

HOUSE SUBSTITUTE TO SENATE BILL 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 amend Chapter 9 of Title 32 of the Official Code of
6 Georgia Annotated, relating to mass transportation, so as to change the provisions relating
7 to the Department of Transportation's participation with state funds in mass transportation
8 systems and services and in the construction and improvement of facilities, equipment, and
9 capital projects for use in mass transportation service; to provide for related matters; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 2 of Title 32 of the Official Code of Georgia Annotated, relating to the Department
14 of Transportation, is amended by adding a new Code Section 32-2-78 to read as follows:

15 "32-2-78.

16 As used in this chapter, the term:

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

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

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

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

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

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

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

13 SECTION 2.

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

15 "32-2-79.

16 (a) The department may receive, consider, evaluate, and accept an unsolicited proposal for
17 a public-private initiative only if the proposal complies with all of the requirements of this
18 Code section.

19 (b) The department may consider an unsolicited proposal only if the proposal:

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

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

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

1 (B) Includes such fees as may be required by the rules and regulations of the
2 department for submission of such proposals.

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

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

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

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

21 (2) Be provided to any person or entity that expresses in writing to the department an
22 interest in the subject matter of the proposal;

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

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

27 (f) Any person who elects to submit a competing proposal for the proposed qualifying
28 project to the department shall submit a written letter of intent to do so by no later than 30
29 days after the department's initial publication of the notice. Any letter of intent received
30 by the department after the expiration of the 30 day period shall not be valid and any
31 competing proposal submitted thereafter by a person who has not submitted a timely letter
32 of intent shall not be considered by the department and shall be returned to the person who
33 did not submit a letter of intent by the deadline. For those persons who elect to submit a
34 competing proposal and submit a timely letter of intent with the department, any such
35 competing proposal shall be submitted to the department by no later than 90 days after the
36 department's initial publication of the notice required by this Code section. Only those

1 competing, compliant proposals submitted by such deadline shall be considered by the
2 department.

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

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

7 (2) Evaluate any comparable proposal; and

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

10 (h) The department shall base its evaluation of the unsolicited proposal or comparable
11 proposals on the following factors:

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

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

15 (3) Potential contribution of the proposal to the department's mission;

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

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

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

22 (i) Once the department has concluded its evaluation of the unsolicited proposal and any
23 comparable proposals, the department may execute a commitment agreement with the
24 entity submitting the most desirable proposal as determined by the department's evaluation
25 process. Such commitment agreement shall indicate the department's commitment to
26 undertake a public-private initiative to execute the proposal if, after public comment:

27 (1) The department determines that the project is financially feasible and in the public
28 interest; and

29 (2) The department and the proposer can arrive at agreeable terms and conditions,
30 including price of the project.

31 (j) The department may execute a commitment agreement relating to an unsolicited
32 proposal only if:

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

34 (2) The department makes a written determination based on facts and circumstances that
35 the unsolicited proposal is an acceptable basis for an agreement to obtain services from
36 the entity making the proposal.

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

3 (1) Should provide public notice that the department will receive public comment with
4 respect to such proposal. The notice shall:

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

10 (B) Be provided to any person or entity that expresses in writing to the department an
11 interest in the subject matter of the proposal;

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

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

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

19 (l) In taking the actions required by subsections (e) and (k) of this Code section, the
20 department shall not disclose either the originality of the research or any proprietary
21 information associated with the proposal as listed by the proposer required by paragraph
22 (3) of subsection (b) of this Code section.

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

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

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

35 (p) If the department declines to accept an unsolicited proposal but, within a period of two
36 years following the submission of such proposal the department contracts for a
37 substantially similar project, the department shall reimburse the proposer of the unsolicited

1 proposal for the costs associated with the preparation and development of the proposal
2 upon submission of such costs and a request for reimbursement to the department.

3 32-2-80.

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

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

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

23 **SECTION 3.**

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

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

SECTION 4.

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2 Chapter 9 of Title 32 of the Official Code of Georgia Annotated, relating to mass
3 transportation, is amended in Code Section 32-9-2, relating to operation by Department of
4 Transportation of facilities or systems and financial assistance to systems, by striking
5 paragraph (3) of subsection (b) and inserting in its place the following:

6 "(3) The department's participation with state funds in those programs specified in
7 paragraphs (1) and (2) of this subsection may be in either cash, products, or in-kind
8 services. The department's participation with state funds shall be limited to a maximum
9 of ~~10~~ 15 percent of the cost of the program. The remainder shall be provided from
10 sources other than department funds or from revenues from the operation of public mass
11 transportation systems."

SECTION 5.

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