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HIGHWAYS, BRIDGES, AND FERRIES

Department of Transportation: Allow Public-Private Initiatives for Department of Transportation System Projects

CODE SECTIONS: O.C.G.A. §§ 32-2-69 (amended), -78 to
-80 (new), 32-9-2 (amended)

BILL NUMBER: SB 257

ACT NUMBER: 394

GEORGIA LAWS: 2003 Ga. Laws 905

SUMMARY: The Act allows the Department of
Transportation to accept and evaluate
unsolicited proposals from private
entities and to enter into contracts for
public-private initiatives for
transportation system projects. It
provides a period of time for
contractors to submit competing bids.
The Act also increases the amount of
funding that the Department of
Transportation can contribute to these
projects.

EFFECTIVE DATE: July 1, 2003

History

The Georgia Department of Transportation (“DOT”) prepared a comprehensive Statewide Transportation Plan (“SWTP”) which encompassed transportation needs for the state over the next 25 years.¹ It projected a \$30 billion funding gap.² Paying for Georgia’s growing transportation needs required a creative solution.³ Passing additional tax bills in order to narrow the funding gap would have

1. See Georgia Department of Transportation, *Statewide Transportation Plan: Planning Georgia's 25-Year Transportation Future*, at <http://www.dot.state.ga.us/dot/add.changed/strategic/swtp/index.shtml> (last visited May 15, 2003).

2. See Audio Recording of Senate Proceedings, Apr. 7, 2003 (remarks by Sen. Tommie Williams), at <http://www.ganet.org/services/leg/audio/2003archive.html>.

3. See *id.*

been difficult.⁴ Instead, the DOT employed a system that other states have successfully utilized: public-private partnerships to complete necessary projects.⁵ Using these partnerships creates a bigger “pie” from which to carve out various transportation projects.⁶ Several Senators proposed the legislation to enable the DOT to accept unsolicited proposals for public-private initiatives, to evaluate those proposals, to receive competing bids, and to ultimately enter into agreements for public-private projects under certain circumstances.⁷

SB 257

Senators Tommie Williams of the 19th district, Liane Levetan of the 40th district, Brian Kemp of the 46th district, Charlie Tanksley of the 32nd district, and David Adelman of the 42nd district sponsored SB 257.⁸ The bill was introduced in the Senate on March 6, 2003.⁹ SB 257 was assigned to the Senate Transportation Committee, which offered a substitute to the bill that added an additional requirement for unsolicited proposals.¹⁰ The Senate adopted a floor amendment and passed the bill on April 7, 2003.¹¹

The bill was introduced in the House the next day.¹² After introduction, the Speaker assigned the bill to the House Committee on Transportation.¹³ The House Committee then offered a substitute to the Senate version, which included the significant change of granting authority for public-private initiatives to the DOT rather than to the State Road and Tollway Authority.¹⁴ After the House passed two floor amendments, it adopted the House Committee’s substitute, as amended, on April 22, 2003.¹⁵ However, the Senate

4. *See id.*

5. *See id.*

6. *See id.*

7. *See id.*

8. *See SB 257*, as introduced, 2003 Ga. Gen. Assem.

9. *See State of Georgia Final Composite Status Sheet*, SB 257, Apr. 25, 2003.

10. *Compare SB 257*, as introduced, 2003 Ga. Gen. Assem., *with SB 257 (SCS)*, 2003 Ga. Gen. Assem.

11. *See State of Georgia Final Composite Status Sheet*, SB 257, Apr. 25, 2003. *Compare SB 257 (SCS)*, 2003 Ga. Gen. Assem., *with SB 257 (SCSFA)*, 2003 Ga. Gen. Assem.

12. *See State of Georgia Final Composite Status Sheet*, SB 257, Apr. 25, 2003.

13. *See id.*

14. *Compare SB 257 (SCSFA)*, 2003 Ga. Gen. Assem., *with SB 257 (HCS)*, 2003 Ga. Gen. Assem.

15. *See State of Georgia Final Composite Status Sheet*, SB 257, Apr. 25, 2003. *Compare SB 257 (HCS)*, 2003 Ga. Gen. Assem., *with SB 257 (HCSFA)*, 2003 Ga. Gen. Assem.

disagreed with the House amendments to the bill, and on April 25, 2003, a Conference Committee was appointed.¹⁶ The Conference Committee offered a substitute with only one minor change to the House version, and both chambers adopted the Conference Committee substitute on April 25, 2003, the final day of the legislative session.¹⁷

The Act

The Act creates new Code section 32-2-78, relating to the general powers of the DOT.¹⁸ This section provides definitions regarding public-private initiatives allowed under the Act.¹⁹

The Act also creates new Code section 32-2-79, which outlines procedures for accepting and evaluating unsolicited proposals.²⁰ The Senate Committee amended this section to only allow proposals to be submitted for projects that are not substantially similar to those that are already in the State Transportation Improvement Program (“STIP”),²¹ or if they are substantially similar, for which the DOT has not already arranged funding.²² The proposing entity must also develop and create the proposals.²³ These proposals must include or be accompanied by all necessary details or information the DOT may require in order to evaluate the proposal.²⁴ Upon receiving a proposal which meets the requirements, the DOT has to publish public notice of the proposal within 30 days and allow competing proposals to be submitted.²⁵ The original bill allowed 30 days from the first publication of notice for a competing proposal to be submitted.²⁶ A floor amendment to the House Committee substitute amended the bill

16. See State of Georgia Final Composite Status Sheet, SB 257, Apr. 25, 2003.

17. See *id.* Compare SB 257 (HCSFA), 2003 Ga. Gen. Assem., with SB 257 (CCS), 2003 Ga. Gen. Assem.

18. See O.C.G.A. § 32-2-78 (Supp. 2003).

19. *Id.*

20. See O.C.G.A. § 32-2-79 (Supp. 2003).

21. See Georgia Department of Transportation, *State Transportation Improvement Program 2003-2005*, at http://www.dot.state.ga.us/DOT/plan-prog/planning/programs/stip2003_2005/index.shtml. The STIP is a three-year plan developed by the DOT. *Id.*

22. Compare SB 257, as introduced, 2003 Ga. Gen. Assem., with SB 257 (SCS), 2003 Ga. Gen. Assem.

23. See O.C.G.A. § 32-2-79(b)(2) (Supp. 2003).

24. See O.C.G.A. § 32-2-79(b)(3) (Supp. 2003).

25. See O.C.G.A. § 32-2-79(e) (Supp. 2003).

26. See SB 257, as introduced, 2003 Ga. Gen. Assem.

to provide a 30-day period after the DOT's first publication of notice for a letter of intent to file a competing bid to be submitted, with a 90-day period to actually submit the competing bid.²⁷ Representative Vance Smith of the 110th district introduced the amendment to reduce any appearance of secrecy in the bidding process.²⁸ The Act further details criteria for the DOT to consider in evaluating a submitted proposal, which includes: "[u]nique and innovative methods . . . demonstrated by the proposal; . . . [s]cientific, technical, or socioeconomic merits of the proposal; . . . [and the q]ualifications, capabilities, and experience of the . . . key personnel who are critical in achieving the proposal objectives."²⁹ If the DOT declines an unsolicited proposal but within two years of its submission contracts for a substantially similar project, the Act provides that the DOT shall reimburse the original proposer for costs associated with the preparation and the development of the proposal.³⁰

The final new section added by the Act is Code section 32-2-80, which grants the DOT the authority to enter into a public-private initiative once it performs the proper evaluation procedures.³¹ The House Committee added a requirement that the agreement will not become effective unless the General Assembly approves it by joint resolution and the Governor agrees to it.³² The Conference Committee later replaced this with a requirement that the DOT provide "the House and Senate Transportation Committees [with] a report" regarding the proposed project and that the State Transportation Board approve the agreement.³³

The Act amends Code section 32-2-69 to allow for an exception from the general rule that the DOT must award a bid to the lowest reliable bidder for those agreements entered into as public-private initiatives under Code sections 32-2-79 and 32-2-80.³⁴

27. Compare SB 257 (HCS), 2003 Ga. Gen. Assem., with SB 257 (HCSFA), 2003 Ga. Gen. Assem.

28. See Audio Recording of House Proceedings, Apr. 22, 2003 (remarks by Rep. Earl Ehrhart), at <http://www.ganet.org/services/leg/audio/2003archive.html>.

29. See O.C.G.A. § 32-2-79(h) (Supp. 2003).

30. See O.C.G.A. § 32-2-79(p) (Supp. 2003).

31. See O.C.G.A. § 32-2-80 (Supp. 2003).

32. Compare SB 257 (SCSFA), 2003 Ga. Gen. Assem., with SB 257 (HCS), 2003 Ga. Gen. Assem.

33. Compare SB 257 (HCSFA), 2003 Ga. Gen. Assem., with SB 257 (CCS), 2003 Ga. Gen. Assem.

34. Compare 1986 Ga. Laws 153, § 1, at 153 (formerly found at O.C.G.A. § 32-2-69 (2001)), with O.C.G.A. § 32-2-69 (Supp. 2003).

The Act also amends Code section 32-9-2, providing for an increase in the use of state funds in certain projects from a 10% cap to a 15% cap.³⁵

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35. Compare 1999 Ga. Laws 112, § 3, at 115 (formerly found at O.C.G.A. § 32-9-2 (2001)), with O.C.G.A. § 32-9-2 (Supp. 2003).