

House Bill 1098 (AS PASSED HOUSE AND SENATE)

By: Representatives Carpenter of the 4<sup>th</sup>, Smith of the 133<sup>rd</sup>, Anulewicz of the 42<sup>nd</sup>, Scoggins of the 14<sup>th</sup>, and Prince of the 127<sup>th</sup>

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 development of a state-wide strategic transportation plan; to  
3 provide for updating and reporting of such plan; to provide for use of such plan in making  
4 award determinations relating to public and private financing of projects; to require the  
5 Department of Transportation to develop a procedure for appealing the rejection of a contract  
6 bid; to provide for acquisition of property by the department for present or future public road  
7 purposes; to provide for the relocation or reconstruction of outdoor advertising signs in  
8 certain instances; to provide for payment or the issuance of variances to zoning and land  
9 disturbance permits in instances where remedy for acquisition or condemnation of property  
10 rights for public road purposes results in violation of local ordinances; to amend Code  
11 Section 48-8-243 of the Official Code of Georgia Annotated, relating to criteria for  
12 development of investment list of projects and programs for Special District Transportation  
13 Sales and Use Tax, report, and gridlock, so as to make a conforming cross-reference change;  
14 to amend Code Section 48-9-3 of the Official Code of Georgia Annotated, relating to levy  
15 of excise tax upon motor fuel, rate, taxation of motor fuels not commonly sold or measured  
16 by gallon, rate, prohibition of tax on motor fuel by political subdivisions, exception, and  
17 exempted sales, so as to provide for the use of the Consumer Price Index in determining an  
18 excise tax upon motor fuel; to amend Code Section 50-13-41 of the Official Code of Georgia  
19 Annotated, relating to hearing procedures, powers of administrative law judge, issuance of  
20 decision, reviewing agency, and review of contested cases, so as to revise a definition; to  
21 provide for an effective date; to provide for related matters; to repeal conflicting laws; and  
22 for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

24 **SECTION 1.**

25 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,  
26 is amended by revising Code Section 32-2-41.1, relating to progress report and state-wide  
27 strategic transportation plan, as follows:

28 "32-2-41.1.

29 ~~(a) On or before October 15, 2009, the director shall prepare a report for the Governor, the~~  
30 ~~Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons~~  
31 ~~of the Senate Transportation Committee and the House Committee on Transportation,~~  
32 ~~respectively, detailing the progress the division has made on preparing a State-wide~~  
33 ~~Strategic Transportation Plan. The director shall deliver a draft of the plan for comments~~  
34 ~~and suggestions by members of the General Assembly and the Governor on or before~~  
35 ~~December 31, 2009. Comments and suggestions by the House and Senate Transportation~~  
36 ~~Committees of the General Assembly and the Governor shall be submitted to the director~~  
37 ~~no later than February 15, 2010. This plan shall include a list of projects realistically~~  
38 ~~expected to begin construction within the next four years, the cost of such projects, and the~~  
39 ~~source of funds for such projects. The plan shall be developed with consideration of~~  
40 ~~investment policies addressing:~~

- 41 ~~(1) Growth in private-sector employment, development of work force, and improved~~  
42 ~~access to jobs;~~  
43 ~~(2) Reduction in traffic congestion;~~  
44 ~~(3) Improved efficiency and reliability of commutes in major metropolitan areas;~~  
45 ~~(4) Efficiency of freight, cargo, and goods movement;~~  
46 ~~(5) Coordination of transportation investment with development patterns in major~~  
47 ~~metropolitan areas;~~  
48 ~~(6) Market driven travel demand management;~~  
49 ~~(7) Optimized capital asset management;~~  
50 ~~(8) Reduction in accidents resulting in injury and loss of life;~~  
51 ~~(9) Border-to-border and interregional connectivity; and~~  
52 ~~(10) Support for local connectivity to the state-wide transportation network.~~

53 ~~The investment policies provided for in paragraphs (1) through (10) of this subsection shall~~  
54 ~~also guide the development of the allocation formula provided for under Code Section~~  
55 ~~32-5-27 and shall expire on April 15, 2012, and every four years thereafter unless amended~~  
56 ~~or renewed. The final version of the State-wide Strategic Transportation Plan shall be~~  
57 ~~completed by April 10, 2010, and shall be delivered to the Governor, the Lieutenant~~  
58 ~~Governor, the Speaker of the House of Representatives, and the chairpersons of the Senate~~  
59 ~~Transportation Committee and the House Committee on Transportation. A report detailing~~  
60 ~~the progress of projects and programs in the State-wide Strategic Transportation Plan shall~~

61 ~~be prepared and delivered annually thereafter, and a revised version shall be prepared and~~  
 62 ~~delivered at least biennially thereafter.~~

63 ~~(b) The report and plan prepared under subsection (a) of this Code section shall also be~~  
 64 ~~published on the website of the department. The director shall prepare a state-wide~~  
 65 ~~strategic transportation plan. Such plan shall be updated and delivered in coordination with~~  
 66 ~~the state-wide, intermodal transportation plan as defined in 23 C.F.R. Section 450.104. The~~  
 67 ~~director shall prepare the state-wide strategic transportation plan for the Governor,~~  
 68 ~~Lieutenant Governor, Speaker of the House of Representatives, and the chairpersons of the~~  
 69 ~~Senate Transportation Committee and House Committee on Transportation.~~"

70 **SECTION 2.**

71 Said title is further amended by revising Code Section 32-2-69, relating to bidding process  
 72 and award of contract, as follows:

73 "32-2-69.

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

79 (b) If only one bid is received, the department shall open and read the bid. If the bid is at  
 80 or below the department's cost estimate for the project as certified by the chief engineer,  
 81 such cost estimate shall be read immediately and publicly. If the bid exceeds the  
 82 department's cost estimate for the project, the department may negotiate with the bidder to  
 83 establish a fair and reasonable price for the contract, provided that the resulting negotiated  
 84 contract price is not greater than the bid and that the department's cost estimate is disclosed  
 85 to the bidder prior to the beginning of the negotiations. For purposes of this Code section,  
 86 posting of a bid on the department's website shall be equivalent to having read the bid.

87 (c) If the department made errors in the bidding documents which resulted in an  
 88 unbalanced bid, the department may negotiate with the lowest reliable bidder to correct  
 89 such errors, provided that the lowest reliable bidder is not changed.

90 (d) If the lowest reliable bidder is released by the department because of an obvious error  
 91 or if the lowest reliable bidder refuses to accept the contract and thereby forfeits the bid  
 92 bond, the department may award the contract to the next lowest reliable bidder, readvertise,  
 93 perform the work itself, or abandon the project.

94 ~~(e) For purposes of this Code section, posting of a bid on the department's website shall~~  
 95 ~~be equivalent to having read the bid.~~

96 (f) The signed, notarized affidavit required in subsection (b) of Code Section 13-10-91  
 97 shall be submitted to the department prior to the award of any contract.  
 98 (f) The department shall provide by rule and regulation for a procedure to appeal the  
 99 rejection of any bid for contracts the department is authorized to enter into under this Code  
 100 section."

### 101 SECTION 3.

102 Said title is further amended in Code Section 32-2-80, relating to public and private financing  
 103 of projects, prohibitions, request for proposed process, no delegation of eminent domain, and  
 104 performance and payment security, by revising paragraph (4) of subsection (a) as follows:

105 "(4) The department shall engage in individual discussions with two or more respondents  
 106 deemed fully qualified, responsible, and suitable on the basis of initial responses and with  
 107 emphasis on professional competence and ability to meet the level of private financial  
 108 participation called for by the department. Repetitive informal interviews shall be  
 109 permissible. In the event that any local governing authority has agreed to consider  
 110 financial participation in the project, a representative of such local governing authority,  
 111 appointed by such local governing authority, may participate in such discussions and  
 112 interviews. At the discussion stage, the department may discuss estimates of total project  
 113 costs, including, but not limited to, life cycle costing and nonbinding estimates of price  
 114 for services. Proprietary information from competing respondents shall not be disclosed  
 115 to the public or to competitors. At the conclusion of such discussions, on the basis of  
 116 evaluation factors published in the request for proposal and all information developed in  
 117 the selection process, the department, with the input of any participating local governing  
 118 authority, shall select in the order of preference two or more respondents whose  
 119 qualifications and proposed services are deemed most meritorious. Negotiations shall  
 120 then be conducted with two or more respondents and with the participation of the  
 121 designated representative of any participating local governing authority. Upon approval  
 122 by the department, the commissioner shall select the respondent for project  
 123 implementation based upon contract terms that are the most satisfactory and  
 124 advantageous to the state and to the department based upon a thorough assessment of  
 125 value and the ability of the final project's characteristics to meet state strategic goals and  
 126 investment policies as provided for by ~~paragraphs (1) through (10) of subsection (a) of~~  
 127 ~~Code Section 32-2-41.1.~~ Before making such selection, the commissioner shall consult  
 128 with any participating local governing authority or authorities. Notwithstanding the  
 129 foregoing, if the terms and conditions for multiple awards are included in the request for  
 130 proposal, the department may award contracts to more than one respondent. Should the  
 131 department determine in writing and in its sole discretion that only one respondent is fully

132 qualified, or that one respondent is clearly more highly qualified and suitable than the  
 133 others under consideration, a contract may be negotiated and awarded to that respondent."

134 **SECTION 4.**

135 Said title is further amended in Code Section 32-3-1, relating to authority to acquire property  
 136 for present or future public road or other transportation purposes, by revising paragraphs (1)  
 137 and (2) of subsection (c) as follows:

138 "(1) Construction will be commenced on the property to be acquired within a period of  
 139 not less than two years nor more than ten years following the end of the fiscal year in  
 140 which the secretary of transportation of the United States approves an advance of all the  
 141 necessary funds to the department for the acquisition of rights of way for such  
 142 construction under authority of Title 23, Section 108, United States Code, as amended;  
 143 ~~and~~ or

144 (2) The intended acquisition is part of a specific plan of highway development, and the  
 145 acquisition will assist in accomplishing one or more of the following:

146 (A) A substantial monetary savings;

147 (B) The enhancement of the integration of highways with public or private urban  
 148 redevelopment; or

149 (C) The forestalling of the physical or functional obsolescence of highways."

150 **SECTION 5.**

151 Said title is further amended in Code Section 32-3-3.1, relating to relocation or  
 152 reconstruction of outdoor advertising sign and requirements, by revising subsections (b) and  
 153 (e) as follows:

154 "(b) An outdoor advertising sign relocated as provided for in subsection (a) of this Code  
 155 section, or the visibility of which is otherwise obstructed by the construction of a sound  
 156 wall, noise barrier, or other transportation related improvement, may be adjusted in height  
 157 or angle or both in order to restore the visibility of the sign to the same or a comparable  
 158 visibility which existed prior to acquisition by a state agency, county, or municipality,  
 159 provided that the height of such relocated sign shall not exceed the greater of the height of  
 160 the existing sign or 75 feet, as measured from the base of the sign or the crown of the  
 161 adjacent roadway to which the sign is permitted, whichever is greater."

162 "(e) If a sign is eligible to be relocated as provided for in subsection (a) of this Code  
 163 section, or the visibility of which is otherwise obstructed by the construction of a sound  
 164 wall, noise barrier, or other transportation related improvement, but such new location  
 165 would result in a conflict with local ordinances in the city or county of applicable  
 166 jurisdiction and no variance or other exception is granted to allow relocation as requested

167 by the owner of the outdoor advertising sign, just and adequate compensation shall be paid  
 168 by the local governing authority to the owner of the outdoor advertising sign. However, no  
 169 compensation resulting from the denial of a variance or exception by a local governing  
 170 authority for an outdoor advertising sign eligible for relocation under this Code section  
 171 shall be paid either directly or indirectly by the department."

172 **SECTION 6.**

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

174 "32-3-3.2.

175 (a) As used in this Code section, the term:

176 (1) 'Acquisition' means the acquisition of rights of way or right of way easements in lieu  
 177 of condemnation.

178 (2) 'Condemnation' means condemnation of rights of way or right of way easements  
 179 pursuant to this title.

180 (3) 'Documentation of a conflict' means documentation produced by a condemning  
 181 authority to a property owner revealing a proposed cure for an alleged damage that  
 182 resulted as part of a condemnation or from acquisition through negotiations, of which the  
 183 cure proposed to the property owner by the condemning authority would result in a  
 184 violation of a local government land use ordinance or land disturbance regulation.

185 (b) When rights of way or real property or interests therein are acquired or condemned by  
 186 a state agency, county, or municipality for public road purposes and a documentation of a  
 187 conflict has been issued to a property owner, the local jurisdiction shall:

188 (1) Grant a minimum degree of variance from land use or land disturbance permitting  
 189 standards for the remaining parcel to the property owner or any successor in interest.  
 190 Such variance shall be granted upon satisfactory production of proof of the transfer of  
 191 title of the acquired or condemned property or interests in property to the condemning  
 192 authority and the documentation of a conflict; provided, however, that application for any  
 193 such variance has been made no later than five years after the transfer of property or  
 194 interests in property; or

195 (2) Provide to the property owner or any successor in interest just and adequate  
 196 compensation for damages related to a conflict with local land use ordinances or  
 197 regulations as identified by documentation of a conflict and upon denial of a variance  
 198 sought pursuant to paragraph (1) of this subsection; provided, however, that no  
 199 compensation shall be paid either directly or indirectly by the acquirer or condemnor."

**SECTION 7.**

200  
201 Code Section 48-8-243 of the Official Code of Georgia Annotated, relating to criteria for  
202 development of investment list of projects and programs for Special District Transportation  
203 Sales and Use Tax, report, and gridlock, is amended by revising subsection (a) as follows:  
204 "(a) Within 60 calendar days following approval by the Governor of the state-wide  
205 strategic transportation plan, the State Transportation Board shall consider the state-wide  
206 strategic transportation plan in accordance with the provisions of subsection (c) of Code  
207 Section 32-2-22. Upon approval of the state-wide strategic transportation plan by the State  
208 Transportation Board, the director shall provide in written form to the local governments  
209 and any MPO's within each special district across the state recommended criteria for the  
210 development of an investment list of projects and programs. The establishment of such  
211 criteria shall comport with the ~~investment policies provided in subsection (a) of Code~~  
212 ~~Section 32-2-41.1 and the~~ state-wide strategic transportation plan. The recommended  
213 criteria shall include performance goals, allocation of investments in alignment with  
214 performance, and execution of projects. The state fiscal economist shall develop an  
215 estimate of the proceeds of the special district transportation sales and use tax for each  
216 special district using financial data supplied by the department. Such estimate shall include  
217 reasonable ranges of anticipated growth, if any. The director shall include such estimates  
218 and ranges in the recommended criteria for developing the draft investment list. Any local  
219 government or MPO desiring to submit comments on the recommended criteria shall make  
220 such submission to the director no later than September 30, 2010. On or before November  
221 10, 2010, the mayors in each county shall elect the mayoral representative to the regional  
222 transportation roundtable and notify the county commission chairperson and the director  
223 of that mayor's name. The director shall accept comments from any MPO located wholly  
224 or partially within each special district in finalizing the recommended district criteria in a  
225 written report on or before November 15, 2010. Such report shall also include notice of  
226 the date, time, and location of the first regional transportation roundtable for each special  
227 district for the purpose of considering the recommended district criteria and for electing  
228 members of the executive committee for each special district. Any amendment to the  
229 recommended criteria, approval of such criteria, and election of the executive committee  
230 shall be enacted by a majority vote of the representatives present at the roundtable meeting.  
231 Upon approval of the criteria, the director shall promptly deliver a report to the  
232 commissioner of transportation, local governments, any MPO located wholly or partially  
233 within each special district and the members of the General Assembly whose districts lie  
234 wholly or partially within each special district detailing the criteria approved by the  
235 roundtable."

236 **SECTION 8.**

237 Code Section 48-9-3 of the Official Code of Georgia Annotated, relating to levy of excise  
 238 tax upon motor fuel, rate, taxation of motor fuels not commonly sold or measured by gallon,  
 239 rate, prohibition of tax on motor fuel by political subdivisions, exception, and exempted  
 240 sales, is amended by revising subparagraph (a)(1.1)(C) as follows:

241 "(C) Once the preliminary excise tax rate is established, it shall be multiplied by the  
 242 annual percentage of increase or decrease in the Consumer Price Index. The resulting  
 243 calculation shall be added to the preliminary excise tax rate, and the result of such  
 244 calculation shall be the new excise tax rate for motor fuels for the next calendar year.  
 245 The Consumer Price Index shall no longer be used after July 1, ~~2022~~ 2025."

246 **SECTION 9.**

247 Code Section 50-13-41 of the Official Code of Georgia Annotated, relating to hearing  
 248 procedures, powers of administrative law judge, issuance of decision, reviewing agency, and  
 249 review of contested cases, is amended by revising paragraph (1) of subsection (d) as follows:

250 "(1) As used in this subsection, the term 'reviewing agency' shall mean the ultimate  
 251 decision maker in a contested case that is a constitutional board or commission; an  
 252 elected constitutional officer in the executive branch of this state; or a board, bureau,  
 253 commission, or other agency of the executive branch of this state created for the purpose  
 254 of licensing or otherwise regulating or controlling any profession, business or trade if  
 255 members thereof are appointed by the Governor; the Department of Transportation; or  
 256 the Department of Human Services in a contested case where such department is required  
 257 to be the ultimate decision maker by federal law or regulations governing titles IV-B and  
 258 IV-E of the federal Social Security Act."

259 **SECTION 10.**

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

262 **SECTION 11.**

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