

House Bill 588

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

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

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 588

SECTION 1.

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

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

SECTION 2.

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

"32-2-78.

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

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

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

SECTION 3.

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

"32-2-79.

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

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

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

SECTION 4.

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

"32-2-80.

(a)(1) The department shall evaluate a public-private partnership project to determine, in the judgment of the department, appropriate or desirable levels of state, local, and private participation in financing such project. In making such determination, the

department shall be authorized and encouraged to seek the advice and input of the affected local governing authorities, applicable metropolitan planning organizations, and the private financial and construction sectors.

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

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

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

~~(4)~~(3) The department shall engage in individual discussions with two or more respondents deemed fully qualified, responsible, and suitable on the basis of initial responses ~~and with emphasis to engage for interview and discussion based upon responses~~ on professional competence and ability to meet the level of private financial

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

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

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

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

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

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

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

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

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

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

SECTION 5.

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

"(5) 'Project' means ~~land and public transportation systems~~ transportation related undertakings which provide a public benefit, including: (A) one or more roads or bridges or a system of roads, bridges, and tunnels or improvements thereto included on an approved state-wide transportation improvement program on the Developmental Highway System as set forth in Code Section 32-4-22, as now or hereafter amended, or a comprehensive transportation plan pursuant to Code Section 32-2-3 or which are toll access roads, bridges, or tunnels, with access limited or unlimited as determined by the authority, and such buildings, structures, parking areas, appurtenances, and facilities related thereto, including but not limited to approaches, cross streets, roads, bridges, tunnels, and avenues of access for such system; (B) any program for mass transportation or mass transportation facilities as approved by the authority and the department and such

buildings, structures, parking areas, appurtenances, and facilities related thereto, including, but not limited to, approaches, cross streets, roads, bridges, tunnels, and avenues of access for such facilities; ~~and (C) buildings, structures, parking areas, appurtenances, and facilities related thereto used in connection with the movement of goods or persons; and (D) any project undertaken pursuant to a public-private initiative as authorized pursuant to Code Section 32-2-78 under any provisions of Code Sections 32-2-78 through 32-2-80.~~"

SECTION 6.

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

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

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

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

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

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

SECTION 7.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in Code Section 48-8-3, relating to state sales and use tax exemptions, by revising paragraphs (26) and (33) as follows:

"(26)(A) From July 1, 2021, until June 30, 2031, sales of fuel to a contract or common carrier regulated by the United States Surface Transportation Board for use exclusively in the operation of locomotives by such carrier;

(B) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any sales and use tax levied or imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to:

(i) Constitutional amendment;

(ii) Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; or

(iii) Article 2, 2A, 3, 4, 5, or 5A of this chapter ~~Reserved;~~"

"(33)(A) The sale of aircraft, watercraft, railroad locomotives and rolling stock, motor vehicles, and major components of each, which will be used principally to cross the borders of this state in the service of transporting passengers or cargo by common carriers and by carriers who hold common carrier and contract carrier authority in interstate or foreign commerce under authority granted by the United States government. Replacement parts installed by carriers in such aircraft, watercraft, railroad locomotives and rolling stock, and motor vehicles which become an integral part of the craft, equipment, or vehicle shall also be exempt from all taxes under this article;

(B) In lieu of any tax under this article which would apply to the purchase, sale, use, storage, or consumption of the tangible personal property described in this paragraph but for this exemption, the tax under this article shall apply with respect to all fuel purchased and delivered within this state by or to any common carrier and with respect to all fuel purchased outside this state and stored in this state irrespective, in either case, of the place of its subsequent use, except to the extent that such fuel is exempt from such tax as provided in paragraph (26) of this Code section;"

SECTION 8.

Said title is further amended by adding a new Code section to read as follows:

"8-8-78.

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

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

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

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

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

SECTION 9.

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

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

SECTION 10.

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

SECTION 11.

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