House Bill 1019 (AS PASSED HOUSE AND SENATE)

By: Representatives Lunsford of the 110th, Smith of the 129th, Mills of the 25th, Sheldon of the 105th, Dempsey of the 13th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 10 of Title 32 of the Official Code of Georgia Annotated, relating to the State Road and Tollway Authority, so as to enact the "Georgia Transportation Infrastructure Bank Act"; to create the Georgia Transportation Infrastructure Bank as an instrumentality of the state within the State Road and Tollway Authority; to provide for a short title; to provide for governance of the bank; to provide for the functions of the bank in general and in particular with respect to the financing of transportation projects of government units; to define terms; to provide for the powers, duties, governance, and operations of the bank; to provide for capitalization of the bank and funding sources; to authorize the issuance of bonds by the authority for purposes of the bank; to provide for other 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.

Article 2 of Chapter 10 of Title 32 of the Official Code of Georgia Annotated, relating to the State Road and Tollway Authority, is amended by revising paragraph (6.1) of Code Section 32-10-60, relating to definitions, as follows:

"(6.1) 'Revenue' or 'revenues' shall mean any and all moneys received from the collection of tolls authorized by Code Sections 32-10-64 and 32-10-65, any federal highway or transit funds and reimbursements, any other federal highway or transit assistance received from time to time by the authority, ~~and~~ any other moneys of the authority pledged for such purpose, and any other moneys received by the authority pursuant to the Georgia Transportation Infrastructure Bank."

SECTION 2.

Said article is further amended by adding at its end a new Part 3 to read as follows:

″Part 3

32-10-120.

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

32-10-121.

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

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

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

(d) The bank shall establish and maintain at least the four following accounts in the authority fund:

(1) State and local roadway account;

(2) State and local nonroadway account;

(3) Federal roadway account; and

(4) Federal nonroadway account.

32-10-122.

As used in this part, the term:

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

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

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

(4) 'Eligible costs' means, as applied to a qualified project to be financed from the federal roadway account, the costs that are permitted under applicable federal laws, requirements, procedures, and guidelines in regard to establishing, operating, and providing assistance from the bank. As applied to a qualified project to be financed from the state and local roadway account, these costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right of way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, facilities, and other costs necessary for the qualified project.

As applied to any qualified project to be financed from the federal nonroadway account, these costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right of way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, equipment, facilities, and other nonoperating costs necessary for the qualified project. As applied to any qualified project to be financed from the state and local nonroadway account, these costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right of way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, equipment, facilities, and other nonoperating costs necessary for the qualified project.

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

(6) 'Federal accounts' means, collectively, the separate account for federal roadway funds and federal nonroadway funds.

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

(8) 'Government unit' means a municipal corporation, county, community improvement district, or any public operator of transit, including combinations of two or more of these entities, acting jointly to construct, own, or operate a qualified project, or any other state authority, board, commission, agency, or department which may construct, own, or operate a qualified project.

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

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

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

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

(13) 'Qualified borrower' means any government unit authorized to construct, operate, or own a qualified project.

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

(15) 'State and local accounts' means, collectively, the separate account for state and local roadway funds and state and local nonroadway funds.

32-10-123.

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

32-10-124.

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

(1) Have perpetual succession;

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

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

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

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

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

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

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

(9) Establish:

(A) Policies and procedures for the making and administering of loans and other financial assistance; and

(B) Fiscal controls and accounting procedures to ensure proper accounting and reporting by the bank and government units;

(10) Acquire by purchase, lease, donation, or other lawful means and sell, convey, pledge, lease, exchange, transfer, and dispose of all or any part of its properties and assets of every kind and character or any interest in it to further the public purpose of the bank;

(11) Procure insurance, guarantees, letters of credit, and other forms of collateral or security or credit support from any public or private entity or instrumentality of the United States for the payment of any bonds issued by it, including the power to pay premiums or fees on any insurance, guarantees, letters of credit, and other forms of collateral or security or credit support;

(12) Collect or authorize the trustee under any trust indenture securing any bonds to collect amounts due under any loan obligations owned by it, including taking the action required to obtain payment of any sums in default;

(13) Unless restricted under any agreement with holders of bonds, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any loan obligations owned by it;

(14) Borrow money through the issuance of bonds and other forms of indebtedness as provided in this article;

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

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

(17) Establish advisory committees as the board determines appropriate, which may include individuals from the private sector with banking and financial expertise, including the requirement that the bank shall consult with the Department of Transportation for the purpose of implementing the project accounting procedures required by subparagraph (a)(9)(B) of Code Section 32-10-124;

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

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

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

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

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

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

(b) The bank shall not be authorized or empowered to be or to constitute a bank or trust company within the jurisdiction or under the control of this state or an agency of it or the Comptroller of the Currency or the Treasury Department of the United States, or a bank, banker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers´ law of the United States or of this state. The use of the word 'bank' in the 'Georgia Transportation Infrastructure Bank' is

required by federal law. For the express purposes of this part, the use of the word 'bank' in the 'Georgia Transportation Infrastructure Bank Act' does not violate Code Section 7-1-243. In addition, all deposits taken by the Georgia Transportation Infrastructure Bank shall contain a notice stating that the deposits are not insured by the Federal Deposit Insurance Corporation.

32-10-125.

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

(1) Appropriations by the General Assembly;

(2) Federal funds available to the state, as approved by the Department of Transportation;

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

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

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

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

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

32-10-126.

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

(b) For necessary and convenient administration of the bank, the board shall establish federal and state and local accounts and subaccounts within the bank necessary to meet any

applicable federal law requirements or as the bank shall determine necessary or desirable in order to implement the provisions of this part.

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

32-10-127.

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

(b) The board shall determine which projects are eligible projects and then select from among the eligible projects qualified projects. Preference may be given to eligible projects which have local financial support.

32-10-128.

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

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

(c) A qualified borrower may receive, apply, pledge, assign, and grant security interests in project revenues to secure its obligations as provided in this part. A qualified borrower may fix, revise, charge, and collect fees, rates, rents, assessments, and other charges of general or special application for the operation or services of a qualified project, the system of which it is a part, and any other revenue producing facilities from which the qualified

borrower derives project revenues to meet its obligations under a financing agreement or to provide for the construction and improving of a qualified project.

32-10-129.

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

32-10-130.

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

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

32-10-131.

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

32-10-132.

Notice, proceeding, or publication, except those required in this part, shall not be necessary to the performance of any act authorized in this part nor shall any act of the bank be subject to any referendum.

32-10-133.

Following the close of each state fiscal year, the bank shall submit an annual report of its activities for the preceding year to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives and make such report available to the General Assembly. The bank also shall submit an annual report to the appropriate federal agency in accordance with requirements of any federal program.″

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 4.

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