

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

AS PASSED

**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 **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) 'Department' means the Georgia Department of Transportation.

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

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

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

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

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

7 (4) 'Transportation system' means the state transportation infrastructure and related
8 systems, including highways, roadways and associated rights of way, bridges, tunnels,
9 overpasses, ferries, airports, port facilities, vehicle parking facilities, park-and-ride lots,
10 transit systems, transportation management systems, intelligent vehicle highway systems,
11 or similar facilities used for the transportation of persons or goods, together with any other
12 property, buildings, structures, parking areas, appurtenances, and facilities needed to
13 operate such system, including any major transportation facility as defined by subparagraph
14 (a)(3) of Code Section 32-2-3, and any other facility for other transportation purposes as
15 defined by paragraph (18) of Code Section 32-1-3.

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

20 SECTION 2.

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

22 "32-2-79.

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

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

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

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

1 (3) Includes or is accompanied by:

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

9 (B) Such fees as may be required by the rules and regulations of the department for
 10 submission of such proposals.

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

16 (d) If the unsolicited proposal does not comply with the requirements of subsection (b) of
 17 this Code section, the department shall return the proposal without further action. In taking
 18 such action, the department shall not disclose either the originality of the research or any
 19 proprietary information associated with the proposal to any other person or entity. If the
 20 unsolicited proposal complies with all the requirements of subsection (b) of this Code
 21 section, the department may further evaluate the proposal pursuant to this Code section.

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

25 (1) Be published in a newspaper of general circulation which is a legal organ and upon
 26 such electronic website providing for general public access as the department may
 27 develop for such purpose or in the same manner as publications providing notice as
 28 described in Code Section 32-2-65;

29 (2) Be provided to any person or entity that expresses in writing to the department an
 30 interest in the subject matter of the proposal and to any member of the General Assembly
 31 whose House or Senate district would be affected by such proposal;

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

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

36 (f) Any person or entity who elects to submit a competing proposal for the proposed
 37 qualifying project to the department shall submit a written letter of intent to do so by no

1 later than 30 days after the department's initial publication of the notice. Any letter of
2 intent received by the department after the expiration of the 30 day period shall not be valid
3 and any competing proposal submitted thereafter by a person or entity who has not
4 submitted a timely letter of intent shall not be considered by the department and shall be
5 returned to the person or entity who did not submit a letter of intent by the deadline. For
6 those persons or entities who elect to submit a competing proposal and submit a timely
7 letter of intent with the department, any such competing proposal shall be submitted to the
8 department by no later than 90 days after the department's initial publication of the notice
9 required by this Code section. Only those competing, compliant proposals submitted by
10 such deadline shall be considered by the department.

11 (g) Upon receipt of a proposal properly submitted in response to the notice described in
12 subsection (e) of this Code section which fully meets the requirements of subsection (b) of
13 this Code section, the department shall:

- 14 (1) Determine, in its discretion, if any submitted proposal is comparable in nature and
15 scope to the unsolicited proposal and whether it warrants further evaluation;
- 16 (2) Evaluate any comparable proposal; and
- 17 (3) Conduct good faith discussions and, if necessary, negotiation concerning each
18 comparable proposal.

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

- 21 (1) Unique and innovative methods, approaches, or concepts demonstrated by the
22 proposal;
- 23 (2) Scientific, technical, or socioeconomic merits of the proposal;
- 24 (3) Potential contribution of the proposal to the department's mission;
- 25 (4) Capabilities, related experience, facilities, or techniques of the proposer as described
26 in the proposal or unique combinations of these qualities that are integral factors for
27 achieving the proposal objectives;
- 28 (5) Qualifications, capabilities, and experience of the proposed principal investigator,
29 team leader, or key personnel who are critical in achieving the proposal objectives; and
- 30 (6) Any other factors appropriate to a particular proposal.

31 (i) Once the department has concluded its evaluation of the unsolicited proposal and any
32 comparable proposals, the department may execute a commitment agreement with the
33 entity submitting the most desirable proposal as determined by the department's evaluation
34 process. At least two weeks prior to approval of any project, the department shall present
35 to the House and Senate transportation committees a report with respect to the proposed
36 commitment agreement. Such commitment agreement shall indicate the department's

1 commitment to undertake a public-private initiative to execute the proposal if, after public
2 comment:

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

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

7 (j) The department may execute a commitment agreement relating to an unsolicited
8 proposal or conforming comparable proposal only if:

9 (1) The proposal receives a favorable evaluation;

10 (2) The department makes a written determination based on facts and circumstances that
11 the proposal is an acceptable basis for an agreement to obtain services from the entity
12 making the proposal; and

13 (3) The specific commitment agreement is specifically approved by affirmative vote of
14 the State Transportation Board.

15 (k) Once the commitment agreement is signed by the parties, prior to final contracting for
16 any public-private initiative from the unsolicited or conforming comparable proposal, the
17 department:

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

20 (A) Be published in a newspaper of general circulation and which is a legal organ, and
21 upon such electronic website providing for general public access as the department may
22 develop for such specific purpose, or in the same manner as publications providing
23 notice as described in Code Section 32-2-65, or both, allowing at least 14 days and no
24 more than 45 days for public comment to be submitted for consideration;

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

27 (C) Outline the general nature and scope of the proposal, including the location of the
28 transportation system project and the work to be performed on the project; and

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

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

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

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

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

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

13 (p) If the department rejects or declines to accept an unsolicited proposal but, within a
14 period of two years following the submission of such proposal the department contracts for
15 a substantially similar project, the department shall reimburse the proposer of the
16 unsolicited proposal for the auditable costs associated with the preparation and
17 development of the proposal upon a request for reimbursement to the department. This
18 provision shall not apply if the department accepts a conforming comparable proposal
19 through the procedures outlined in subsections (f) and (g) of this Code section.

20 32-2-80.

21 (a) If the department follows the evaluation criteria set forth in Code Section 32-2-79 and
22 if an unsolicited proposal contains all the information required by that Code section and the
23 proposal is accepted by the department as demonstrated by the execution of a commitment
24 agreement, upon completion of the public comment period, the department shall have the
25 authority to contract with the proposer for a public-private initiative based upon the
26 proposal without subjecting such contract to public bid as required by Code Section
27 32-2-64, 32-10-68, or 50-5-72. Such contracts shall be in compliance with all other
28 applicable federal and state laws and each specific contract shall be specifically approved
29 by affirmative vote of the State Transportation Board.

30 (b) Any agreement entered into pursuant to this article may authorize funding to include
31 tolls, fares, or other user fees and tax increments for use of the transportation facility that
32 is the subject of the proposal. The department may take any action to obtain federal, state,
33 or local assistance for a qualifying project that serves the public purpose of this chapter and
34 may enter into any contracts required to receive such assistance. Any funds received from
35 the state or federal government or any agency or instrumentality thereof shall be subject
36 to appropriation as provided by the Constitution and laws of this state. The department

1 may determine that it serves the public purpose of this chapter for all or any portion of the
 2 costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant
 3 or loan made by the federal, state, or local government or any instrumentality thereof,
 4 including, but not limited to, the State Road and Tollway Authority. The department may
 5 agree to make grants or loans to the operator from time to time from amounts received
 6 from the federal, state, or local government or any agency or instrumentality, including, but
 7 not limited to, the State Road and Tollway Authority.

8 (c) The department, in its sole discretion, may reject any unsolicited proposal at any time
 9 until a contract is signed with the entity submitting the proposal. In the event that a
 10 proposal is rejected but the department subsequently proceeds with all or part of such
 11 proposal within a period of two years, the entity submitting the proposal shall be entitled
 12 to reimbursement of the costs of developing the proposal as indicated in subsection (p) of
 13 Code Section 32-2-79."

14 SECTION 3.

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

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

24 SECTION 4.

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

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

SECTION 5.

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