

Senate Bill 257

By: Senators Williams of the 19th, Levetan of the 40th, Kemp of the 46th, Tanksley of the 32nd, Adelman of the 42nd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 10 of Title 32 of the Official Code of Georgia Annotated, relating to the
2 general powers of the State Road and Tollway Authority, so as to permit the acceptance of
3 unsolicited proposals from private entities; to authorize the authority to accept and evaluate
4 unsolicited proposals for public-private initiatives; to authorize contracts for public-private
5 initiatives; to provide for definitions; to provide for related matters; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 10 of Title 32 of the Official Code of Georgia Annotated, relating to the general
10 powers of the State Road and Tollway Authority, is amended in Code Section 32-10-60,
11 relating to definitions, by adding the following new paragraphs:

12 "(4.1) 'Private contribution' means resources supplied by a private entity to accomplish
13 all or any part of the work on a transportation system project, including funds, financing,
14 income, revenue, cost sharing, technology, staff, materials, equipment, expertise, data,
15 or engineering, construction, or maintenance services, or other items of value."

16 "(5.1) 'Public-private initiative' means a nontraditional arrangement between the
17 authority and one or more private or public entities that provides for:

18 (A) Acceptance of a private contribution to a transportation system project or service
19 in exchange for a public benefit concerning that project or service;

20 (B) Sharing of resources and the means of providing transportation system projects or
21 services; or

22 (C) Cooperation in researching, developing, and implementing transportation system
23 projects or services."

24 "(8.1) 'Transportation system' means the state transportation infrastructure and related
25 systems, including highways, roadways and associated rights of way, bridges,

1 park-and-ride lots, transit systems, transportation management systems, intelligent
2 vehicle highway systems, and other projects as defined in this chapter.

3 (8.2) 'Unsolicited proposal' means a written proposal for a public-private initiative that
4 is submitted by a private entity for the purpose of entering into an agreement with the
5 authority concerning a transportation system project but that is not in response to a formal
6 solicitation or request issued by the authority."

7 SECTION 2.

8 Said chapter is further amended by adding new Code sections to read as follows:

9 "32-10-67.1.

10 (a) The authority may receive, consider, evaluate, and accept an unsolicited proposal for
11 a public-private initiative only if the proposal complies with all of the requirements of this
12 Code section.

13 (b) The authority may consider an unsolicited proposal only if the proposal:

14 (1) Is independently originated and developed by the proposer; and

15 (2) Includes sufficient detail and information for the authority to evaluate the proposal
16 in an objective and timely manner and to determine if the proposal benefits the public.

17 (c) Paragraph (1) of subsection (b) of this Code section shall not be deemed to prohibit the
18 authority from encouraging the submission of unsolicited proposals that are well-developed
19 and consistent with the authority's general policy priorities by providing written or oral
20 information to any person regarding the policy priorities or the requirements and
21 procedures for submitting an unsolicited proposal.

22 (d) If the unsolicited proposal does not comply with the requirements of subsection (b) of
23 this Code section, the authority shall return the proposal without further action. In taking
24 such action, the authority shall not disclose either the originality of the research or any
25 proprietary information associated with the proposal to any other person or entity. If the
26 unsolicited proposal complies with all the requirements of subsection (b) of this Code
27 section, the authority may further evaluate the proposal pursuant to this Code section.

28 (e) Within 30 days of receipt of an unsolicited proposal that meets the requirements of
29 subsection (b) of this Code section, the authority shall provide public notice of the
30 proposed project. This notice shall:

31 (1) Be published in a newspaper of general circulation which is a legal organ, or upon
32 such electronic website providing for general public access as the authority may develop
33 for such purpose or in the same manner as publications providing notice as described in
34 Code Section 32-2-69, or both;

35 (2) Be provided to any person or entity that expresses in writing to the authority an
36 interest in the subject matter of the proposal;

- 1 (3) Outline the general nature and scope of the unsolicited proposal, including the
2 location of the transportation system project and the work to be performed on the project;
3 and
- 4 (4) Specify the address to which any comparable proposal must be submitted.
- 5 (f) Any comparable proposal for consideration by the authority must be received by the
6 authority no later than 30 days after the first publication of a notice in the manner
7 prescribed by paragraph (1) of subsection (e) of this Code section. No comparable
8 proposals received after that date will be considered or evaluated by the authority.
- 9 (g) Upon receipt of a proposal properly submitted in response to the notice described in
10 subsection (e) of this Code section, the authority shall:
- 11 (1) Determine, in its discretion, if any submitted proposal is comparable in nature and
12 scope to the unsolicited proposal and whether it warrants further evaluation;
- 13 (2) Evaluate any comparable proposal; and
- 14 (3) Conduct good faith discussions and, if necessary, negotiation concerning each
15 comparable proposal.
- 16 (h) The authority shall base its evaluation of the unsolicited proposal or comparable
17 proposals on the following factors:
- 18 (1) Unique and innovative methods, approaches, or concepts demonstrated by the
19 proposal;
- 20 (2) Scientific, technical, or socioeconomic merits of the proposal;
- 21 (3) Potential contribution of the proposal to the authority's mission;
- 22 (4) Capabilities, related experience, facilities, or techniques of the proposer as described
23 in the proposal or unique combinations of these qualities that are integral factors for
24 achieving the proposal objectives;
- 25 (5) Qualifications, capabilities, and experience of the proposed principal investigator,
26 team leader, or key personnel who are critical in achieving the proposal objectives; and
- 27 (6) Any other factors appropriate to a particular proposal.
- 28 (i) Once the authority has concluded its evaluation of the unsolicited proposal and any
29 comparable proposals, the authority will execute a commitment agreement with the entity
30 submitting the most desirable proposal as determined by the authority's evaluation process.
31 Such commitment agreement shall indicate the authority's commitment to undertake a
32 public-private initiative to execute the proposal if, after public comment:
- 33 (1) The authority determines that the project is financially feasible and in the public
34 interest; and
- 35 (2) The authority and the proposer can arrive at agreeable terms and conditions,
36 including price of the project.

1 (j) The authority may execute a commitment agreement relating to an unsolicited proposal
2 only if:

3 (1) The unsolicited proposal receives a favorable evaluation; and

4 (2) The authority makes a written determination based on facts and circumstances that
5 the unsolicited proposal is an acceptable basis for an agreement to obtain services from
6 the entity making the proposal.

7 (k) Once the commitment agreement is signed by the parties, prior to final contracting for
8 any public-private initiative from the unsolicited proposal, the authority:

9 (1) Should provide public notice that the authority will receive public comment with
10 respect to such proposal. The notice shall:

11 (A) Be published in a newspaper of general circulation and which is a legal organ, or
12 upon such electronic website providing for general public access as the authority may
13 develop for such specific purpose, or in the same manner as publications providing
14 notice as described in Code Section 32-2-69, or both, allowing at least 14 days and no
15 more than 45 days for public comment to be submitted for consideration;

16 (B) Be provided to any person or entity that expresses in writing to the authority an
17 interest in the subject matter of the proposal;

18 (C) Outline the general nature and scope of the unsolicited proposal, including the
19 location of the transportation system project and the work to be performed on the
20 project; and

21 (D) Specify the address to which any public comment must be submitted; and

22 (2) In its discretion, may provide additional opportunity for public comment at a public
23 meeting or meetings. In such event, notice of such meetings shall be provided in the
24 same manner as described in paragraph (1) of this subsection.

25 (l) In taking the actions required by subsections (e) and (k) of this Code section, the
26 authority shall not disclose either the originality of the research or any proprietary
27 information associated with the proposal.

28 (m) The provisions of Code Section 50-18-70 to the contrary notwithstanding, no proposal
29 shall become a 'public record' nor be subject to disclosure as such until such time as a
30 commitment agreement has been signed and notice of solicitation of public comment has
31 been published as required in subsection (k) of this Code section.

32 (n) The power of eminent domain shall not be delegated to any private entity under any
33 public-private initiative commenced or proposed pursuant to this article.

34 (o) The authority or the authority's designee has the authority to make the determination
35 and take the actions required by this Code section.

36 (p) If the authority declines to accept an unsolicited proposal but, within a period of two
37 years following the submission of such proposal the authority contracts for a substantially

1 similar project, the authority shall reimburse the proposer of the unsolicited proposal for
 2 the costs associated with the preparation and development of the proposal upon submission
 3 of such costs and a request for reimbursement to the authority.

4 32-10-67.2.

5 (a) If the authority follows the evaluation criteria set forth in Code Section 32-10-67.1 and
 6 if an unsolicited proposal contains all the information required by that Code section and the
 7 proposal is accepted by the authority as demonstrated by the execution of a commitment
 8 agreement, upon completion of the public comment period, the authority shall have the
 9 authority to contract with the proposer for a public-private initiative based upon the
 10 proposal without subjecting such contract to public bid as required by Code Section
 11 32-2-64, 32-10-68, or 50-5-72.

12 (b) Any agreement entered into pursuant to this article may authorize funding to include
 13 tolls, fares, or other user fees and tax increments for use of the transportation facility that
 14 is the subject of the proposal.

15 (c) The authority, in its sole discretion, may reject any unsolicited proposal at any time
 16 until a contract is signed with the entity submitting the proposal. In the event that a
 17 proposal is rejected but the authority subsequently proceeds with all or part of such
 18 proposal within a period of two years, the entity submitting the proposal shall be entitled
 19 to reimbursement of the costs of developing the proposal as indicated in subsection (p) of
 20 Code Section 32-10-67.1."

21 SECTION 3.

22 Said chapter is further amended by striking Code Section 32-10-68, relating to letting of
 23 contracts by competitive bids, in its entirety and inserting in its place the following:

24 "32-10-68.

25 Except as authorized by Code Sections 32-10-67.1 and 32-10-67.2, all AH contracts of the
 26 authority for the construction of any project authorized by this article shall be let to the
 27 reliable bidder submitting the lowest sealed bid upon plans and specifications approved by
 28 the department. The procedures for letting such bids shall conform to those prescribed for
 29 the department in Code Sections 32-2-64 through 32-2-72."

30 SECTION 4.

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