

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. To the
16 extent that this definition may conflict with any federal law or regulation, for any project
17 utilizing federal funds, the federal definition shall supersede this subsection."

18 "(5.1) 'Public-private initiative' means a nontraditional arrangement between the
19 authority and one or more private or public entities that provides for:

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

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

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

1 "(8.1) 'Transportation system' means the state transportation infrastructure and related
 2 systems, including highways, roadways and associated rights of way, bridges,
 3 park-and-ride lots, transit systems, transportation management systems, intelligent
 4 vehicle highway systems, and other projects as defined in this chapter.

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

9 SECTION 2.

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

11 "32-10-67.1.

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

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

16 (1) Is unique and innovative in comparison with and is not substantially similar to other
 17 transportation system projects already in the state transportation improvement program
 18 within the authority or the Department of Transportation or, if it is similar to a project in
 19 the state transportation improvement program, that such project has not been fully funded
 20 by the authority, the Department of Transportation, or any other entity as of the date the
 21 proposal is submitted. Unique or innovative features which may be considered by the
 22 authority in evaluating such a proposal may include but not be limited to unique or
 23 innovative financing, construction, design, or other components as compared with other
 24 projects or as otherwise defined by authority rules or regulations;

25 (2) Is independently originated and developed by the proposer; and

26 (3)(A) Includes such detail and information as the authority may require by rule or
 27 regulation to assist in its evaluation of the proposal and to determine if the proposal
 28 benefits the public. Such information shall include a list of any proprietary information
 29 included in the proposal which the proposer considers protected trade secrets or other
 30 information exempted from disclosure under Code Section 50-18-70, et seq., and an
 31 itemized, auditable listing of the costs associated with the development of the proposal;
 32 and

33 (B) Includes such fees as may be required by the rules and regulations of the authority
 34 for submission of such proposals.

35 (c) Paragraph (1) of subsection (b) of this Code section shall not be deemed to prohibit the
 36 authority from encouraging the submission of unsolicited proposals that are well-developed

1 and consistent with the authority's general policy priorities by providing written or oral
2 information to any person regarding the policy priorities or the requirements and
3 procedures for submitting an unsolicited proposal.

4 (d) If the unsolicited proposal does not comply with the requirements of subsection (b) of
5 this Code section, the authority shall return the proposal without further action. In taking
6 such action, the authority shall not disclose either the originality of the research or any
7 proprietary information associated with the proposal to any other person or entity. If the
8 unsolicited proposal complies with all the requirements of subsection (b) of this Code
9 section, the authority may further evaluate the proposal pursuant to this Code section.

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

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

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

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

22 (4) Specify the address to which any comparable proposal must be submitted.

23 (f) Any comparable proposal for consideration by the authority must be received by the
24 authority no later than 30 days after the first publication of a notice in the manner
25 prescribed by paragraph (1) of subsection (e) of this Code section. No comparable
26 proposals received after that date will be considered or evaluated by the authority.

27 (g) Upon receipt of a proposal properly submitted in response to the notice described in
28 subsection (e) of this Code section, the authority shall:

29 (1) Determine, in its discretion, if any submitted proposal is comparable in nature and
30 scope to the unsolicited proposal and whether it warrants further evaluation;

31 (2) Evaluate any comparable proposal; and

32 (3) Conduct good faith discussions and, if necessary, negotiation concerning each
33 comparable proposal.

34 (h) The authority shall base its evaluation of the unsolicited proposal or comparable
35 proposals on the following factors:

36 (1) Unique and innovative methods, approaches, or concepts demonstrated by the
37 proposal;

1 (2) Scientific, technical, or socioeconomic merits of the proposal;

2 (3) Potential contribution of the proposal to the authority's mission;

3 (4) Capabilities, related experience, facilities, or techniques of the proposer as described
4 in the proposal or unique combinations of these qualities that are integral factors for
5 achieving the proposal objectives;

6 (5) Qualifications, capabilities, and experience of the proposed principal investigator,
7 team leader, or key personnel who are critical in achieving the proposal objectives; and

8 (6) Any other factors appropriate to a particular proposal.

9 (i) Once the authority has concluded its evaluation of the unsolicited proposal and any
10 comparable proposals, the authority may execute a commitment agreement with the entity
11 submitting the most desirable proposal as determined by the authority's evaluation process.
12 Such commitment agreement shall indicate the authority's commitment to undertake a
13 public-private initiative to execute the proposal if, after public comment:

14 (1) The authority determines that the project is financially feasible and in the public
15 interest; and

16 (2) The authority and the proposer can arrive at agreeable terms and conditions,
17 including price of the project.

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

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

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

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

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

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

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

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

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

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

5 (l) In taking the actions required by subsections (e) and (k) of this Code section, the
6 authority shall not disclose either the originality of the research or any proprietary
7 information associated with the proposal as listed by the proposer required by paragraph
8 (3) of subsection (b) of this Code section.

9 (m) The provisions of Code Section 50-18-70 to the contrary notwithstanding, no proposal
10 shall become a 'public record' nor be subject to disclosure as such until such time as a
11 commitment agreement has been signed and notice of solicitation of public comment has
12 been published as required in subsection (k) of this Code section. At all times thereafter,
13 the authority shall not disclose trade secret or proprietary information, or both, specifically
14 designated by the proposer as required by paragraph (3) of subsection (b) of this Code
15 section which meets the definition of a trade secret under Code Section 50-18-70, et seq.

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

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

20 (p) If the authority declines to accept an unsolicited proposal but, within a period of two
21 years following the submission of such proposal the authority contracts for a substantially
22 similar project, the authority shall reimburse the proposer of the unsolicited proposal for
23 the costs associated with the preparation and development of the proposal upon submission
24 of such costs and a request for reimbursement to the authority.

25 32-10-67.2.

26 (a) If the authority follows the evaluation criteria set forth in Code Section 32-10-67.1 and
27 if an unsolicited proposal contains all the information required by that Code section and the
28 proposal is accepted by the authority as demonstrated by the execution of a commitment
29 agreement, upon completion of the public comment period, the authority shall have the
30 authority to contract with the proposer for a public-private initiative based upon the
31 proposal without subjecting such contract to public bid as required by Code Section
32 32-2-64, 32-10-68, or 50-5-72. Such contracts shall be in compliance with all other
33 applicable federal and state laws.

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

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

7 **SECTION 3.**

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

10 "32-10-68.

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

16 **SECTION 4.**

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