

The House Committee on Transportation offers the following substitute to SB 257:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 32 of the Official Code of Georgia Annotated, relating to the
2 general powers of the Department of Transportation, so as to permit the acceptance of
3 unsolicited proposals from private entities; to authorize the department 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 2 of Title 32 of the Official Code of Georgia Annotated, relating to the Department
10 of Transportation, is amended by adding a new Code Section 32-2-78 to read as follows:

11 "32-2-78.

12 As used in this chapter, the term:

13 (1) 'Private contribution' means resources supplied by a private entity to accomplish all
14 or any part of the work on a transportation system project, including funds, financing,
15 income, revenue, cost sharing, technology, staff, materials, equipment, expertise, data,
16 or engineering, construction, or maintenance services, or other items of value. To the
17 extent that this definition may conflict with any federal law or regulation, for any project
18 utilizing federal funds, the federal definition shall supersede this subsection.

19 (2) 'Public-private initiative' means a nontraditional arrangement between the department
20 and one or more private or public entities that provides for:

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

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

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

1 (3) '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 (4) 'Unsolicited proposal' means a written proposal for a public-private initiative that is
 6 submitted by a private entity for the purpose of entering into an agreement with the
 7 department concerning a transportation system project but that is not in response to a
 8 formal solicitation or request issued by the department."

9 SECTION 2.

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

11 "32-2-79.

12 (a) The department 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 department 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 department or, if it is similar to a project in the state transportation
 19 improvement program, that such project has not been fully funded by the department or
 20 any other entity as of the date the proposal is submitted. Unique or innovative features
 21 which may be considered by the department in evaluating such a proposal may include
 22 but not be limited to unique or innovative financing, construction, design, or other
 23 components as compared with other projects or as otherwise defined by department rules
 24 or regulations;

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

26 (3)(A) Includes such detail and information as the department 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
 34 department for submission of such proposals.

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

1 well-developed and consistent with the department's general policy priorities by providing
2 written or oral information to any person regarding the policy priorities or the requirements
3 and 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 department shall return the proposal without further action. In taking
6 such action, the department 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 department 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 department 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 department may
15 develop for such purpose or in the same manner as publications providing notice as
16 described in Code Section 32-2-69, or both;

17 (2) Be provided to any person or entity that expresses in writing to the department 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 department must be received by the
24 department 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 department.

27 (g) Upon receipt of a proposal properly submitted in response to the notice described in
28 subsection (e) of this Code section, the department 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 department 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 department'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 department has concluded its evaluation of the unsolicited proposal and any
- 10 comparable proposals, the department may execute a commitment agreement with the
- 11 entity submitting the most desirable proposal as determined by the department's evaluation
- 12 process. Such commitment agreement shall indicate the department's commitment to
- 13 undertake a public-private initiative to execute the proposal if, after public comment:
- 14 (1) The department determines that the project is financially feasible and in the public
- 15 interest; and
- 16 (2) The department and the proposer can arrive at agreeable terms and conditions,
- 17 including price of the project.
- 18 (j) The department may execute a commitment agreement relating to an unsolicited
- 19 proposal only if:
- 20 (1) The unsolicited proposal receives a favorable evaluation; and
- 21 (2) The department 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 department:
- 26 (1) Should provide public notice that the department 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 department 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 department 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 department 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 department shall not disclose trade secret or proprietary information, or both,
14 specifically designated by the proposer as required by paragraph (3) of subsection (b) of
15 this Code section which meets the definition of a trade secret under Code Section 50-18-70,
16 et seq.

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

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

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

26 32-2-80.

27 (a) If the department follows the evaluation criteria set forth in Code Section 32-10-67.1
28 and if an unsolicited proposal contains all the information required by that Code section
29 and the proposal is accepted by the department as demonstrated by the execution of a
30 commitment agreement, upon completion of the public comment period, the department
31 shall have the authority to contract with the proposer for a public-private initiative based
32 upon the proposal without subjecting such contract to public bid as required by Code
33 Section 32-2-64, 32-10-68, or 50-5-72. Such contracts shall be in compliance with all other
34 applicable federal and state laws. Any such agreement shall not become effective unless
35 and until approved by joint resolution of the General Assembly and approved by the
36 Governor.

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

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

10

SECTION 3.

11 Said chapter is further amended by striking subsection (a) of Code Section 32-2-69, relating
 12 to award of contract to lowest reliable bidder, procedure upon rejection of bids, receipt of
 13 only one bid, error in bidding documents, or release or refusal of acceptance by lowest
 14 reliable bidder, in its entirety and inserting in its place the following:

15 "(a) Except as authorized by Code Sections 32-2-79 and 32-2-80, the The department shall
 16 award the contract to the lowest reliable bidder, provided that the department shall have the
 17 right to reject any and all such bids whether such right is reserved in the public notice or
 18 not and, in such case, the department may readvertise, perform the work itself, or abandon
 19 the project."

20

SECTION 4.

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