

LOCOMOTIVE FUEL TAX PROGRAM APPLICATION GUIDE

Locomotive Fuel Tax

The Georgia Locomotive Fuel Tax was established under O.C.G.A. §48-8-78 and specifies that taxes collected under this code section be used for “freight and logistics projects”, which is defined as “any project for capital construction and maintenance on freight rail assets owned or leased by a common carrier regulated by the United States Surface Transportation Board and found to be an expenditure of ample consideration for a substantial public benefit pursuant to subsection (f) of Code Section 32-2-41.3.” The code section further specifies that “[s]uch appropriation shall be allocated for freight and logistics projects based upon a formula developed by the commissioner of transportation which shall include consideration of total track miles operated within the state by a common carrier and any other factors as determined appropriate by the commissioner.”

Georgia Freight Railroad Program Overview

During the 2020 Session of the Georgia General Assembly, Article 3 of Chapter 2 of the Title 32 was amended to authorize the commissioner of transportation (“Commissioner”) to administer a Georgia Freight Railroad Program (O.C.G.A. § 32-2-41.3).

The Georgia Freight Rail Program (also referred to herein as the “Program”), also statutorily subject to appropriations, is composed of three sub-programs:

- *The Rail Enhancement Program* - may acquire, lease, or improve railways or railroad equipment, including rail crossings, rolling stock, rights of way, or rail facilities.
- *The Rail Preservation Program* - may acquire, lease, or improve short line railways or assist other appropriate entities to acquire, lease, or improve short line railways. For purposes of this sub-program, O.C.G.A. §32-2-41.3(a) defines “short line railroad” as “any carrier designated as a Class III by the Surface Transportation Board.”
- *The Rail Industrial Access Program* - may build, construct, restructure, or improve industrial access to railroad tracks and related facilities.

Pursuant to O.C.G.A. §32-2-41.3(f), in administering the Georgia Freight Rail Program, the Commissioner must determine whether an expenditure under the Program provides ample consideration of “a substantial public benefit in compliance with Article III, Section VI, Paragraph VI (a) of the Georgia Constitution.” The commissioner may delegate the day-to-day operations of all sub-programs of the Georgia Freight Rail Program to the GDOT Intermodal Division; however, final recommendations for funding must be presented to the Commissioner for approval.

In accordance with the requirements of O.C.G.A. §32-2-41.3(e), following the end of each fiscal year, the Commissioner, or his or her designee, must submit an annual report on the activities of the Georgia Freight Railroad Program to the Governor, the Lieutenant Governor,

and the Speaker of the House of Representatives and shall make such report available to the members of the General Assembly.

To meet the goals of O.C.G.A. §32-2-41.3, GDOT has adopted a policy setting out specific goals for the Program and each sub-program, as well as a project description to inform project development, application, and administration. It is the policy of the Georgia Department of Transportation (GDOT) to consider railroad corridors as important elements of the Statewide Transportation System, thereby enhancing the state's investment in freight rail projects for public benefit and in support of safe and balanced transportation.

Funding Distribution

The funds collected under the Locomotive Fuel Tax shall generally be distributed as follows through a grant process in the order listed below:

1. 67% of all such funds shall be distributed to the Class I operators by way of a Memorandum of Agreement (MOA) upon approval of a project proposal for which the funds will be utilized.
2. 33% of all such funds shall be distributed among the short line railroads in the state of Georgia, in accordance with the processes set out in the Georgia Freight Railroad Program.

Per O.C.G.A. §48-8-78, other factors, including but not limited to, GDOT rail program administration and GDOT-owned shortline rehabilitation project funding, may be considered by the Commissioner to determine final distribution amounts

Grant Applications

- All proposals and applications must be submitted to the Division of Intermodal Rail Program within 30 business days after commencement of the application period at FreightRailApplications@dot.ga.gov.
- Grant funds may be awarded to owners and operators of short line railroads or owners and operators of Class 1 railroads.
- All applications must contain a plan outlining how the funds will be used to assist in meeting the goals of the Program and the specific sub-program, and a benefit cost analysis clearly demonstrating the public benefit(s) and potential public use of the funds.
- Applications shall be submitted under one or more specific sub-programs within the Program.
 - Applications should identify the sub-program and contain a description of how the project fits within and advances the goals of the sub-program(s).
 - Should funding be applied for under multiple sub-programs, a separate description of how the project meets the goals for each must be included in the submission.
 - If funding is requested under multiple sub-programs, the application must specify the percentage of funding requested under each sub-program, or if the requests are alternatives.
 - Applications should also include a scalability plan, setting out the impacts on the project and final outcomes should the full requested amount of funding not be awarded. If the project is not scalable, that information should be provided along with

any reasons for non-scalability.

Application Review and Award Process

- The GDOT Rail Program team will conduct preliminary reviews of all applications timely received and may conduct on-site visits, as needed.
- Applications meeting the grant requirements will be forwarded to the Rail Program Evaluation Committee (REPC) established by the commissioner for review and evaluation.
- An additional review period may be requested if the number and/or complexity of the applications submitted warrant additional time.
- Final award determinations shall consider the potential for future public benefits of the property and/or the cost thereof in relation to the prospective rail use, and other economic and public benefits, and the common good of the State or a region of the State.
- The selection of eligible projects will be administered under the leadership of GDOT Commissioner providing ample consideration of substantial public benefit in compliance with Article III, Section VI, Paragraph VI (a) of the Georgia Constitution. Other considerations in determining funding include (but are not limited to): blocked crossing reduction, state of good repair, freight volume or carloads handled, safety improvements, closure of illegal crossings, financial hardship, and other factors as deemed appropriate.
- In determining the substantial public benefit of a project, the Commissioner may rely on any evidence provided in the application for the project. Evidence that may be considered includes, but is not limited to, enhanced public safety, enhanced mobility of 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.
- The Commissioner will determine the final list of projects recommended for funding, based on the Committee's recommendations, or based on his/her own determination and consideration of the projects and its substantial public benefit. Notifications will be made within 60 days after the application closing date.
- Grant award and funds will be provided in the form of a MOA that will serve as the official Grant Award Document with each Railroad selected for funding. The MOA will detail the specific sources and uses of funds as set out in the application.
- The recipient of the grant award will be required to operate and maintain tracks, facilities, and/or property, and to pay any costs related to the future relocation or removal of such tracks and facilities.
- Where applicable, the recipients or their subcontractors shall also be contractually committed to provide for the continued operation of rail service as a common carrier and to assume all liability in connection with the implementation and operation of the project.

Project Selection and Scoring

Applications submitted will be considered in accordance with the goals and priorities outlined by GDOT regarding enhanced rail transportation. Each application will be reviewed and scored using the evaluation method set out below.

Total Score = 100 points.

Below is a breakdown of the scoring structure.

1. Local Stakeholder Support – 10 points
2. Project to be completed within 12 months of award – 5 points
3. Public benefit of the project as demonstrated by the cost benefit analysis – 15 points
4. Non-GDOT Freight Rail Program Match percentage
 - a. >50% 60 points
 - b. 31-50% 40 points
 - c. 30% 20 points
5. Project eligible for Federal funding that is seeking State grant funds as a contribution to the match – 10 points

Each project will be scored on its own merits without consideration of size, location, or ownership of the railroad.

Grant Fund Awards

- Grant Funds will be provided in the form of an executed MOA detailing the specific sources and uses of funds. The executed MOA will serve as the official Grant Award Document.
- Grant awards under the Program require a minimum 30% local (non-State) match.
 - A higher local match percentage is encouraged.
- Funds may be used as a portion of the non-federal share for the utilization of federal funds by public or private parties.
- Funds may also be used to match other non-state grants obtained by the applicant. These funds will provide no more than 50% of the local share of the Federal matching requirement.
- No funds may be used for railroad operating or routine maintenance expenses.

Ownership Interest and Maintenance of Tracks

- The State of Georgia will retain an interest in materials installed in tracks, and facilities reconstructed or improved with grant funds for a period of 20 years, or until the useful life has expired, whichever is latest. All materials installed and work performed must be in compliance with Federal, State, and any other regulatory requirements for freight rail projects.
- The recipient of the grant award will be contractually obligated and committed to the operation and maintenance of such tracks and facilities, and/or property, and to the payment of any costs related to the future relocation or removal of such tracks and facilities. Where applicable, the recipients or their subcontractors shall also be contractually committed to provide for the continued operation of rail service as a common carrier and to assume all liability in connection with the implementation and operation of the project. GDOT shall be advised of any change in the carrier status.
- Should the recipient discontinue rail service or maintenance of any tracks or facilities funded through the Program within 20 years of award, the recipient may be required to repay all funds awarded under this Program.

- In the event the grant award recipient desires to sell the property or interest in the railway equipment and/or facilities which were acquired, reconstructed, or improved with funding this Program, said sale shall be subject to the State of Georgia's vested interest and written approval of GDOT.

Project Award and Implementation

Successful applicants will be required to enter into an MOA and contractual commitments with GDOT to receive funding. Rail program staff will supervise the awarding of funds, execution of MOAs, expenditure of funds, and review of documentation validating appropriate use of grant funding. Rail program staff may perform site visits to review project progress and construction as appropriate and prepare documentation of the improvement work performed and materials installed prior to final review and payment.

Awardees must submit a certification of Project Completion within 30 days after completion, and GDOT may perform a final site visit and audit prior to grant closeout. The applicant shall maintain records regarding the projects and be subject to all Federal, State, and local laws, regulations, and audit requirements.