any agreement entered into between the bank and a
15 qualified borrower pertaining to a loan or other financial assistance. This agreement may
16 contain, in addition to financial terms, provisions relating to the regulation and
17 supervision of a qualified project, or other provisions as the board may determine. The
18 term 'financing agreement' includes, without limitation, a loan agreement, trust indenture,
19 security agreement, reimbursement agreement, guarantee agreement, bond or note,
20 ordinance or resolution, or similar instrument.

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

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

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

33 (11) 'Other financial assistance' includes, but is not limited to, grants, contributions,
34 credit enhancement, capital or debt reserves for bonds or debt instrument financing,
35 interest rate subsidies, provision of letters of credit and credit instruments, provision of
36 bond or other debt financing instrument security, and other lawful forms of financing and

1 methods of leveraging funds that are approved by the board, and in the case of federal
2 funds, as allowed by federal law.

3 (12) 'Private entity' means a private person or entity that has entered into a contract with
4 a government unit to design, finance, construct, and operate an eligible project within the
5 jurisdiction of the government unit responsible for complying with applicable federal
6 requirements.

7 (13) 'Project revenues' or 'revenues' means all rates, rents, fees, assessments, charges, and
8 other receipts derived or to be derived by a qualified borrower from a qualified project
9 or made available from a special source, and, as provided in the applicable financing
10 agreement, derived from any system of which the qualified project is a part or from any
11 other revenue-producing facility under the ownership or control of the qualified borrower
12 including, without limitation, proceeds of grants, gifts, appropriations, and loans,
13 including the proceeds of loans made by the bank, investment earnings, reserves for
14 capital and current expenses, proceeds of insurance or condemnation, and proceeds from
15 the sale or other disposition of property and from any other special source as may be
16 provided by the qualified borrower.

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

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

21 (16) 'State and local accounts' means, collectively, the separate account for state and
22 local highway funds and state and local transit funds.

23 50-23-53.

24 In administering the affairs of the bank, the board may exercise any or all of the powers
25 granted to the authority under Article 1 of this chapter, as well as the powers granted in this
26 article. Without limiting the generality of the foregoing, the board is specifically
27 authorized to issue bonds for the purposes of the bank, in the same general manner
28 provided in Article 1 of this chapter.

29 50-23-54.

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

33 (1) Have perpetual succession;

34 (2) Adopt, promulgate, amend, and repeal bylaws, not inconsistent with provisions in
35 this article for the administration of the bank's affairs and the implementation of its

- 1 functions, including the right of the board to select qualifying projects and to provide
2 loans and other financial assistance;
- 3 (3) Sue and be sued in the name of the bank;
- 4 (4) Have a seal and alter it at its pleasure, although the failure to affix the seal does not
5 affect the validity of an instrument executed on behalf of the bank;
- 6 (5) Make loans to qualified borrowers to finance the eligible costs of qualified projects
7 and to acquire, hold, and sell loan obligations at prices and in a manner as the board
8 determines advisable;
- 9 (6) Provide qualified borrowers with other financial assistance necessary to defray
10 eligible costs of a qualified project;
- 11 (7) Enter into contracts, arrangements, and agreements with qualified borrowers and
12 other persons and execute and deliver all financing agreements and other instruments
13 necessary or convenient to the exercise of the powers granted in this article;
- 14 (8) Enter into agreements with a department, agency, or instrumentality of the United
15 States or of this state or another state for the purpose of providing for the financing of
16 qualified projects;
- 17 (9) Establish:
- 18 (A) Policies and procedures for the making and administering of loans and other
19 financial assistance; and
- 20 (B) Fiscal controls and accounting procedures to ensure proper accounting and
21 reporting by the bank, government units, and private entities;
- 22 (10) Acquire by purchase, lease, donation, or other lawful means and sell, convey,
23 pledge, lease, exchange, transfer, and dispose of all or any part of its properties and assets
24 of every kind and character or any interest in it to further the public purpose of the bank;
- 25 (11) Procure insurance, guarantees, letters of credit, and other forms of collateral or
26 security or credit support from any public or private entity or instrumentality of the
27 United States or this state, for the payment of any bonds issued by it, including the power
28 to pay premiums or fees on any insurance, guarantees, letters of credit, and other forms
29 of collateral or security or credit support;
- 30 (12) Collect or authorize the trustee under any trust indenture securing any bonds to
31 collect amounts due under any loan obligations owned by it, including taking the action
32 required to obtain payment of any sums in default;
- 33 (13) Unless restricted under any agreement with holders of bonds, consent to any
34 modification with respect to the rate of interest, time, and payment of any installment of
35 principal or interest, or any other term of any loan obligations owned by it;
- 36 (14) Borrow money through the issuance of bonds and other forms of indebtedness as
37 provided in this chapter;

1 (15) Expend funds to obtain accounting, management, legal, financial consulting, and
 2 other professional services necessary to the operations of the bank;

3 (16) Expend funds credited to the bank as the board determines necessary for the costs
 4 of administering the operations of the bank;

5 (17) Establish advisory committees as the board determines appropriate, which may
 6 include individuals from the private sector with banking and financial expertise;

7 (18) Procure insurance against losses in connection with its property, assets, or activities
 8 including insurance against liability for its acts or the acts of its employees or agents or
 9 to establish cash reserves to enable it to act as a self-insurer against any and all such
 10 losses;

11 (19) Collect fees and charges in connection with its loans or other financial assistance;

12 (20) Apply for, receive, and accept from any source, aid, grants, or contributions of
 13 money, property, labor, or other things of value to be used to carry out the purposes of
 14 this article subject to the conditions upon which the aid, grants, or contributions are made;

15 (21) Enter into contracts or agreements for the servicing and processing of financial
 16 agreements;

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

19 (23) Do all other things necessary or convenient to exercise powers granted or
 20 reasonably implied by this article.

21 (b) The bank is not authorized or empowered to be or to constitute a bank or trust company
 22 within the jurisdiction or under the control of this state or an agency of it or the
 23 Comptroller of the Currency or the Treasury Department of the United States, or a bank,
 24 banker, or dealer in securities within the meaning of, or subject to the provisions of, any
 25 securities, securities exchange, or securities dealers' law of the United States or of this
 26 state. The use of the word 'bank' in the Georgia Transportation Infrastructure Bank is
 27 required by federal law. For the express purpose as described in this article, the use of the
 28 word 'bank' in this article does not violate Code Section 7-1-243. In addition, all deposits
 29 taken by the bank shall contain a notice stating that the deposits are not insured by the
 30 Federal Deposit Insurance Corporation.

31 50-23-55.

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

34 (1) Appropriations by the General Assembly;

35 (2) Federal funds not already dedicated for another purpose and made available to the
 36 state specifically for this purpose and federal funds, including Surface Transportation

1 Program and Congestion Mitigation and Air Quality funds, which may be made available
2 to any government unit for purposes of financing qualified transit projects;

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

5 (4) All moneys paid or credited to the bank, by contract or otherwise, payments of
6 principal and interest on loans or other financial assistance made from the bank, and
7 interest earnings which may accrue from the investment or reinvestment of the bank's
8 moneys;

9 (5) Proceeds from the issuance of bonds as provided in this chapter; and

10 (6) Other lawful sources not already dedicated for another purpose as determined
11 appropriate by the board.

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

17 (c) Neither the proceeds of the state motor fuel taxes nor any other state revenue source
18 currently dedicated to any particular purpose or program shall be used to capitalize the
19 bank. State tax revenues may not be appropriated or used to fund the bank.

20 50-23-56.

21 (a) Earnings on balances in the federal accounts must be credited and invested according
22 to federal law. Earnings on state and local accounts must be credited to the state and local
23 highway account or state and local transit account that generates the earnings. The bank
24 may establish accounts and subaccounts within the state and local accounts and federal
25 accounts as considered desirable to effectuate the purposes of this article, or to meet the
26 requirements of any state or federal programs.

27 (b) For necessary and convenient administration of the bank, the board shall establish
28 federal and state and local accounts and subaccounts within the bank necessary to meet any
29 applicable federal law requirements or as the bank shall determine necessary or desirable
30 in order to implement the provisions of this article.

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

33 50-23-57.

34 (a) The bank may provide loans and other financial assistance to a government unit or
35 private entity to pay for all or part of the eligible costs of a qualified project. The term of

1 the loan or other financial assistance shall not exceed the useful life of the project. The
2 bank may require the government unit or private entity to enter into a financing agreement
3 in connection with its loan obligation or other financial assistance. The board shall
4 determine the form and content of loan applications, financing agreements, and loan
5 obligations including the term and rate or rates of interest on a financing agreement. The
6 terms and conditions of a loan or other financial assistance from federal accounts shall
7 comply with applicable federal requirements.

8 (b) The selection of which eligible projects are to receive a loan or other financial
9 assistance from the bank shall be in accordance with the following criteria:

10 (1) Preference shall be given to eligible projects which have local financial support;

11 (2) An eligible project shall be included on a state-wide transportation improvement
12 program or a local or regional transportation plan by the board; and

13 (3) Other criteria adopted by the board.

14 50-23-58.

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

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

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

1 50-23-59.

2 The bank is performing an essential governmental function in the exercise of the powers
3 conferred upon it and is not required to pay taxes or assessments upon property or upon its
4 operations or the income therefrom or taxes or assessments upon property or loan
5 obligations acquired or used by the bank or upon the income therefrom.

6 50-23-60.

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

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

17 (c) A mutual undertaking by a local government entity to borrow and an undertaking by
18 the state or a state authority to lend funds from and to one another for highway, mass
19 transit, and other transportation purposes pursuant to law shall be a provision for services
20 and an activity within the meaning of Article IX, Section III, Paragraph I(a) of the
21 Constitution of the State of Georgia.

22 50-23-61.

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

26 50-23-62.

27 Notice, proceeding, or publication, except those required in this article, is not necessary to
28 the performance of any act authorized in this article is any act of the bank subject to any
29 referendum.

1 50-23-63.

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

6 **SECTION 2.**

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