

THE VOICE OF THE CONSTRUCTION INDUSTRY OF GEORGIA

The Georgia CONTRACTOR

Volume 5, Issue 4

July/August 2009



Building for the Future

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Legislature Overhauls Transportation Oversight Strips DOT Power; Fails to Pass Funding Measure

By Carrie L. Christie, Esq.

Georgia's Transportation Needs

According to transportation officials, Georgia lags woefully behind other states in building new roads and mass transit systems. "Georgia ranks second-to-last among states, spending \$380 per person annually on transportation. That's not nearly enough," lamented former DOT Commissioner Gena Evans during a three-day training session for lawmakers in December. In order to make the improvements necessary to fix the transportation crisis, the DOT will need between \$150 billion and \$257 billion over the next thirty years to improve bridges, roads, and railroads.

In addition to the serious funding shortfall in Georgia, on average it takes approximately fifteen years to start a project under the DOT Board. Such delays not only add stress to Georgia's already suffering economy, as the prices of steel, concrete and asphalt rise every year, but also deter new companies from relocating to Georgia due to growing congestion, high commuter traffic, and lack of significant mass transit system. With Atlanta ranking second in worst traffic congestion in the country, Lt. Gov. Casey Cagle reported, "We've seen it time and again companies that have shown interest in locating to Georgia have indicated that one major reason for not doing so is our terrible traffic congestion."

In 2008, the clash between the statewide one percent sales and use tax for transportation, favored by the House, and a regional TSPLOST (Transportation Special Local Option Sales Tax), favored by the Senate, resulted in neither plan being submitted to the voters during the November 2008 election. In June, 2008, following the legislature's failure to fund transportation, Governor Sonny Perdue promised a massive state transportation plan by January. Part of the Governor's apparent frustration over stagnant transportation development

appeared aimed at the Department of Transportation (DOT) and the DOT Board, with Perdue spokesman Chris Schrimpf claiming, "The only diagnosis has been a lack of money, and the only prescription has been to spend more of it."

Despite the failing economy, a poll conducted just one month prior to the 2009 legislative session found that 74.8 percent of Republicans and 75.3 percent of Democrats desired 'the right to vote' on a one percent tax increase to fund transportation projects.

With Georgia facing a budget shortfall of nearly \$2 billion, and Governor Perdue ordering spending cuts of up to eight percent from executive branch departments, legislators in 2009 seemed both poised and determined to pass major transportation funding to cover a \$100 billion transportation funding shortfall.

Introduction of Senate Bill 200

In February, 2009, Governor Sonny Perdue unveiled his plan to address the DOT's perceived failure to handle transportation issues. The Atlanta Business Chronicle reported his "solution to the lack of progress in reducing metro Atlanta's traffic congestion is to blow up Georgia's transportation bureaucracy and start over." The proposed plan would reorganize the DOT by creating a new agency, the State Transportation Authority, the chief transportation agency in the state. The DOT would continue to exist, but would be stripped of all responsibilities other than maintenance. The General Assembly would continue to elect members of the DOT Board, just as it had prior to the bill. The new State Transportation Authority would consist of 11 members: five appointed by the Governor, three by the Speaker, and three by the Lieutenant Governor. All appointments would be subject to ratification by majority vote of the

General Assembly.

Opponents expressed strong reservations over an alleged "power grab" that would vest too much power in the hands of the Governor and the two officials considered to be the Governor's closest political allies. Although as a GOP candidate for Governor, Perdue had condemned then-Governor Roy Barnes' push to create a transportation super-agency in 2002, Perdue's 2009 proposal, Republicans supporters argued, could not credibly be characterized as a power play, given that Perdue would be leaving office in 2010. Despite posturing on both sides of the aisle, the bill passed the Senate, with the only Amendment being a provision limiting alternatives to the lowest sealed bidder procedure for public-private initiatives.

The 104-page Senate bill was reduced in the House, after great consideration and lengthy debates, into a 15-page House substitute, designed to avoid creation of a new state agency. The Senate agreed to the House substitute, with the Governor signing it into law on May 11, 2009.

Changes in the Law: Authority Shift

The new law provides the following changes, designed to limit powers of the Commissioner and the DOT Board, while providing greater accountability within the Department.

The Act provides for both a new Director of Planning, who co-exists with the Commissioner, and a Planning Division within the DOT. The Director will be appointed by the Governor, subject to approval of the House Transportation Committee, will serve during the term of the appointing Governor at his/her pleasure, and will be responsible for developing transportation plans. The Commissioner continues as the chief executive officer, but his/her responsibilities are limited to "implementa-

tion of transportation plans produced by the Director of Planning approved by the Governor and the [House] State Transportation Board” and subject to the appropriations procedures. The Director is the head of the Planning Division. Capital construction projects are no longer completed at the discretion of the DOT, but are now subject to the appropriations process. Members of the Transportation Board will no longer receive a per diem allowance for meetings conducted by conference call. The Board will no longer have authority to reject or confirm appointments of department officers.

Code Section 32-2-22 specifies that the new Director and Planning Division review and make recommendations to the Governor regarding regional transportation plans, negotiate with regional planners regarding recommendations of the Governor or the department, review transportation projects proposed by the department, develop the State-wide Strategic Transportation Plan (SSTP) and the State Transportation Improvement Plan (STIP), support improvement programs by various metropolitan planning organizations, create an annual capital construction project list, which will be reviewed by the Governor and presented to the General Assembly for consideration in the budget, and issue rules and regulations conditional upon approval by the House and Senate Transportation Committees. Additionally, the reporting and planning duties are placed on the Director, and he/she specifies new dates that progress reports will be submitted to the Governor, Lt. Governor, Speaker, and Chairs of the Transportation Committees.

In contrast, the Commissioner’s

authority and duties are limited to those not reserved to the Director. Finance, Administration, Engineering and Local Grants Divisions were created, subject to the Commissioner. The Commissioner may create and control Construction, Operations and Maintenance, Permitting, and Public-Private Initiative Divisions.

The new Planning Division, staffed by the Director, will be the principal agency for developing the STIP and SSTP. The SSTP, as outlined in O.C.G.A. § 32-2-41, is required to include a list of projects “realistically expected to begin construction within the next four years,” the cost of the projects, and the source of funding.

The DOT shall identify projects on the STIP that will provide “the greatest gains in congestion mitigation or promotion of economic development” (O.C.G.A. § 32-2-79). Any such project that does not have complete funding in place or will not be initiated within two years may be completed through a public-private initiative. If funded, either wholly or partially, through private sources, the DOT must accept written public comment, hold at least one public hearing, engage in discussion with at least two respondents to the request for proposals, rank at least two respondents, and conduct negotiations with at least two respondents. Upon approval by the department, the Commissioner shall select the appropriate respondent for the project. Additionally, the department drafts contracts, subject to final approval by the State Transportation Board.

The Division of Planning has the responsibility to determine allocation formulas to control spending of the State Public Transportation Fund, including the

state-wide transportation asset management program, state-wide transportation asset improvement program, local maintenance and improvement grant program. Specific percentages of the total allocation from the Fund are provided. A list of projects by priority must be submitted to the Governor, who must submit all or a portion of such project requests as part of his/her budget recommendations to the General Assembly. Such funds allocated are not subject to reservation or redirection by the General Assembly, unless the appropriations Act would create a budget deficit, and must be published on the DOT website.

The Georgia Regional Transportation Authority will no longer have authority to propose regional transportation plans to the Governor, as this responsibility rests with the Planning Division.

Conclusion

While it appears that the legislature made aggressive moves in the direction of accountability within the DOT, comprehensive transportation funding was not forthcoming for the second year in a row and voters will, once again, not be presented any sales tax options to consider this November. Given the recent call for accountability, the desperate need to fund a multi-billion dollar transportation shortfall, and poll results reflecting widespread voter support for a one percent sales and use tax for transportation, there seems little, if any, reason why the General Assembly will not be able to approve desperately needed transportation funding in 2010. ❖



Carrie L. Christie is a partner with the Atlanta law firm of Rutherford & Christie LLP, which is certified as a Women’s Business Enterprise – www.rutherfordchristie.com. Firm attorneys have handled the litigation needs for some of the state’s largest contractors and developers. Ms. Christie’s trial and appellate practice focuses on construction, construction defect, defense and indemnity issues related to complex construction cases. She can be reached at (404) 522-6888 or at clc@rclawllp.com.