

Senate Bill 5

By: Senator Moody of the 56th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 50 of the Official Code of Georgia Annotated, relating to state government,
2 so as to provide for the comprehensive regulation of public-private infrastructure projects;
3 to provide for a short title; to provide for definitions; to provide for legislative intent; to
4 provide for contracting authority; to provide for procedures, conditions, and limitations with
5 respect to approval of qualifying projects and selection of proposals; to provide for powers,
6 duties, and responsibilities of project operators; to provide for default; to provide for
7 remedies; to provide for property dedication; to provide for eminent domain; to provide for
8 exercise of police powers; to provide for funding; to provide for exemptions from regulation;
9 to provide for construction of provisions; to provide for related matters; to repeal conflicting
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
14 by adding a new chapter at the end thereof to be designated Chapter 36 to read as follows:

15 style="text-align:center">"CHAPTER 36

16 50-36-1.

17 This chapter may be cited as the 'Georgia Public-Private Infrastructure Act of 2005.'

18 50-36-2.

19 As used in this chapter, the term:

20 (1) 'Affected local jurisdiction' means any county or municipality of this state in which
21 all or any portion of a qualifying project is located or is proposed to be located.

22 (2) 'County' means any county created under the Constitution or laws of this state.

1 (3) 'Develop' or 'development' means to plan, design, develop, finance, acquire, install,
2 construct, equip, maintain, improve, modify, expand, repair, or operate.

3 (4) 'Facility' means the following or any combination of the following:

4 (A) Environmental facilities as defined by paragraph (5) of Code Section 50-23-4;

5 (B) Any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle
6 parking facility, port facility, or similar commercial facility used for the transportation
7 of persons or goods, together with any other property, buildings, structures, parking
8 areas, appurtenances, and facilities needed to operate such facility, including any major
9 transportation facility as defined by paragraph (3) subsection (a) of Code Section
10 32-2-3, and any facility for other transportation purposes as defined by paragraph (18)
11 of Code Section 32-1-3;

12 (C) Any education facility including, but not limited to, a school building, any
13 functionally related and subordinate facility and land to a school building, including any
14 stadium or other facility primarily used for school events, and any depreciable property
15 provided for use in a school facility that is operated as part of a public school system
16 or as an institution of higher education;

17 (D) Any building or facility for principal use by any public entity and any
18 improvements and equipment necessary to enhance public safety and security of
19 buildings or facilities to be principally used by a public entity;

20 (E) Utility and telecommunications and other communications infrastructure;

21 (F) Any recreational facility; and

22 (G) Any project which any public entity is authorized to construct, erect, acquire, own,
23 repair, remodel, maintain, add to, extend, improve, equip, operate, or manage under
24 applicable provisions of the Constitution or laws of this state.

25 (5) 'Lease' shall mean a capital lease, operating lease, rental agreement, usufruct, sale and
26 leaseback, or any other lease agreement concerning real or personal property and any
27 right, title, or interest therein.

28 (6) 'Lease payments' means rental payments pursuant to a lease.

29 (7) 'Material default' means any default by the operator in the performance of its duties
30 under subsection (e) of Code Section 50-36-8 that jeopardizes adequate service to the
31 public from a qualifying project and remains unremedied after the responsible public
32 entity has provided notice to the operator and a reasonable cure period has elapsed.

33 (8) 'May' means permission and not command.

34 (9) 'Municipality' means any municipal corporation in this state.

35 (10) 'Operator' means any person, other than a public entity, responsible for development
36 of any and all of the stages of a qualifying project or any portion thereof.

1 (11) 'Person' means any individual and any corporation, limited partnership, general
2 partnership, limited liability company, joint venture, business trust, or other business
3 entity.

4 (12) 'Public entity' means this state and any agency or authority thereof; any county,
5 school district, or municipality of this state; any local water or sewer or sanitary district;
6 any regional authority, local government authority as defined in paragraph (2) of
7 subsection (d) of Code Section 36-80-16, or joint authority; or instrumentality of the
8 foregoing.

9 (13) 'Public-private agreement' means the agreement between the operator and the
10 responsible public entity required by Code Section 50-36-7.

11 (14) 'Qualifying project' means any facility for which development approval is sought
12 pursuant to Code Section 50-36-5.

13 (15) 'Responsible public entity' means a public entity that has the power to plan, design,
14 develop, finance, acquire, install, construct, equip, maintain, improve, expand, repair, or
15 operate the applicable qualifying project.

16 (16) 'Revenues' means all revenues, income, earnings, user fees, lease payments, or
17 service payments arising out of or in connection with a qualifying project, including
18 without limitation moneys received as grants or otherwise from the United States of
19 America, from any public entity, or from any agency or instrumentality of the foregoing
20 in aid of such project.

21 (17) 'Service contract' means a contract entered into between a public entity and the
22 operator pursuant to Code Section 50-36-7.

23 (18) 'Service payments' means payments pursuant to a service contract.

24 (19) 'State' means the State of Georgia.

25 (20) 'User fees' mean the rates, rents, tolls, fees, or other charges imposed by the operator
26 of a qualifying project for use of all or a portion of such qualifying project pursuant to a
27 public-private agreement.

28 50-36-3.

29 (a) The General Assembly finds and declares that:

30 (1) It is essential for the economic, social, and environmental well-being of this state and
31 the maintenance of a high quality of life that the citizens of this state have an efficient
32 transportation system and adequate environmental and public facilities;

33 (2) The availability of adequate qualifying projects is an important element of the ability
34 of public entities to provide for the continuing economic growth that affords jobs for this
35 state's citizens;

1 (3) Because this state and its political subdivisions have limited resources to fund the
2 development of qualifying projects, alternative funding sources must be developed to
3 supplement public revenue sources;

4 (4) Allowing public entities to contract with private entities for the development of
5 qualifying projects will provide significant public benefits to the citizens of this state by
6 making available additional transportation, environmental, and public facilities to the
7 general public while minimizing the need for additional public tax revenues needed
8 therefor; and

9 (5) Because financial incentives exist under state and federal law to promote public
10 entities entering into contractual arrangements with private entities for the development
11 of qualifying projects, it is in the public interest and for the public benefit and good to
12 facilitate the provision of qualifying projects through the collaborative efforts of public
13 and private entities.

14 (b) It is the intent of this chapter, among other things, to facilitate innovative federal, state,
15 and local financing mechanisms and private capital and other funding sources, as
16 authorized by otherwise applicable provisions of law, that support the development of
17 qualifying projects, including, without limitation, grants, direct loans, credit enhancements,
18 and other measures authorized by federal legislation, to the end that financing for
19 qualifying projects be expanded and accelerated to improve and add to the convenience of
20 the public, such that public and private entities may have the greatest possible flexibility
21 in contracting with each other for the provision of the public services that are the subject
22 of this chapter.

23 50-36-4.

24 Any public entity is authorized to contract with an operator to develop one or more
25 qualifying projects pursuant to the provisions of this chapter.

26 50-36-5.

27 Any operator seeking authorization under this chapter to develop a qualifying project shall
28 first obtain approval of the responsible public entity as follows:

29 (1) An operator shall request approval of a qualifying project by the responsible public
30 entity. Any such request shall be accompanied by the following material and information:

31 (A) A topographic map (1:2,000 or other appropriate scale) indicating the location of
32 the qualifying project;

33 (B) A description of the qualifying project, including the conceptual design of such
34 facility or facilities or a conceptual plan for the provision of services, and a schedule
35 for the initiation of and completion of the qualifying project to include the proposed
36 major responsibilities and timeline for activities to be performed by both the public
37 entity and the operator;

1 (C) A statement setting forth the method by which the operator proposes to secure any
2 necessary property interests required for the qualifying project. The statement shall
3 include:

4 (i) The names and addresses, if known, of the current owners of the property needed
5 for the qualifying project;

6 (ii) The nature of the property interests to be acquired; and

7 (iii) Any property that the responsible public entity will be asked to condemn;

8 (D) A listing describing any current plans for development of facilities to be used by
9 a public entity that are similar to the qualifying project being proposed by the operator,
10 if any, of each affected local jurisdiction;

11 (E) A list of all known significant permits and approvals required for the qualifying
12 project from local, state, or federal agencies and a projected schedule for obtaining such
13 permits and approvals;

14 (F) A list of public utility facilities, if any, that will be crossed by the qualifying project
15 and a statement of the plans of the operator to accommodate such crossings;

16 (G) A statement setting forth the operator's general plans for financing the qualifying
17 project, including the sources of funds;

18 (H) The names and addresses of the persons who may be contacted for further
19 information concerning the request;

20 (I) User fees, lease payments, and service payments over the term of the public-private
21 agreement provided for by Code Section 50-36-7, and the methodology and
22 circumstances for changes to such user fees, lease payments, and service payments over
23 time; and

24 (J) Such additional material and information as the responsible public entity may
25 request;

26 (2) The responsible public entity may request proposals or invite bids from private
27 entities for the development of qualifying projects;

28 (3) Any operator requesting approval from, or submitting a proposal to, a responsible
29 public entity pursuant to this Code section shall notify each affected local jurisdiction that
30 is not a responsible public entity for the qualifying project by furnishing a copy of its
31 request or proposal to such jurisdiction. Each such affected local jurisdiction may, within
32 60 days after receiving such notice, submit comments in writing on the proposed
33 qualifying project to the responsible public entity or entities and indicate whether the
34 facility is compatible with such jurisdiction's local comprehensive plan, local
35 infrastructure development plans, capital improvements budget, or other government
36 spending plan. Such comments shall be reviewed and considered by the responsible
37 public entity prior to entering a public-private agreement pursuant to Code Section
38 50-36-7 with such operator;

39 (4) Once any unsolicited proposal submitted by an operator pursuant to the provisions
40 of this Code section is received by the responsible public entity and is in compliance with
41 all legal and policy requirements for initial review, within 30 days thereof the responsible

1 public entity shall determine whether or not the public entity will accept for initial review
2 the unsolicited proposal. If the responsible public entity determines not to accept for
3 consideration the unsolicited proposal submitted by an operator pursuant to this Code
4 section, it shall return the unsolicited proposal, together with any fees submitted by the
5 operator with its unsolicited proposal pursuant to paragraph (6) of this Code section and
6 accompanying documentation, to the operator. If the responsible public entity passes a
7 resolution agreeing to accept for initial review and consider the unsolicited proposal,
8 within ten business days the responsible public entity shall publish in the legal organ for
9 that responsible public entity, or on such electronic website providing for general public
10 access as the responsible public entity may develop for such purpose, a notice stating that
11 such proposal has been accepted for initial review, providing a general description of the
12 proposed qualifying project, and inviting others to submit competing proposals to the
13 responsible public entity. The description of the proposed qualifying project shall include
14 an outline of the general nature and scope of the unsolicited proposal, including the
15 location of the proposed qualifying project, and specify the address to which any letters
16 of intent to submit a competing proposal and the competing proposals themselves must
17 be submitted. The responsible public entity shall advertise such notice for a period of 30
18 days. If the responsible public entity advertises such notice in its legal organ, the notice
19 shall be published at least twice with the first notice to be published 30 days prior to the
20 expiration of the advertisement period. The second publication of the notice shall occur
21 at least two weeks following the publication of the initial notice. In the event an
22 electronic website is used for the purpose of publishing such notice, the responsible
23 public entity shall maintain the notice on such website continuously for the 30 day period.
24 Any person who elects to submit a competing proposal for the proposed qualifying
25 project to the responsible public entity shall submit a written letter of intent to do so by
26 no later than 30 days after the responsible public entity's initial publication of the notice.
27 Any letter of intent received by the responsible public entity after the expiration of the
28 30 day period shall not be valid and any competing proposal submitted thereafter by a
29 person who has not submitted a timely letter of intent shall not be considered by the
30 responsible public entity and shall be returned to the person who did not submit a letter
31 of intent by the deadline. For those persons who elect to submit a competing proposal
32 and submit a timely letter of intent with the responsible public entity, any such competing
33 proposal shall be submitted to the responsible public entity by no later than 90 days after
34 the responsible public entity's initial publication of the notice required by this Code
35 section. Only those competing, compliant proposals submitted by such deadline shall be
36 considered by the responsible public entity;

37 (5) Any proposal submitted pursuant to this chapter shall be treated in the same manner
38 as a bid or proposal under subparagraph (a)(6)(B) of Code Section 50-18-72 and shall not
39 be disclosed until such time as the public-private agreement is approved by the
40 responsible public entity or the qualifying project is terminated or abandoned. It shall be
41 the responsibility of the operator to clearly mark and identify any trade secrets covered

1 by paragraph (1) of subsection (b) of Code Section 50-18-72, information specifically
2 required by the federal government to be kept confidential and covered by paragraph (1)
3 of subsection (a) of Code Section 50-18-72, and any other confidential, privileged and
4 proprietary information which is exempt from disclosure under applicable law. Trade
5 secrets and other confidential, privileged and proprietary information submitted in
6 connection with a qualifying project shall be deemed to be required by law to be
7 submitted to a government agency pursuant to the provisions of Article 4 of Chapter 18
8 of Title 50;

9 (6) The responsible public entity may charge a reasonable fee to cover the costs of
10 providing legal notice and processing, reviewing, and evaluating a request submitted
11 pursuant to the provisions of this Code section, including, without limitation, notice fees,
12 reasonable attorneys' fees and fees for financial and other necessary advisers or
13 consultants;

14 (7) The responsible public entity may reject any proposal initiated by an operator
15 pursuant to this Code section at any time; and

16 (8) Responsible public entities may consider any unsolicited proposal, or may request
17 proposals for the development of qualifying projects, which propose that more than one
18 facility be combined into a single public-private agreement only if the facilities are
19 related by function and the total estimated cost for the qualifying project does not exceed
20 \$15,000,000.00. If the total estimated cost of combined facilities is proposed to exceed
21 \$15,000,000.00, then a responsible public entity shall consider combining multiple
22 facilities in a single public-private agreement only if the responsible public entity
23 determines, and states the reasons for such determination in writing, that all of the
24 following criteria are met:

25 (A) The facilities are related by function or purpose;

26 (B) The facilities are on the same qualifying project site, or within close proximity;

27 (C) The combination of more than one facility in a single public-private agreement will
28 benefit the responsible public entity, any affected local jurisdictions, and the public;

29 (D) The combination of such facilities in a single public-private agreement will result
30 in a material increase in available funding, a material cost savings to the responsible
31 public entity, or both; and

32 (E) The combination of such facilities will not limit competition or have an adverse
33 impact on small business.

34 In no event shall a responsible public entity consider combining an entire infrastructure
35 or facilities development program, or separate unrelated facilities in a single
36 public-private agreement.

- 1 50-36-6.
- 2 (a) The responsible public entity may grant approval of the development of the qualifying
3 project if the responsible public entity determines that such project serves the public
4 purpose of this chapter. The responsible public entity may determine that the development
5 of the qualifying project as a qualifying project serves such public purpose if:
- 6 (1) There is a public need for and benefit derived from the qualifying project of the type
7 the operator proposes as a qualifying project;
- 8 (2) The estimated cost of the qualifying project is reasonable in relation to similar
9 facilities; and
- 10 (3) The operator's plans will result in the timely planning, design, development,
11 financing, acquisition, installation, construction, equipping, maintenance, improvement,
12 expansion, repair, or operation of the qualifying project.
- 13 (b) The approval of the responsible public entity shall be subject to the operator's entering
14 into a public-private agreement pursuant to Code Section 50-36-7 with the responsible
15 public entity. In connection with its approval of the qualifying project, the responsible
16 public entity shall establish a date for the commencement of activities related to the
17 qualifying project. The responsible public entity may extend such date from time to time.
- 18 (c) Proposals for qualifying projects submitted pursuant to paragraph (1) of Code Section
19 50-36-5 shall be selected without regard to any contracting requirements in this state which
20 would require that qualifying projects be awarded by public competitive bid including, but
21 not limited to, any local legislation or ordinance, Part 1 of Article 3 of Chapter 5 of this
22 title, Chapter 91 of Title 36, Code Sections 36-10-2.1 and 36-10-2.2, and any
23 interpretations, regulations, or guidelines of the Department of Administrative Services
24 relating thereto.
- 25 (d) Each proposal for a qualifying project shall be weighed by the responsible public entity
26 on its own merits and, if the responsible public entity has requested proposals or invited
27 bids for the qualifying project, competing proposals shall be evaluated in light of any
28 selection criteria stipulated in such request or invitation.
- 29 (e) Responsible public entities shall not be required to select the proposal with the lowest
30 price offer, but may consider price as one factor in evaluating proposals received. Other
31 factors that the responsible public entity may consider include the proposed cost of the
32 qualifying project, the general reputation, industry experience, and financial capacity of the
33 operator, the proposed design of the qualifying project, the time schedule proposed for
34 completion of the project, local citizen and government concerns, benefits to the public, the
35 operator's compliance with a minority business enterprise participation plan or good faith
36 effort to comply with the goals of such a plan, the operator's plans to employ local
37 contractors and residents, and other criteria that the responsible public entity deems
38 appropriate.
- 39 (f) A responsible public entity shall not proceed to consider any request by an operator for
40 approval of a qualifying project pursuant to Code Section 50-36-5 until the responsible

1 public entity has adopted and made publicly available procedures that are sufficient to
2 enable the responsible public entity to comply with this chapter.

3 (g) A responsible public entity with a plan promoting the participation of minority, female,
4 or disadvantaged business enterprises shall comply with any such plan or similarly
5 designed plan in developing qualifying projects under this chapter.

6 50-36-7.

7 (a) Prior to developing the qualifying project, the operator shall enter into a written
8 public-private agreement with the responsible public entity. If it shall be deemed necessary
9 or appropriate by the operator and the responsible public entity, any other private entity or
10 public entity may join in the execution of or become a party to the public-private agreement
11 in furtherance of the purposes of this chapter. The public-private agreement shall provide
12 for:

13 (1) Delivery of maintenance, performance, and payment bonds or letters of credit in
14 connection with the development of the qualifying project, in the forms and amounts
15 satisfactory to the responsible public entity;

16 (2) Review of plans and specifications for the qualifying project by the responsible
17 public entity and approval by the responsible public entity if the plans and specifications
18 conform to standards acceptable to the responsible public entity. This requirement shall
19 not be construed as mandating that the operator complete design of a qualifying project
20 prior to the execution of a public-private agreement and shall not be construed as placing
21 liability for the plans and specifications on the responsible public entity rather than the
22 operator;

23 (3) Inspection of the qualifying project by the responsible public entity, if the responsible
24 public entity so chooses, to ensure that the operator's activities are acceptable to the
25 responsible public entity in accordance with the provisions of the public-private
26 agreement;

27 (4) Indemnity of the responsible public entity by the operator for any and all claims of
28 whatever nature arising from the qualifying project or the public-private agreement,
29 except for gross negligence or intentional torts by the responsible public entity;

30 (5) Maintenance by the operator of a policy or policies of public liability insurance in an
31 amount appropriate to protect the qualifying project's viability and in a form reasonably
32 satisfactory to the responsible public entity;

33 (6) Monitoring of the practices of the operator by the responsible public entity, if the
34 responsible public entity so chooses, to ensure that the qualifying project is properly
35 maintained;

36 (7) Reimbursement to be paid to the responsible public entity for services provided by
37 the responsible public entity;

38 (8) A plan of finance for the qualifying project, specifying the sources of funds; and

39 (9) Filing, upon the written request of the responsible public entity, of appropriate
40 financial statements of the operator with such entity.

1 (b) The public-private agreement shall provide for such user fees, lease payments, or
2 service payments as may be established from time to time by agreement of the parties. A
3 copy of any lease or service contract shall be filed with the responsible public entity. In
4 negotiating user fees under this subsection, the parties shall establish payments or fees that
5 are the same for persons using the facility under like conditions. The execution of the
6 public-private agreement or any amendment thereto shall constitute conclusive evidence
7 that the user fees, lease payments, or service payments provided for comply with this
8 chapter. User fees or lease payments established in the public-private agreement as a source
9 of revenues may be in addition to, or in lieu of, service payments.

10 (c) The public-private agreement shall incorporate the duties of the operator under this
11 chapter and may contain such other terms and conditions that the responsible public entity
12 determines serve the public purpose of this chapter. Without limitation, the public-private
13 agreement may contain provisions under which the responsible public entity agrees to
14 provide notice of default and cure rights for the benefit of the operator and the persons
15 specified therein as providing financing for the qualifying project. The public-private
16 agreement may contain such other lawful terms and conditions to which the operator and
17 the responsible public entity mutually agree, including, without limitation, provisions
18 regarding unavoidable delays or provisions providing for a grant or loan of public funds,
19 as authorized by otherwise applicable provisions of law, to the operator to develop one or
20 more qualifying projects. The public-private agreement may also contain provisions where
21 the authority and duties of the operator under this chapter shall cease, and the qualifying
22 project is dedicated to the responsible public entity or, if the qualifying project was initially
23 dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

24 (d) The public-private agreement may extend for any period as determined by the
25 responsible public entity notwithstanding the provisions of Code Section 36-30-3, Code
26 Section 36-60-13, or any other provision of law. The total estimated costs of qualifying
27 projects approved pursuant to this chapter shall not be applied toward the allowable
28 average annual payments or outstanding principal balance limitations of any county or
29 municipality pursuant to subsection (h) of Code Section 36-60-13.

30 (e) Any changes in the terms of the public-private agreement, as may be agreed upon by
31 the parties from time to time, shall be added to the public-private agreement by written
32 amendment.

33 (f) In addition to any authority otherwise conferred by law, and in addition to or as an
34 element of the public-private agreement provided for herein, any public entity may contract
35 with an operator for the delivery of services to be provided as part of a qualifying project
36 in exchange for such service payments and other consideration as such public entity may
37 deem appropriate.

38 50-36-8.

39 (a) The operator shall have all power allowed by law generally to an entity having the
40 same form of organization as the operator and shall have the power to develop the

1 qualifying project and collect lease payments, impose user fees, or enter into service
2 contracts in connection with the use thereof.

3 (b) The operator may own, lease, or acquire any other right to use or operate the qualifying
4 project.

5 (c) The operator shall have the powers described in Code Section 50-36-13 with respect
6 to the financing of any qualifying project.

7 (d) In operating the qualifying project, the operator may:

8 (1) Make classifications according to reasonable categories for assessment of user fees;
9 and

10 (2) With the consent of the responsible public entity, make and enforce reasonable rules
11 to the same extent that the responsible public entity may make and enforce rules with
12 respect to similar facilities.

13 (e) The operator shall:

14 (1) Develop the qualifying project in a manner that is acceptable to the responsible
15 public entity, all in accordance with the provisions of the public-private agreement;

16 (2) Keep the qualifying project open for public use at all times, or as appropriate based
17 upon the use of the facility, after its initial opening upon payment of the applicable user
18 fees, lease payments, or service payments, provided that the qualifying project may be
19 temporarily closed because of emergencies or, with the consent of the responsible public
20 entity, to protect the safety of the public or for reasonable construction or maintenance
21 procedures;

22 (3) Maintain, or provide by contract for the maintenance of, the qualifying project, if
23 required by the public-private agreement;

24 (4) Cooperate with the responsible public entity in making best efforts to establish any
25 interconnection with the qualifying project requested by the responsible public entity; and

26 (5) Comply with the provisions of the public-private agreement, any lease, and any
27 service contract.

28 (f) Nothing shall prohibit an operator of a qualifying project from providing additional
29 services for or from the qualifying project to public or private entities other than the
30 responsible public entity so long as the provision of additional service does not impair the
31 operator's ability to meet its commitments to the responsible public entity pursuant to the
32 public-private agreement as determined by the responsible public entity.

33 (g) The operator's authority and duties under this chapter shall terminate on the date set
34 forth in the public-private agreement. Upon termination, the authority and duties of the
35 operator under this chapter shall cease, and the qualifying project may be dedicated to the
36 responsible public entity or, if the qualifying project was initially dedicated by an affected
37 local jurisdiction, to such affected local jurisdiction for public use.

38 50-36-9.

39 (a) In the event of a material default by the operator, the responsible public entity may
40 elect to assume the responsibilities and duties of the operator of the qualifying project, and

1 in such case, it shall succeed to all of the rights, title, and interest in such qualifying project,
2 subject to any liens on revenues previously granted by the operator to any person providing
3 financing therefor.

4 (b) In the event of a material default by the operator, the responsible public entity may
5 terminate the public-private agreement and exercise any other rights and remedies that may
6 be available to it at law or in equity.

7 (c) In the event of a material default by the operator, the responsible public entity may
8 make or cause to be made any appropriate claims under the maintenance, performance, or
9 payment bonds or lines of credit required by paragraph (1) of subsection (a) of Code
10 Section 50-36-7.

11 (d) In the event the responsible public entity elects to take over a qualifying project
12 pursuant to subsection (a) of this Code section, the responsible public entity may operate
13 and maintain the qualifying project, impose user fees, impose and collect lease payments
14 and service payments for the use thereof, and comply with any lease and service contracts
15 as if it were the operator. Any revenues that are subject to a lien shall be collected for the
16 benefit of and paid to secured parties, as their interests may appear, to the extent necessary
17 to satisfy the operator's obligations to secured parties, including the maintenance of
18 reserves. Such liens shall be correspondingly reduced and, when paid off, released. Before
19 any payments to, or for the benefit of, secured parties, the responsible public entity may use
20 revenues to pay current operation and maintenance costs of the qualifying project,
21 including compensation to the responsible public entity for its services in operating and
22 maintaining the qualifying project. The right to receive such payment, if any, shall be
23 considered just compensation for the qualifying project. The full faith and credit of the
24 responsible public entity shall not be pledged to secure any financing of the operator by the
25 election to take over the qualifying project. Assumption of operation of the qualifying
26 project shall not obligate the responsible public entity to pay any obligation of the operator
27 from sources other than revenues.

28 50-36-10.

29 Any public entity may dedicate any property interest of any type held by such entity,
30 including land, improvements, and tangible personal property, for public use in a qualifying
31 project if it finds that so doing will serve the public purpose. In connection with such
32 dedication, a public entity may convey any property interest that it has, subject to the
33 conditions imposed by general law, to the operator, subject to the provisions of this chapter,
34 for such consideration as such public entity may determine. The aforementioned
35 consideration may include, without limitation, the agreement of the operator to operate the
36 qualifying project.

37 50-36-11.

38 At the request of the operator, the responsible public entity may exercise any power of
39 eminent domain in the manner provided by law for the purpose of acquiring any property

1 or interests therein to the extent that the responsible public entity finds that such action
2 serves the public purpose of this chapter. The power of eminent domain shall not be
3 delegated to any operator under any public-private agreement executed pursuant to this
4 chapter.

5 50-36-12.

6 All peace officers of this state and of each affected local jurisdiction shall have the same
7 powers and jurisdiction within the limits of such qualifying project as they have in their
8 respective areas of jurisdiction and such peace officers shall have access to the qualifying
9 project at any time for the purpose of exercising such powers and jurisdiction.

10 50-36-13.

11 (a) Any financing of a qualifying project may be in such amounts and upon such terms and
12 conditions as may be determined by the parties to the public-private agreement. Without
13 limiting the generality of the foregoing, the operator and the responsible public entity may
14 utilize any and all funding resources available to them and may, to the fullest extent
15 permitted by applicable law, issue debt, equity, or other securities or obligations, enter into
16 leases, and secure any financing with a pledge of, security interest in, or lien on, any or all
17 of its property, including all of its property interests in the qualifying project.

18 (b) The responsible public entity may take any action to obtain federal, state, or local
19 assistance for a qualifying project that serves the public purpose of this chapter and may
20 enter into any contracts required to receive such assistance. If the responsible public entity
21 is a state agency, any funds received from the state or federal government or any agency
22 or instrumentality thereof shall be subject to appropriation as provided by the Constitution
23 and laws of this state. The responsible public entity may determine that it serves the public
24 purpose of this chapter for all or any portion of the costs of a qualifying project to be paid,
25 directly or indirectly, from the proceeds of a grant or loan, as authorized by otherwise
26 applicable provisions of law, made by the federal, state, or local government or any agency
27 or instrumentality thereof.

28 (c) The responsible public entity may agree to make grants or loans, as authorized by
29 otherwise applicable provisions of law, to the operator from time to time from amounts
30 received from the federal, state, or local government or any agency or instrumentality
31 thereof.

32 50-36-14.

33 A qualifying project operated pursuant to a public-private agreement authorized under this
34 chapter shall not be subject to regulation as to user fees, toll amounts, or any other matters
35 by the Public Service Commission, the Department of Transportation, the State Road and
36 Tollway Authority, or the Georgia Environmental Facilities Authority, except those matters
37 related to the regulation of safety or hazardous materials as provided for in Title 46.

1 50-36-15.

2 (a) Nothing in this chapter shall be construed as or deemed a waiver of the sovereign
3 immunity of this state, any responsible public entity, or any affected local jurisdiction or
4 any officer or employee thereof with respect to the participation in or approval of all or any
5 part of the qualifying project or its operation, including but not limited to interconnection
6 of the qualifying project with any other infrastructure or project. Counties and
7 municipalities in which a qualifying project is located shall possess sovereign immunity
8 with respect to its design, construction, maintenance, and operation.

9 (b) Nothing in this chapter shall be construed to enlarge or diminish the authority or
10 responsibility of the Federal Highway Administration, the Georgia Regional Transportation
11 Authority, the Environmental Protection Division of the Department of Natural Resources,
12 the Metropolitan North Georgia Water Planning District, the Department of Community
13 Affairs, or any other federal or state agency to conduct any statutorily mandated reviews
14 of and grant approvals relating to any proposed qualifying project and the contracts,
15 agreements, and expenditures relating thereto.

16 (c) Nothing in this chapter or in a public-private agreement entered into pursuant to this
17 chapter shall be deemed to enlarge, diminish, or affect the constitutional debt limits of
18 counties, municipalities, or the state, pursuant to Article VII or Article IX of the
19 Constitution of this state.

20 (d) Except as specifically provided herein, nothing in this chapter or in a public-private
21 agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish, or
22 affect the powers of a responsible public entity otherwise granted to such entity pursuant
23 to the Constitution and the laws of this state.

24 (e) This chapter shall be deemed to provide an additional and alternative method for the
25 doing of the things authorized hereby and shall be regarded as supplemental and additional
26 to powers conferred by other laws and shall not be regarded as in derogation of any powers
27 now existing.

28 (f) This chapter, being for the welfare of this state and its inhabitants, shall be liberally
29 construed to effect the purposes hereof, and insofar as this chapter may be inconsistent with
30 the provisions of any other law, including the charter of any municipal corporation, this
31 chapter shall be controlling. No proceeding or publication not required by this chapter or
32 applicable law shall be necessary to the performance of any act authorized in this chapter,
33 nor shall any such act be subject to referendum unless otherwise provided for by law."

34 **SECTION 2.**

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