

The Senate Natural Resources and the Environment Committee offered the following substitute to SB 321:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 6 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated,  
2 relating to water supply, so as to provide for private operation or ownership of new public  
3 water facilities in certain cases; to provide for requests for proposals for projects; to provide  
4 for reimbursement of project advancement costs; to provide for an evaluation process; to  
5 provide for awards; to provide conditions and restrictions; to provide for rules and  
6 regulations; to provide a short title; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Georgia Public-Private Water Facility and  
10 Supply Act of 2010."

11 **SECTION 2.**

12 Article 6 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to  
13 water supply, is amended by adding a new Code section to read as follows:

14 "12-5-476.2.

15 (a) As used in this Code section, the term 'water facility' means a supply or recapture  
16 reservoir, well, collection and distribution system, water transportation system, and any  
17 other facility for the impoundment, collection, or distribution of water for public use.

18 (b) The division or any county, municipality, or local water authority may enter into a  
19 reservoir use or water supply agreement with the owner of any private water facility. Any  
20 contracts entered into pursuant to this subsection may include user fees for use of the  
21 project or water supplied thereby.

22 (c)(1) After identifying any site as feasible for a water facility pursuant to subsection (c)  
23 of Code Section 12-5-472, the division may evaluate a potential project for such site to  
24 determine, in the judgment of the division, appropriate or desirable levels of state, local,  
25 or private participation in such project for purposes of supplying water to the division or

26 any county, municipality, or local water authority for resale. In making such  
27 determination, the division shall be authorized and encouraged to seek the advice and  
28 input of the affected local governing authorities, local water authorities, and the private  
29 financial and construction sectors.

30 (2) For any project for which private ownership of a new water facility is determined by  
31 the division to be feasible and appropriate for purposes of supplying water to the division  
32 or any county, municipality, or local water authority for resale, the division may perform  
33 management, technical, consultative, training, educational, and other project development  
34 and promotion activities, subject to availability of funds from the Georgia Reservoir Fund  
35 established by Code Section 50-23-28 and the requirement that the division be fully  
36 compensated by the private owner of the water facility for such expenditures. All such  
37 compensation paid to the division shall be deposited in such fund.

38 (3) For any project for which private operation or ownership of a new water facility is  
39 determined by the division to be feasible and appropriate for purposes of supplying water  
40 to the division or any county, municipality, or local water authority for resale, the  
41 division, for itself or for any interested local governing authority or local water authority  
42 which has requested the division to act in its behalf, may issue a written request for  
43 proposals indicating in general terms the scope of the project and the factors that will be  
44 used in evaluating the proposals and containing or incorporating by reference other  
45 applicable contractual terms and conditions, including any unique capabilities or  
46 qualifications that will be required of the contractor. Public notice of such request for  
47 proposals shall be made at least 90 days prior to the date set for receipt of proposals by  
48 posting the legal notice on a single website that shall be procured and maintained for such  
49 purposes by the Department of Administrative Services or in substantially the same  
50 manner utilized by the division to solicit requests for proposals.

51 (4) Upon receipt of a proposal or proposals responsive to the request for proposals, the  
52 division shall accept written public comment, solicited in the same manner as provided  
53 for notice of proposals, for a period of 30 days beginning at least ten days after the date  
54 set for receipt of proposals. In addition, the division shall hold at least one public hearing  
55 on such proposals not later than the conclusion of the period for public comment.

56 (5) In the event the division receives more than one proposal, the division shall engage  
57 in individual discussions with two or more respondents deemed fully qualified,  
58 responsible, and suitable on the basis of initial responses and with emphasis on  
59 professional competence and ability to meet the level of private financial participation  
60 called for by the division. Repetitive informal interviews shall be permissible. In the  
61 event that any county, municipality, or local water authority is a potential customer of a  
62 project that is to be privately owned or operated, a representative of such local

63 government entity, appointed by the same, may participate in such discussions and  
64 interviews. At the discussion stage, the division may discuss estimates of total project  
65 costs, including, but not limited to, nonbinding estimates of price for services.  
66 Proprietary information from competing respondents shall not be disclosed to the public  
67 or to competitors and shall not be subject to the provisions of Code Section 50-18-70.  
68 At the conclusion of such discussions, on the basis of evaluation factors published in the  
69 request for proposal and all information developed in the selection process, the division,  
70 with the input of any participating local governing authority or local water authority, shall  
71 select in the order of preference two or more respondents whose qualifications and  
72 proposed services are deemed most meritorious. Negotiations shall then be conducted  
73 with two or more respondents and with the participation of the designated representative  
74 of any participating local governing authority or local water authority. The director shall  
75 select the respondent who shall implement the project based upon contract terms that are  
76 the most satisfactory and advantageous to the division based upon a thorough assessment  
77 of value and the ability of the final project's characteristics to further the goals of regional  
78 and state-wide water management plans prepared pursuant to Article 8 of this chapter.  
79 Before making such selection, the director shall consult with any and all interested local  
80 governing authorities or local water authorities. Notwithstanding the foregoing, if the  
81 terms and conditions for multiple awards are included in the request for proposal, the  
82 director may award contracts to more than one respondent. Should the director determine  
83 in writing and in his or her sole discretion that only one respondent is fully qualified, or  
84 that one respondent is clearly more highly qualified and suitable than the others under  
85 consideration, a contract may be negotiated and awarded to that respondent.

86 (d)(1) If the division or any county, municipality, or local water authority receives an  
87 unsolicited proposal from a private entity for a project for purposes of supplying water  
88 to the division or any county, municipality, or local water authority for resale, the  
89 division may evaluate the proposed site to determine if such site is feasible for a water  
90 facility pursuant to subsection (c) of Code Section 12-5-472.

91 (2) For any project for which private operation or ownership of a new water facility is  
92 determined by the division to be feasible and appropriate for purposes of supplying water  
93 to the division or any county, municipality, or local water authority for resale, the  
94 division may evaluate such proposed project to determine, in the judgment of the  
95 division, appropriate or desirable levels of state, local, or private participation in such  
96 project. In making such determination, the division shall be authorized and encouraged  
97 to seek the advice and input of the affected local governing authorities, local water  
98 authorities, and the private financial and construction sectors.

99 (3) In determining whether a project involving private ownership of a new water facility  
100 is feasible and appropriate for purposes of supplying water to the division or any county,  
101 municipality, or local water authority for resale, the division may perform management,  
102 technical, consultative, training, educational, and other project development and  
103 promotion activities, subject to availability of funds from the Georgia Reservoir Fund  
104 established by Code Section 50-23-28 and the requirement that the division be fully  
105 compensated by the private owner of the water facility for such expenditures. All such  
106 compensation paid to the division shall be deposited in such fund.

107 (4) If appropriate after the considerations stated in paragraphs (2) and (3) of this  
108 subsection, the division shall negotiate terms with the private entity which made the  
109 proposal with the participation of the designated representative of any participating local  
110 governing authority or local water authority. The division shall not solicit additional  
111 proposals, but it shall consider any concurrent projects affecting the same area under  
112 subsection (c) of this Code section in determining whether to award a contract under this  
113 subsection. The director shall negotiate contract terms that are the most satisfactory and  
114 advantageous to the division based upon a thorough assessment of value and the ability  
115 of the final project's characteristics to further the goals of regional and state-wide water  
116 management plans prepared pursuant to Article 8 of this chapter. Before making a final  
117 approval of such proposal, the director shall consult with any and all interested local  
118 governing authorities or local water authorities.

119 (5) Should the director determine in writing that:

120 (A) The proposed site is feasible for a water facility;

121 (B) The levels of state, local, or private participation in such project are appropriate or  
122 desirable;

123 (C) The terms negotiated with the private entity are satisfactory and advantageous to  
124 the division; and

125 (D) The private entity making the proposal is fully qualified,

126 then the director or any county, municipality, or local or regional water authority may  
127 enter into a contract with such party. Such findings shall be made in writing and the  
128 reasons for each such findings shall be fully and thoroughly documented with technical  
129 and financial data.

130 (e) Nothing in this Code section shall require the division to continue negotiations or  
131 discussions arising out of any request for proposal.

132 (f) The authority may promulgate reasonable rules or regulations to assist in the division's  
133 evaluation of the proposal and to implement this Code section.

134 (g) No employee, officer, or member of the division, the authority, the department, Board  
135 of Natural Resources, any local governing authority, or any local water authority shall

136 serve as an agent, lobbyist, or board member for any entity directly or indirectly under  
137 contract with or negotiating a contract with the division under this Code section for one  
138 year after leaving his or her position as such an employee, officer, or member.

139 (h) The director shall be authorized to delegate such duties and responsibilities under this  
140 Code section as he or she deems appropriate from time to time; provided, however, that the  
141 final approval of contracts provided for in this Code section shall be by action of the  
142 director.

143 (i) The power of eminent domain shall not be delegated to any private entity with respect  
144 to any project commenced or proposed pursuant to this Code section."

145

### SECTION 3.

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