

Senate Bill 40

By: Senators Williams of the 19th, Mullis of the 53rd, Rogers of the 21st, Stoner of the 6th and Pearson of the 51st

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 32-2-2 of the Official Code of Georgia Annotated, relating to the
2 powers and duties of the Department of Transportation generally, so as to specify that the
3 General Assembly may designate agencies or authorities to control projects involving the
4 state highway system; to amend Article 2 of Chapter 10 of Title 32 of the Official Code of
5 Georgia Annotated, relating to the State Road and Tollway Authority, so as to remove
6 control of the authority from the Department of Transportation; to provide for projects to be
7 contracted for and constructed by the authority; to provide for related matters; to provide an
8 effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

10 Code Section 32-2-2 of the Official Code of Georgia Annotated, relating to the powers and
11 duties of the Department of Transportation generally, is amend by revising paragraph (1) of
12 subsection (a) as follows:
13

14 "(1) The department shall plan, designate, improve, manage, control, construct, and
15 maintain a state highway system and shall have control of and responsibility for all
16 construction, maintenance, or any other work upon the state highway system and all other
17 work which may be designated to be done by the department by this title or any other
18 law. However, the General Assembly may by general law specifically allow other state
19 agencies or authorities to have control of and responsibility for designated types of
20 projects involving the state highway system. ~~However, In addition,~~ on those portions of
21 the state highway system lying within the corporate limits of any municipality, the
22 department shall be required to provide only substantial maintenance activities and
23 operations, including, but not limited to, reconstruction and major resurfacing,
24 reconstruction of bridges, erection and maintenance of official department signs, painting
25 of striping and pavement delineators, furnishing of guardrails and bridge rails, and other
26 major maintenance activities; and, furthermore, the department may by contract authorize

27 and require any rapid transit authority created by the General Assembly to plan, design,
 28 and construct, at no cost to the department and subject to the department's review and
 29 approval of design and construction, segments of the state highway system necessary to
 30 replace those portions of the system which the rapid transit authority and the department
 31 agree must be relocated in order to avoid conflicts between the rapid transit authority's
 32 facilities and the state highway system;"

33 SECTION 2.

34 Article 2 of Chapter 10 of Title 32 of the Official Code of Georgia Annotated, relating to the
 35 State Road and Tollway Authority, is amended by revising paragraph (5) of Code Section
 36 32-10-63, relating to powers generally of the State Road and Tollway Authority, as follows:

37 "(5) To make such contracts, leases, or conveyances as the legitimate and necessary
 38 purposes of this article shall require, including, but not limited to, contracts for
 39 construction or maintenance of projects, provided that the authority shall consider the
 40 possible economic, social, and environmental effects of each project, and the authority
 41 shall assure that possible adverse economic, social, and environmental effects relating to
 42 any proposed project have been fully considered in developing such project and that the
 43 final decision on the project is made in the best overall public interest, taking into
 44 consideration the need for fast, safe, and efficient transportation, public services, and the
 45 cost of eliminating or minimizing adverse economic, social, and environmental effects.
 46 Furthermore, in order to assure that adequate consideration is given to economic, social,
 47 and environmental effects of any tollway project under consideration, the authority shall:

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

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

59 (C) Not approve and proceed with acquisition of rights of way and construction of a
 60 project until: (i) there has been held, or there has been offered an opportunity to hold,
 61 a public hearing or public hearings on such project in compliance with requirements of
 62 the Federal-aid Highway Act of 1970, as amended, except that neither acquisition of

63 right of way nor construction shall be required to cease on any federal-aid project which
 64 has received federal approval pursuant to the National Environmental Policy Act of
 65 1969, as amended, and is subsequently determined to be eligible for construction as an
 66 authority project utilizing, in whole or in part, a mix of federal funds and authority
 67 funds; and (ii) the adequacy of environmental considerations has been approved by the
 68 Governor, for which said approval of the environmental considerations may come in
 69 the form of the Governor's acceptance of a federally approved environmental document;
 70 and
 71 (D) Let by public competitive bid upon plans and specifications approved by the ~~chief~~
 72 ~~engineer or his or her successors~~ authority all contracts for the construction of projects;"

73 **SECTION 3.**

74 Said article is further amended by revising Code Section 32-10-66, relating to the duty of the
 75 authority to prescribe rules and regulations for projects, as follows:

76 "32-10-66.

77 It shall be the duty of the authority to prescribe rules and regulations ~~as approved by the~~
 78 ~~department~~ for the operation of each project constructed under this article, including rules
 79 and regulations to ensure maximum use of such project. The authority is authorized to
 80 promulgate such rules and regulations for the use and occupancy of the project as may be
 81 necessary and proper for the public's safety and convenience, for the preservation of its
 82 property, and for the collection of tolls."

83 **SECTION 4.**

84 Said article is further amended by revising Code Section 32-10-67, relating to the study,
 85 financing, construction, and operation of new projects and cooperation of the Department of
 86 Transportation, as follows:

87 "32-10-67.

88 (a) The Governor, in his or her discretion ~~or upon the recommendation of the State~~
 89 ~~Transportation Board~~, is authorized and empowered to call a ~~joint~~ meeting of the authority
 90 ~~and the board~~ for the purpose of initiating all projects which may be considered under the
 91 authority of this article. Upon the concurrence of the Governor, ~~a majority of the board,~~
 92 and the authority, ~~the board or the authority~~ is authorized and empowered to commence the
 93 study of any given project or projects and to provide for their construction. An appropriate
 94 resolution of such ~~joint~~ meeting shall provide for ~~divisions of~~ duties and responsibilities
 95 ~~between the authority and the board~~ in connection with such studies. In keeping with such
 96 resolution or resolutions, the authority ~~and the board are~~ is authorized, in the performance
 97 of ~~their~~ its assigned duties, to expend from any sums available such sums as may be

98 necessary for the survey and study and completion of any project or projects; and such
 99 expenditures may include those necessary for all traffic surveys, expert studies, and all
 100 other expense reasonably necessary in establishing the feasibility of any given project and
 101 in the execution of all plans, specifications, and all other things necessary for revenue bond
 102 financing and construction, including all supervision of every kind required in its
 103 completion. ~~If such expenditures, or any part of them, shall be undertaken by the board,~~
 104 ~~the board shall keep proper records which shall reflect the amounts spent on each and every~~
 105 ~~project study. Upon completion of any given project or projects financed by any given~~
 106 ~~revenue bond issued, so long as there shall be funds available in the hands of the authority~~
 107 ~~from the issue of revenue bonds to finance such project or projects, the board may demand~~
 108 ~~the reimbursement of such expenditures; however, if not reimbursed, said expenditures~~
 109 ~~shall be legitimate expenses of operation of the board.~~ The authority, upon the completion
 110 or receipt of such studies or plans and specifications or other aids, shall proceed, if such
 111 project or projects are possible, to finance, acquire rights of way, construct, and operate
 112 such projects pursuant to its purposes, powers, and duties.

113 (b) Upon the ~~concurrence of the board~~ approval of the authority, the Department of
 114 Transportation shall have the right to provide maintenance and operational assistance to the
 115 authority as may be necessary to effectuate the purposes of this article, including, but not
 116 limited to, authorizing employees of the department to assist the authority in the collection
 117 of tolls on authority projects. The authority shall reimburse the department for such
 118 assistance."

119 SECTION 5.

120 Said article is further amended by revising Code Section 32-10-68, relating to the letting of
 121 contracts by competitive bids, as follows:

122 "32-10-68.

123 All contracts of the authority for the construction of any project authorized by this article,
 124 except as otherwise provided in Part 4 of this article, shall be let to the reliable bidder
 125 submitting the lowest sealed bid upon plans and specifications approved by the ~~department~~
 126 authority. The procedures for letting such bids shall conform to those prescribed for the
 127 department in Code Sections 32-2-64 through 32-2-72."

128 SECTION 6.

129 Said article is further amended by revising Code Section 32-10-72, relating to the authority
 130 fund, as follows:

131 "32-10-72.

132 All revenue in excess of all obligations of the authority of any nature, together with all
 133 unused receipts and gifts of every kind and nature whatsoever, shall be and become the
 134 authority fund. The authority, in its discretion, is shall be charged with the duty of
 135 pledging, utilizing, or expending the authority fund for the following purposes:

136 (1) Pledges to the payment of any revenue bond issue requirements, sinking or reserve
 137 funds, as may be provided for under Code Section 32-10-102;

138 (2) The payment of any outstanding unpaid revenue bond obligations or administrative
 139 expenses;

140 (3) The construction of all or any part of projects, the need for which is concurred in by
 141 the Governor ~~and the board~~;

142 (4) The most advantageous obtainable redemptions and retirements of the authority's
 143 bonds pursuant to the prepayment redemption privileges accorded to the authority upon
 144 the various issues of bonds outstanding;

145 (5) The most advantageous open market purchase of the authority's bonds that the
 146 authority may accomplish;

147 (6) Investment in such securities and in such manner as it determines to be in its best
 148 interest; and

149 (7) Subject to the terms of any resolution or trust indenture authorizing the issuance of
 150 revenue bonds, the transfer of funds to the department to be used by the department for
 151 department purposes."

152 **SECTION 7.**

153 Said article is further amended by adding a new part to read as follows:

154 "Part 4

155 32-10-140.

156 As used in this part, the term:

157 (1) 'Board' means the State Transportation Board.

158 (2) 'Department' means the Department of Transportation.

159 (3) 'Local governing authority' includes the governing authority of any county or
 160 municipality or any transit authority.

161 (4) 'Project' means a project subject to the provisions of subsection (b) of Code Section
 162 32-10-141 or other projects which the authority deems appropriate for letting pursuant
 163 to the procedures of this part.

164 32-10-141.

165 (a) The staff of the authority and the staff of the department shall jointly identify and
166 report to the board by July 31 of each odd-numbered year those 20 projects on the
167 department's State Transportation Improvement Plan or otherwise identified by the
168 department or the authority that afford the greatest gains in congestion mitigation. By that
169 date and with respect to each such project, the department shall report to the board whether
170 construction of such project will be initiated within two years of such date and identify the
171 specific available and complete funding source for each such project.

172 (b) Any project identified pursuant to subsection (a) of this Code section that will not be
173 initiated by the department within two years of the reporting date or that does not have
174 specific available and complete funding may be let and constructed by the authority
175 utilizing the procedures of this part. The department shall cooperate in all respects at the
176 direction of the authority in the letting, construction, maintenance, and operation of such
177 projects, including without limitation providing such access and control of portions of the
178 state highway system as may be requested by the authority from time to time for such
179 purposes.

180 32-10-142.

181 (a)(1) The authority shall evaluate a project to determine, in the judgment of the
182 authority, appropriate or desirable levels of state, local, and private participation in
183 financing such project. In making such determination, the authority shall be authorized
184 and encouraged to seek the advice and input of the department, affected local governing
185 authorities, and the private financial and construction sectors.

186 (2) The authority shall be authorized to issue a written request for proposal indicating in
187 general terms the scope of the project, the proposed financial participations in the project,
188 and the factors that will be used in evaluating the proposal and containing or
189 incorporating by reference other applicable contractual terms and conditions, including
190 any unique capabilities or qualifications that will be required of the contractor. Public
191 notice of such request for proposal shall be made at least 90 days prior to the date set for
192 receipt of proposals in substantially the same manner utilized by the department to solicit
193 requests for proposals or in other manner as provided for by rule or regulation of the
194 authority.

195 (3) Upon receipt of a proposal or proposals responsive to the request for proposals, the
196 authority shall accept written public comment, solicited in the same manner as provided
197 for notice of proposals, for a period of 30 days beginning at least ten days after the date
198 set for receipt of proposals. In addition, the authority shall hold at least one public
199 hearing on such proposals not later than the conclusion of the period for public comment.

200 (4) The authority shall engage in individual discussions with two or more respondents
201 deemed fully qualified, responsible, and suitable on the basis of initial responses and with
202 emphasis on professional competence and ability to meet the level of private financial
203 participation called for by the authority. Repetitive informal interviews shall be
204 permissible. In the event that any local governing authority has agreed to consider
205 financial participation in the project, a representative of such local governing authority,
206 appointed by such local governing authority, may participate in such discussions and
207 interviews. At the discussion stage, the authority may discuss nonbinding estimates of
208 total project costs, including, but not limited to, life cycle costing and nonbinding
209 estimates of price for services. Proprietary information from competing respondents shall
210 not be disclosed to the public or to competitors. At the conclusion of such discussions,
211 on the basis of evaluation factors published in the request for proposal and all information
212 developed in the selection process, the authority, with the input of any participating local
213 governing authority, shall select in the order of preference two or more respondents
214 whose qualifications and proposed services are deemed most meritorious. Negotiations
215 shall then be conducted, beginning with the respondent ranked first and with the
216 participation of the designated representative of any participating local governing
217 authority. If a contract satisfactory and advantageous to the authority and any
218 participating local governing authority can be negotiated at a price considered fair and
219 reasonable, the award shall be made to that respondent. Otherwise, negotiations with the
220 respondent ranked first shall be formally terminated, negotiations conducted with the
221 respondent ranked second, and so on until such a contract can be negotiated at a fair and
222 reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple
223 awards are included in the request for proposal, a public body may award contracts to
224 more than one respondent. Should the authority determine in writing and in its sole
225 discretion that only one respondent is fully qualified, or that one respondent is clearly
226 more highly qualified and suitable than the others under consideration, a contract may be
227 negotiated and awarded to that respondent.

228 (5) Nothing in this Code section shall require the authority to continue negotiations or
229 discussions arising out of any request for proposal, and the authority, in its sole
230 discretion, may terminate the process provided for by this Code section at any time.

231 (6) The authority shall be authorized to promulgate reasonable rules or regulations to
232 assist in its evaluation of the proposal and to implement the purposes of this part. The
233 authority shall report the content of such rules or regulations to the chairpersons of the
234 Transportation Committees of the Senate and House of Representatives upon the
235 promulgation thereof and shall make quarterly reports to the same chairpersons of all of
236 its activities undertaken pursuant to the provisions of this Code section.

237 (b) Any contracts entered into pursuant to this part may authorize funding to include tolls,
238 fares, or other user fees and tax increments for use of the transportation facility that is the
239 subject of the proposal. Such funding may be distributed by contract among the
240 participants in the project as may be provided for by contract. The authority may take any
241 action to obtain federal, state, or local assistance for a qualifying project that serves the
242 public purpose of this part and may enter into any contracts required to receive such
243 assistance. The authority may determine that it serves the public purpose of this part for
244 all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from
245 the proceeds of a grant or loan made by the federal, state, or local government or any
246 instrumentality thereof. The department or the authority may agree to make grants or loans
247 to the operator from time to time from amounts received from the federal, state, or local
248 government or any agency or instrumentality.

249 (c) The authority shall be authorized to delegate such duties and responsibilities under this
250 Code section to its executive director as it deems appropriate from time to time; provided,
251 however, that the final approval of contracts provided for herein shall be by action of the
252 board of the authority.

253 (d) The power of eminent domain shall not be delegated to any private entity with respect
254 to any project commenced or proposed pursuant to this part."

255 **SECTION 8.**

256 This Act shall become effective on July 1, 2009.

257 **SECTION 9.**

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