

House Bill 588 (RULES COMMITTEE SUBSTITUTE)

By: Representatives Jasperse of the 11th, Burns of the 159th, Hatchett of the 150th, Smyre of the 135th, Ballinger of the 23rd, and others

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 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as
6 to provide for the disposition of state sales and use tax on sales of fuel to a contract or
7 common carrier regulated by the United States Surface Transportation Board for use
8 exclusively in the operation of locomotives by such carrier as authorized and subject to
9 express conditions imposed by the Constitution of the State of Georgia; to provide for an
10 annual audit and report; to amend Code Section 52-2-5 of the Official Code of Georgia
11 Annotated, relating to composition of the Georgia Ports Authority; appointment, terms, and
12 qualifications of members generally; filling of vacancies; election of chairperson, vice
13 chairperson, and secretary-treasurer; and quorum, so as to add the commissioner of
14 transportation as an ex officio member of the Georgia Ports Authority; to provide for related
15 matters; to provide for compliance with constitutional requirements; to repeal conflicting
16 laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 588 (SUB)

18 **SECTION 1.**

19 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,
20 is amended in Code Section 32-2-41.3, relating to the Georgia Freight Railroad Program,
21 definition, eligible projects, reporting, and funding, by revising subsection (f) as follows:

22 "(f) Prior to the expenditure of state funds, the commissioner shall make a determination
23 whether such expenditure is ample consideration for a substantial public benefit in
24 compliance with Article III, Section VI, Paragraph ~~VI(a)~~ VI(a) of the Georgia
25 Constitution. Such substantial public benefit must constitute a benefit accrued to the public
26 in the form of enhanced public safety, enhanced mobility of people or goods, congestion
27 mitigation, enhanced trade and economic development, improved air quality or land use,
28 reduction of public expenditures due to improved transportation efficiency or infrastructure
29 preservation, or other public benefits identified and approved by a majority of the board."

30 **SECTION 2.**

31 Said title is further amended by revising Code Section 32-2-78, relating to definitions relative
32 to certain types of projects, as follows:

33 "32-2-78.

34 As used in this Code section and in Code Sections 32-2-79 and 32-2-80, the term:

35 (1) 'Participating local governing authority' includes the governing authority of any
36 county or municipality whose geographical jurisdiction includes the project.

37 (2) 'Project' means ~~a project~~ an undertaking including intermodal rail-related and
38 multimodal transportation solutions which the department deems appropriate for letting
39 pursuant to the procedures of Code ~~Section~~ Sections 32-2-79 and ~~Code Section~~ 32-2-80."

40 **SECTION 3.**

41 Said title is further amended by revising Code Section 32-2-79, relating to reporting on
42 congestion mitigation and letting of projects, as follows:

43 "32-2-79.

44 ~~(a) The~~ At a minimum the staff of the department shall jointly identify and report to the
 45 board by July 31 of each odd-numbered year those ~~projects on the state-wide transportation~~
 46 ~~improvement program or otherwise identified that afford the greatest gains in congestion~~
 47 ~~mitigation or promotion of economic development~~ potential undertakings best suited for
 48 delivery under the procedures of Code Section 32-2-80 and that are expected to provide the
 49 greatest public benefit through enhanced public safety, enhanced mobility of people or
 50 goods, congestion mitigation, enhanced trade and economic development, improved air
 51 quality or land use, or reduction of public expenditures due to improved transportation
 52 efficiency or infrastructure preservation.

53 ~~(b) Any project identified pursuant to subsection (a) of this Code section that will not be~~
 54 ~~initiated within two years of the reporting date or that does not have specific available and~~
 55 ~~complete funding may be let and constructed utilizing the procedures of this Code section~~
 56 ~~and Code Section 32-2-80. All personnel of the department shall cooperate in all respects~~
 57 ~~in the letting, construction, maintenance, and operation of such projects, including without~~
 58 ~~limitation providing such access and control of portions of the state highway system as may~~
 59 ~~be requested or required from time to time for such purposes.~~

60 ~~(c) Projects wholly or partly in a metropolitan planning area shall be included in a fiscally~~
 61 ~~constrained transportation improvement program."~~

62 **SECTION 4.**

63 Said title is further amended by revising Code Section 32-2-80, relating to public and private
 64 financing of projects, prohibitions, request for proposed process, no delegation of eminent
 65 domain, and performance and payment security, as follows:

66 "32-2-80.

67 (a)(1) The department shall evaluate a public-private partnership project to determine,
 68 in the judgment of the department, appropriate or desirable levels of state, local, and

69 private participation in financing such project. In making such determination, the
70 department shall be authorized and encouraged to seek the advice and input of the
71 affected local governing authorities, applicable metropolitan planning organizations, and
72 the private financial and construction sectors.

73 ~~(1.1)~~(2) No constitutional officer or member of the State Transportation Board shall
74 serve as an agent, lobbyist, or board member for any entity directly or indirectly under
75 contract with or negotiating a contract with the department under this Code section for
76 one year after leaving his or her position as a constitutional officer or member of the State
77 Transportation Board.

78 ~~(2)~~(b)(1) For projects that are funded or financed in part or in whole by private sources,
79 the department shall be authorized to issue a written request for proposal indicating in
80 general terms the scope of the project, the proposed financial participations in the project,
81 and the factors that will be used in evaluating the proposal and containing or
82 incorporating by reference other applicable contractual terms and conditions, including
83 any unique capabilities or qualifications that will be required of the contractor. Public
84 notice of such request for proposal shall be made at least 90 days prior to the date set for
85 receipt of proposals by posting the legal notice on a single website that shall be procured
86 and maintained for such purposes by the Department of Administrative Services or in
87 substantially the same manner utilized by the department to solicit requests for proposals.

88 ~~(3)~~(2) Upon receipt of a proposal or proposals responsive to the request for proposals,
89 the department shall accept written public comment, solicited in the same manner as
90 provided for notice of proposals, for a period of 30 days beginning at least ten days after
91 the date set for receipt of proposals. In addition, the department shall hold at least one
92 public hearing on such proposals not later than the conclusion of the period for public
93 comment.

94 ~~(4)~~(3) The department shall engage in individual discussions with two or more
95 respondents deemed fully qualified, responsible, and suitable on the basis of initial

96 responses ~~and with emphasis~~ to engage for interview and discussion based upon
97 responses on professional competence and ability to meet the level of private financial
98 participation called for by the department. ~~Repetitive informal~~ Multiple interviews shall
99 be permissible. In the event that any local governing authority has agreed to consider
100 financial participation in the project, a representative of such local governing authority,
101 appointed by such local governing authority, may participate in such discussions and
102 interviews. ~~At the discussion~~ During this stage, the department may discuss estimates of
103 total project costs, including, but not limited to, life cycle costing and nonbinding
104 estimates of price for services. Proprietary information from competing respondents shall
105 not be disclosed to the public or to competitors.

106 ~~(4) At the conclusion of such discussions, on the basis of evaluation factors published~~
107 ~~in the request for proposal and all information developed in the selection process, the~~
108 ~~department, with the input of any participating local governing authority, Upon~~
109 ~~conclusion of discussions described in paragraph (3) of this subsection, the department~~
110 ~~shall rank respondents on the basis of the evaluation criteria set forth in the request for~~
111 ~~proposal. The department shall select in the order of preference two or more respondents~~
112 ~~whose qualifications and proposed services are deemed most meritorious and shall~~
113 ~~conduct negotiations with those respondents. Negotiations conducted under this~~
114 ~~paragraph can include, but are not limited to, one-on-one meetings, requests for proposal~~
115 ~~revisions, or best and final offers. Negotiations shall then be conducted with two or more~~
116 ~~respondents and with the participation of the designated representative of any~~
117 ~~participating local governing authority.~~

118 (5) Upon approval by the department, the commissioner shall select the respondent for
119 project implementation based upon contract terms that are the most satisfactory and
120 advantageous to the state and to the department based upon a thorough assessment of
121 value and the ability of the final project's characteristics to meet state strategic goals and
122 investment policies as provided for by Code Section 32-2-41.1. Before making such

123 selection, the commissioner shall consult with any participating local governing authority
124 or authorities.

125 (6) Notwithstanding the foregoing, if the terms and conditions for multiple awards are
126 included in the request for proposal, the department may award contracts to more than
127 one respondent. Should the department determine in writing and in its sole discretion that
128 only one respondent is fully qualified, or that one respondent is clearly more highly
129 qualified and suitable than the others under consideration, a contract may be negotiated
130 and awarded to that respondent after the respondent is determined to be responsible.

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

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

140 ~~(b)(e)~~ Any contracts entered into pursuant to this Code section may authorize funding to
141 include tolls, fares, or other user fees and tax increments for use of the project that is the
142 subject of the proposal. Such funding may be distributed by contract among the
143 participants in the project as may be provided for by contract. The department may take
144 any action to obtain federal, state, or local assistance for a qualifying project that serves the
145 public purpose of this Code section and may enter into any contracts required to receive
146 such assistance. The department may determine that it serves the public purpose of this
147 Code section for all or any portion of the costs of a qualifying project to be paid, directly
148 or indirectly, from the proceeds of a grant or loan made by the federal, state, or local
149 government or any instrumentality thereof. The department may agree to make grants or

150 loans to the operator from time to time from amounts received from the federal, state, or
 151 local government or any agency or instrumentality thereof.

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

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

158 ~~(e)~~(h) Any contract for a public-private partnership shall require the private partner or each
 159 of its prime contractors to provide performance and payment security. Notwithstanding
 160 any other provision of law, the penal sum or amount of such security may be less than the
 161 price of the contract involved, such as the value of the construction elements of the
 162 contract, based upon the department's determination on a project-by-project basis of what
 163 sum may be required to adequately protect the department, the state, and the contracting
 164 and subcontracting parties."

165 **SECTION 5.**

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

168 "(5) 'Project' means ~~land public transportation systems~~ transportation related
 169 undertakings which provide a public benefit, including: (A) one or more roads or bridges
 170 or a system of roads, bridges, and tunnels or improvements thereto included on an
 171 approved state-wide transportation improvement program on the Developmental
 172 Highway System as set forth in Code Section 32-4-22, as now or hereafter amended, or
 173 a comprehensive transportation plan pursuant to Code Section 32-2-3 or which are toll
 174 access roads, bridges, or tunnels, with access limited or unlimited as determined by the
 175 authority, and such buildings, structures, parking areas, appurtenances, and facilities

176 related thereto, including but not limited to approaches, cross streets, roads, bridges,
 177 tunnels, and avenues of access for such system; (B) any program for mass transportation
 178 or mass transportation facilities as approved by the authority and the department and such
 179 buildings, structures, parking areas, appurtenances, and facilities related thereto,
 180 including, but not limited to, approaches, cross streets, roads, bridges, tunnels, and
 181 avenues of access for such facilities; ~~and~~ (C) buildings, structures, parking areas,
 182 appurtenances, and facilities related thereto used in connection with the movement of
 183 goods or persons; and (D) any project undertaken pursuant to a public-private initiative
 184 as authorized pursuant to Code Section 32-2-78 under any provisions of Code Sections
 185 32-2-78 through 32-2-80."

186 **SECTION 6.**

187 Said title is further amended in Code Section 32-10-63, relating to powers of authority
 188 generally, by revising paragraph (5) as follows:

189 "(5) To make such contracts, leases, or conveyances as the legitimate and necessary
 190 purposes of this article shall require, including but not limited to contracts for
 191 construction or maintenance of projects, provided that the authority shall consider the
 192 possible economic, social, and environmental effects of each project, and the authority
 193 shall assure that possible adverse economic, social, and environmental effects relating to
 194 any proposed project have been fully considered in developing such project and that the
 195 final decision on the project is made in the best overall public interest, taking into
 196 consideration the need for fast, safe, and efficient transportation, public services, and the
 197 cost of eliminating or minimizing adverse economic, social, and environmental effects.
 198 Furthermore, in order to assure that adequate consideration is given to economic, social,
 199 and environmental effects of any ~~tollway~~ project under consideration, the authority shall:

200 (A) Follow the processes required for federal-aid highway projects, as determined by
 201 the National Environmental Policy Act of 1969, as amended, except that final approval

202 of the adequacy of such consideration shall rest with the Governor, as provided in
203 subparagraph (C) of this paragraph, acting as the chief executive of the state, upon
204 recommendation of the commissioner, acting as chief administrative officer of the
205 Department of Transportation;

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

211 (C) Not approve and proceed with acquisition of rights of way and construction of a
212 project until: (i) there has been held, or there has been offered an opportunity to hold,
213 a public hearing or public hearings on such project in compliance with requirements of
214 the Federal-aid Highway Act of 1970, as amended, except that neither acquisition of
215 right of way nor construction shall be required to cease on any federal-aid project which
216 has received federal approval pursuant to the National Environmental Policy Act of
217 1969, as amended, and is subsequently determined to be eligible for construction as an
218 authority project utilizing, in whole or in part, a mix of federal funds and authority
219 funds; and (ii) the adequacy of environmental considerations has been approved by the
220 Governor, for which said approval of the environmental considerations may come in
221 the form of the Governor's acceptance of a federally approved environmental document;
222 and

223 (D) Let by public competitive bid upon plans and specifications approved by the chief
224 engineer or his or her successors all contracts for the construction of projects, except
225 as otherwise provided for projects authorized under any provisions of Code Sections
226 32-2-78 through 32-2-81;"

227 **SECTION 7.**

228 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
229 amended by adding a new Code section to read as follows:

230 "48-8-78.

231 (a) For purposes of this Code section, the term 'freight and logistics projects' means
232 buildings, structures, parking areas, appurtenances, and facilities related thereto used in
233 connection with the movement of goods or persons.

234 (b) Under the authority granted pursuant to Article III, Section IX, Paragraph VI(r) of the
235 Constitution of Georgia, the funds collected under this article upon the retail purchase,
236 retail sale, rental, storage, use, or consumption of fuel to a contract or common carrier
237 regulated by the United States Surface Transportation Board for use exclusively in the
238 operation of locomotives by such carrier shall be deposited with the Department of
239 Transportation for use exclusively on freight and logistics projects, and such amounts shall
240 not lapse as otherwise required by Article III, Section IX, Paragraph IV(c) of the
241 Constitution of Georgia.

242 (c) The Department of Transportation shall prepare, by February 1 of each year, an
243 accounting of the funds received pursuant to this Code section and expended. The report
244 shall be made available to the Senate Transportation Committee, the House Committee on
245 Transportation, and to members of the public upon request.

246 (d) The dedication of funds provided for in this Code section shall be subject to all
247 conditions imposed by Article III, Section IX, Paragraph VI(r) of the Constitution of
248 Georgia and shall not be operational if this Code section provides for the dedication of state
249 revenues in an amount that, including any nonlapsed funds, is equal to or exceeds 1 percent
250 of the total state revenues based on the previous fiscal year's state revenues that were
251 subject to appropriations.

252 (e) This Code section shall stand repealed and reserved on June 30, 2031."

253 **SECTION 8.**

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

258 "(b) The nine members of the authority in office immediately prior to May 1, 2000, shall
259 serve out the remainder of the terms for which they were appointed, all of such terms
260 expiring on June 30 of the year of expiration. In addition to said nine members, the
261 Governor shall appoint three members for terms to expire June 30, 2004. The director of
262 the Office of Planning and Budget or his or her designee and the commissioner of
263 transportation or his or her designee as approved by the Governor shall serve as an ex
264 officio ~~member~~ members of the authority."

265 **SECTION 9.**

266 In accordance with the requirements of Article III, Section IX, Paragraph VI(r) of the
267 Constitution of Georgia, this Act shall not become law unless it receives the requisite
268 two-thirds' majority vote in both the Senate and the House of Representatives and the amount
269 of the funds dedicated by this Act do not equal or exceed 1 percent of the previous fiscal
270 year's state revenues subject to appropriations.

271 **SECTION 10.**

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