

House Bill 588 (AS PASSED HOUSE AND SENATE)

By: Representatives Jasperse of the 11<sup>th</sup>, Burns of the 159<sup>th</sup>, Hatchett of the 150<sup>th</sup>, Smyre of the 135<sup>th</sup>, Ballinger of the 23<sup>rd</sup>, 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 financing and letting of projects; to provide for definitions; to provide for  
5 procedures, conditions, approval, and limitations upon an alternative contracting method to  
6 be used for certain projects; to amend Code Section 40-2-151.1 of the Official Code of  
7 Georgia Annotated, relating to highway impact fees for heavy vehicles and use of funds, so  
8 as to provide for intended appropriation of highway impact fees, certification, and automatic  
9 repeal; to amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and  
10 taxation, so as to provide for the intended appropriation of the proceeds of the state sales and  
11 use tax on sales of fuel to a contract or common carrier regulated by the United States  
12 Surface Transportation Board for use exclusively in the operation of locomotives by such  
13 carrier; to provide for a definition; to provide for certification and automatic repeal; to  
14 provide for an annual audit and report; to provide for intended appropriation of taxes  
15 imposed by innkeepers, certification, and automatic repeal; to provide for related matters; to  
16 repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 588

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 goods, congestion mitigation,  
27 enhanced trade and economic development, improved air quality or land use, reduction of  
28 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 Such public benefit shall also align with goals in the state-wide strategic transportation plan  
31 as defined in Code Section 32-2-41.1 or the state's freight plan as defined in  
32 49 U.S.C. 70202."

33

**SECTION 2.**

34 Said title is further amended in Code Section 32-2-69, relating to bidding process and award  
35 of contract, by revising subsection (a) as follows:

36 "(a) Except as authorized by Code Sections 32-2-79, ~~and~~ 32-2-80, and 32-2-82, the  
37 department shall award contracts to the lowest reliable bidder, provided that the department  
38 shall have the right to reject any and all such bids whether such right is reserved in the  
39 public notice or not and, in such case, the department may readvertise, perform the work  
40 itself, or abandon the project."

41 **SECTION 3.**

42 Said title is further amended by designating Code Sections 32-2-60 through 32-2-77 as new  
 43 Part 1, designating Code Sections 32-2-78 through 32-2-82 as Part 2, and revising newly  
 44 designated Part 2 to read as follows:

45 "Part 2

46 32-2-78.

47 As used in this Code section and Code Sections 32-2-79 and 32-2-80 part, the term:48 (1) 'Alternative contracting method' means a method of contracting authorized by Code  
49 Section 32-2-82.50 (2) 'Construction manager/general contractor' means a person the department has  
51 selected to perform project delivery pursuant to Code Section 32-2-82.52 ~~(1)~~(3) 'Participating local governing authority' includes the governing authority of any  
53 county or municipality whose geographical jurisdiction includes the project.54 ~~(2)~~(4) 'Project' means a project an undertaking, including intermodal rail-related and  
55 multimodal transportation solutions, which the department deems appropriate for letting  
56 pursuant to the procedures of Code Section 32-2-79 and Code Section 32-2-80 pursuing  
57 or letting based upon the authority granted in this part."

58 32-2-79.

59 ~~(a) The~~ At a minimum, the staff of the department shall jointly identify and report to the  
60 board by July 31 of each odd-numbered year those ~~projects on the state-wide transportation~~  
61 ~~improvement program or otherwise identified that afford the greatest gains in congestion~~  
62 ~~mitigation or promotion of economic development potential undertakings best suited for~~  
63 delivery under the procedures of Code Section 32-2-80 and that are expected to provide the  
64 greatest public benefit through enhanced public safety, enhanced mobility of goods,

65 congestion mitigation, enhanced trade and economic development, improved air quality or  
66 land use, or reduction of public expenditures due to improved transportation efficiency or  
67 infrastructure preservation as aligned with the state-wide strategic transportation plan as  
68 defined in Code Section 32-2-41.1.

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

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

78 32-2-80.

79 (a)(1) The department shall evaluate a potential project to determine, in the judgment of  
80 the department, appropriate or desirable levels of state, local, and private participation in  
81 financing such project. In making such determination, the department shall be authorized  
82 and encouraged to seek the advice and input of the affected local governing authorities,  
83 applicable metropolitan planning organizations, and the private financial and construction  
84 sectors.

85 ~~(1.1)(2)~~ No constitutional officer or member of the ~~State Transportation Board~~ board  
86 shall serve as an agent, lobbyist, or board member for any entity directly or indirectly  
87 under contract with or negotiating a contract with the department under this Code section  
88 for one year after leaving his or her position as a constitutional officer or member of the  
89 ~~State Transportation Board~~ board.

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

100 ~~(3)(2)~~ For every project undertaken pursuant to this Code section ~~Upon receipt of a~~  
101 ~~proposal or proposals responsive to the request for proposals,~~ the department shall accept  
102 written public comment, solicited in the same manner as provided for ~~notice of proposals~~  
103 in the request for proposal, for a period of 30 days beginning at least ten days after the  
104 date set for receipt of proposals public notice of the request for proposal is made pursuant  
105 to paragraph (1) of this subsection. In addition, the department shall hold at least one  
106 public hearing ~~on such proposals, which may be held by teleconference,~~ not later than the  
107 conclusion of the period for public comment.

108 ~~(4)(3)~~ The department shall ~~engage in individual discussions with~~ select two or more  
109 respondents deemed fully qualified, responsible, and suitable ~~on the basis of initial~~  
110 ~~responses and with emphasis to engage for interview and discussion based upon~~  
111 responses on professional competence and ability to meet the level of private financial  
112 participation called for by the department. ~~Repetitive informal~~ Multiple interviews shall  
113 be permissible. In the event that any local governing authority has agreed to consider  
114 financial participation in the project, a representative of such local governing authority,  
115 appointed by such local governing authority, may participate in such discussions and  
116 interviews. ~~At the discussion~~ During this stage, the department may discuss estimates of

117 total project costs, including, but not limited to, life cycle costing and nonbinding  
118 estimates of price for services. Proprietary information from competing respondents shall  
119 not be disclosed to the public or to competitors.

120 (4) Upon conclusion of discussions described in paragraph (3) of this subsection, the  
121 department shall rank respondents on the basis of the evaluation criteria set forth in the  
122 request for proposal. The department ~~At the conclusion of such discussions, on the basis~~  
123 ~~of evaluation factors published in the request for proposal and all information developed~~  
124 ~~in the selection process, the department, with the input of any participating local~~  
125 ~~governing authority, shall select in the order of preference two or more respondents~~  
126 ~~whose qualifications and proposed services are deemed most meritorious. Negotiations~~  
127 ~~shall then be conducted with two or more respondents and with the participation of the~~  
128 ~~designated representative of any participating local governing authority~~ and shall conduct  
129 negotiations with those respondents. Negotiations conducted under this paragraph can  
130 include, but are not limited to, one-on-one meetings or requests for proposals.

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

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

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

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

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

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

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

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

178 32-2-81.

179 (a) As used in this Code section, the term 'design-build procedure' means a method of  
180 contracting under which the department contracts with another party for the party to both  
181 design and build the structures, facilities, systems, and other items specified in the contract.

182 (b) The department may use the design-build procedure for projects that include buildings,  
183 bridges and approaches, rail corridors, technology deployments, and limited or controlled  
184 access projects or projects that may be constructed within existing rights of way where the  
185 scope of work can be clearly defined or when a significant savings in project delivery time  
186 can be attained.

187 (c) When the department determines that it is in the best interests of the public, the  
188 department may combine any or all of the environmental services, utility relocation  
189 services, right of way services, design services, and construction phases of a public road  
190 or other transportation purpose project into a single contract using a design-build  
191 procedure. Design-build contracts may be advertised and awarded notwithstanding the  
192 requirements of paragraph (1) of subsection (d) of Code Section 32-2-61. ~~However,;~~  
193 provided, however, that construction activities shall not begin on any portion of such  
194 projects until title to the necessary rights of way and easements for the construction of that  
195 portion of the project has vested in the state or a local governmental entity and all railroad  
196 crossing and utility agreements have been executed.



197 (d) The department shall adopt by rule procedures for administering design-build  
198 contracts. Such procedures shall include, but not be limited to:

199 (1) Prequalification requirements;

200 (2) Public advertisement procedures;

201 (3) Request for qualification requirements;

202 (4) Request for proposal requirements;

203 (5) Criteria for evaluating technical information and project costs;

204 (6) Criteria for selection and award process, provided that the rules shall specify that the  
205 criteria for selection shall consist of the following minimum two components for any  
206 two-step procurement process:

207 (A) A statement of qualifications from which the department will determine a list of  
208 qualified firms for the project, provided that, if the department determines it is in the  
209 state's best interest, it may omit this requirement and move directly to a one-step  
210 procurement process through the issuance of a request for proposal from which the  
211 department may select the lowest qualified bidder; and

212 (B) From the list of qualified firms as provided in subparagraph (A) of this paragraph,  
213 a technical proposal and a price proposal from each firm from which the department  
214 shall select the lowest qualified bidder or, in the event the department uses the best  
215 value procurement process, the request for proposal shall specify the requirements  
216 necessary for the selection of the best value proposer which shall include, at a  
217 minimum, a weighted cost component and a technical component. A proposal shall  
218 only be considered nonresponsive if it does not contain all the information and level of  
219 detail requested in the request for proposal. A proposal shall not be deemed to be  
220 nonresponsive solely on the basis of minor irregularities in the proposal that do not  
221 directly affect the ability to fairly evaluate the merits of the proposal. Notwithstanding  
222 the requirements of Code Section 36-91-21, under no circumstances shall the  
223 department use a 'best and final offer' standard in awarding a contract in order to induce

224 one proposer to bid against an offer of another proposer. The department may provide  
225 for a stipulated fee to be awarded to the short list of qualified proposers who provide  
226 a responsive, successful proposal. In consideration for paying the stipulated fee, the  
227 department may use any ideas or information contained in the proposals in connection  
228 with the contract awarded for the project, or in connection with a subsequent  
229 procurement, without obligation to pay any additional compensation to the unsuccessful  
230 proposers;

231 (7) Identification of those projects that the department believes are candidates for  
232 design-build contracting; and

233 (8) Criteria for resolution of contract issues. The department may adopt a method for  
234 resolving issues and disputes through negotiations at the project level by the program  
235 manager up to and including a dispute review board procedure with final review by the  
236 commissioner or his or her designee. Regardless of the status or disposition of the issue  
237 or dispute, the design-builder and the department shall continue to perform their  
238 contractual responsibilities. The department shall have the authority to suspend or  
239 provide for the suspension of Section 108 of the department's standard specifications  
240 pending final resolution of such contract issues and disputes. This paragraph shall not  
241 prevent an aggrieved party from seeking judicial review.

242 (e) In contracting for design-build projects, the department shall be limited to contracting  
243 for no more than 50 percent of the total amount of construction projects awarded in the  
244 previous fiscal year.

245 (f) Not later than 90 days after the end of the fiscal year, the department shall provide to  
246 the Governor, Lieutenant Governor, Speaker of the House of Representatives, and  
247 chairpersons of the House and Senate Transportation Committees a summary containing  
248 all the projects awarded during the fiscal year using the design-build contracting method.  
249 Included in the report shall be an explanation for projects awarded to other than the ~~low-bid~~  
250 low-bid proposal. This report shall be made available for public information.

251 32-2-82.

252 (a) The department shall be authorized to utilize an alternative contracting method for  
253 project delivery that includes one of the following:

254 (1) An agreement in which a construction manager/general contractor performs two  
255 phases of work as follows:

256 (A) The first phase, in which the construction manager/general contractor performs in  
257 the capacity of a construction manager, consisting of preconstruction services for a  
258 project which may be paid in lump sum, cost-plus fixed fee, cost per unit of work,  
259 specific rates of compensation, or other comparable payment method permitted by law;  
260 and

261 (B) The second phase, in which the construction manager/general contractor performs  
262 in the capacity of a general contractor, consisting of construction services for a project  
263 that may be performed under the same contract as that of the first phase, subject to  
264 agreement by the department as to the terms for payment for such services and using  
265 any method of payment permitted by law; provided that the construction  
266 manager/general contractor self-performs at least 30 percent of the total original price  
267 for construction work on the project;

268 (2) A predevelopment agreement, pursuant to which one or more contractors collaborate  
269 with the department on one or more projects:

270 (A) For the conceptual, preliminary, and final planning for such projects, which may  
271 include predevelopment services, financial planning, environmental studies,  
272 engineering, and assistance with public outreach; and

273 (B) To perform, at the department's election, the construction work for any such  
274 project, subject to agreement as to the basis of payment for construction services; or

275 (3) A comprehensive development agreement that allows for expedited project delivery  
276 through the concurrent design and construction of a project under a single multiphase  
277 contract, pursuant to which a contractor shall:

- 278 (A) Collaborate with the department to advance development of the project concept;  
279 (B) Perform both the design and construction services; and  
280 (C) Perform any operations or maintenance work required for the project.
- 281 (b) The department shall consider at least the following factors in assessing a project's  
282 suitability and feasibility for delivery through an alternative contracting method: public  
283 interest, innovation, risk, design complexity, cost control, and construction schedule  
284 optimization.
- 285 (c) When the department determines, in accordance with subsection (b) of this Code  
286 section, that the public interest is best served by delivering the project utilizing an  
287 alternative contracting method, the department shall submit to the board a written request  
288 to proceed in delivering a project using an alternative contracting method. The department  
289 shall not proceed with the project using an alternative contracting method without prior  
290 approval by the board.
- 291 (d) Upon approval of a request pursuant to subsection (c) of this Code section, the  
292 department shall be authorized to issue a written solicitation identifying the scope of the  
293 project, the factors to be used to evaluate responses to the solicitation, and the basis for  
294 award of the contract to perform work on the project utilizing an alternative contracting  
295 method.
- 296 (e) For any project for which an alternative contracting method is elected, the department  
297 shall utilize the procurement procedures under either Code Section 32-2-80 or 32-2-81 to  
298 competitively solicit proposals.
- 299 (f) The department shall be authorized to utilize the alternative contracting method to  
300 deliver no more than two projects during any single fiscal year and no more than seven  
301 projects over a single ten-year period. Solely as it relates to a project delivered using an  
302 alternative contracting method under this Code section, the department shall not encumber  
303 in any one fiscal year an amount greater than 5 percent of the department's capital budget  
304 in the previous fiscal year.

305 (g) Not later than 90 days after the end of a fiscal year in which the department has  
 306 executed a contract to deliver a project using an alternative contracting method, the  
 307 department shall provide to the Governor, Lieutenant Governor, Speaker of the House of  
 308 Representatives, and chairpersons of the House and Senate Transportation Committees a  
 309 summary containing all contracts that utilized an alternative contracting method. This  
 310 report shall be made available to the public.

311 (h) The department shall adopt rules and regulations to implement the provisions of this  
 312 Code section.

313 (i) Not later than five years after the effective date of this Code section and then once  
 314 every five years thereafter, the department shall submit a report to the Governor, Lieutenant  
 315 Governor, Speaker of the House of Representatives, and the members of the House and  
 316 Senate Transportation Committees detailing all contracts executed to deliver a project using  
 317 an alternative contracting method and the benefits of using an alternative contracting  
 318 method compared with other contracting methods for review and consideration as to the  
 319 effectiveness of this Code section and any necessary amendments."

320 **SECTION 4.**

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

323 "(5) 'Project' means ~~land public transportation systems~~ transportation related  
 324 undertakings which provide a public benefit, including:

325 (A) One ~~one~~ or more roads or bridges or a system of roads, bridges, and tunnels or  
 326 improvements thereto included on an approved state-wide transportation improvement  
 327 program on the Developmental Highway System as set forth in Code Section 32-4-22,  
 328 as now or hereafter amended, or a comprehensive transportation plan pursuant to Code  
 329 Section 32-2-3 or which are toll access roads, bridges, or tunnels, with access limited  
 330 or unlimited as determined by the authority, and such buildings, structures, parking

331 areas, appurtenances, and facilities related thereto, including but not limited to  
 332 approaches, cross streets, roads, bridges, tunnels, and avenues of access for such  
 333 system;

334 (B) Any ~~any~~ program for mass transportation or mass transportation facilities as  
 335 approved by the authority and the department and such buildings, structures, parking  
 336 areas, appurtenances, and facilities related thereto, including, but not limited to,  
 337 approaches, cross streets, roads, bridges, tunnels, and avenues of access for such  
 338 facilities; and

339 (C) Any ~~any~~ project undertaken pursuant to a ~~public-private initiative as authorized~~  
 340 ~~pursuant to Code Section 32-2-78~~ Part 2 of Article 4 of Chapter 2 of this title."

341 **SECTION 5.**

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

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

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

357 of the adequacy of such consideration shall rest with the Governor, as provided in  
358 subparagraph (C) of this paragraph, acting as the chief executive of the state, upon  
359 recommendation of the commissioner, acting as chief administrative officer of the  
360 Department of Transportation;

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

366 (C) Not approve and proceed with acquisition of rights of way and construction of a  
367 project until: (i) there has been held, or there has been offered an opportunity to hold,  
368 a public hearing or public hearings on such project in compliance with requirements of  
369 the Federal-aid Highway Act of 1970, as amended, except that neither acquisition of  
370 right of way nor construction shall be required to cease on any federal-aid project which  
371 has received federal approval pursuant to the National Environmental Policy Act of  
372 1969, as amended, and is subsequently determined to be eligible for construction as an  
373 authority project utilizing, in whole or in part, a mix of federal funds and authority  
374 funds; and (ii) the adequacy of environmental considerations has been approved by the  
375 Governor, for which said approval of the environmental considerations may come in  
376 the form of the Governor's acceptance of a federally approved environmental document;  
377 and

378 (D) Let by public competitive bid upon plans and specifications approved by the chief  
379 engineer or his or her successors all contracts for the construction of projects, except  
380 as otherwise provided for projects authorized under any provisions of ~~Code Sections~~  
381 ~~32-2-78 through 32-2-81~~ Part 2 of Article 4 of Chapter 2 of this title;"

382 **SECTION 6.**

383 Code Section 40-2-151.1 of the Official Code of Georgia Annotated, relating to highway  
384 impact fees for heavy vehicles and use of funds, is amended by adding a new subsection to  
385 read as follows:

386 "(e) Notwithstanding subsection (d) of this Code section or any other law to the contrary,  
387 if at any time the amount collected under this Code section is ever not appropriated for two  
388 consecutive or nonconsecutive fiscal years to transportation purposes with up to 10 percent  
389 of such fees collected appropriated for transit projects, as determined by the House Budget  
390 and Research Office and the Senate Budget and Evaluation Office, then the amount  
391 collected shall be reduced by 50 percent. Upon the conclusion of a third fiscal year in  
392 which an amount is not so appropriated, this Code section shall stand repealed and reserved  
393 and such fees shall cease to be collected, on the date the appropriations Act for such fiscal  
394 year becomes effective. Such budget offices shall certify any such lack of appropriation  
395 to the Code Revision Commission for purposes of updating the Code in accordance with  
396 this subsection."

397 **SECTION 7.**

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

400 "48-8-78.

401 (a) For purposes of this Code section, the term 'freight and logistics projects' means any  
402 project for capital construction and maintenance on freight rail assets owned or leased by  
403 a common carrier regulated by the United States Surface Transportation Board and found  
404 to be an expenditure of ample consideration for a substantial public benefit pursuant to  
405 subsection (f) of Code Section 32-2-41.3.

406 (b) It is the intention of the General Assembly, subject to appropriations, that the funds  
407 collected under this article upon the retail purchase, retail sale, rental, storage, use, or



408 consumption of fuel to a contract or common carrier regulated by the United States Surface  
409 Transportation Board for use exclusively in the operation of locomotives by such carrier  
410 shall be appropriated to the Department of Transportation for use exclusively on freight and  
411 logistics projects located on or connected to publicly owned roads. Such appropriation  
412 shall be allocated for freight and logistics projects based upon a formula developed by the  
413 commissioner of transportation which shall include consideration of total track miles  
414 operated within the state by a common carrier and any other factors as determined  
415 appropriate by the commissioner.

416 (c) If at any time the funds collected as described in subsection (b) of this Code section are  
417 ever not appropriated for two consecutive or nonconsecutive fiscal years to freight and  
418 logistics projects, as determined by the House Budget and Research Office and the Senate  
419 Budget and Evaluation Office, then the tax levied and imposed upon the retail purchase,  
420 retail sale, storage, use, or consumption of fuel to a contract or common carrier regulated  
421 by the United States Surface Transportation Board for the exclusive use in the operation  
422 of locomotives shall be reduced by 50 percent. Upon the conclusion of a third fiscal year  
423 in which an amount is not so appropriated, this Code section shall stand repealed and  
424 reserved and such sales and use tax shall cease to be collected, on the date the  
425 appropriations Act for such fiscal year becomes effective. Such budget offices shall certify  
426 any such lack of appropriation to the Code Revision Commission for purposes of updating  
427 the Code in accordance with this subsection.

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

432 **SECTION 8.**

433 Said title is further amended in Code Section 48-13-50.3, relating to additional tax imposed  
434 by innkeepers, forms for reporting, use of funds from additional taxes, and provisions for  
435 termination, by adding a new subsection to read as follows:

436 "(f) Notwithstanding subsection (e) of this Code section or any other law to the contrary,  
437 if at any time the amount collected under this Code section is ever not appropriated for two  
438 consecutive or nonconsecutive fiscal years to transportation purposes with up to 10 percent  
439 of such fees collected appropriated for transit projects, as determined by the House Budget  
440 and Research Office and the Senate Budget and Evaluation Office, then the amount  
441 collected shall be reduced by 50 percent. Upon the conclusion of a third fiscal year in  
442 which an amount is not so appropriated, this Code section shall stand repealed and reserved  
443 and such fees shall cease to be collected, on the date the appropriations Act for such fiscal  
444 year becomes effective. Such budget offices shall certify any such lack of appropriation  
445 to the Code Revision Commission for purposes of updating the Code in accordance with  
446 this subsection."

447 **SECTION 9.**

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