

Senate Bill 321

By: Senators Pearson of the 51st, Williams of the 19th, Rogers of the 21st, Tolleson of the 20th, Mullis of the 53rd and others

AS PASSED SENATE

**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, nor shall any property
145 taken through the exercise of the power of eminent domain be conveyed or leased to a
146 private entity.

147 (j) Any water facility approved pursuant to this Code section shall, as a condition of such
148 approval, be submitted to the governing authority of each county and municipal corporation
149 within which the facility is wholly or partially located and shall be included in the service
150 delivery strategy agreement required by Article 2 of Chapter 70 of Title 36. Without such
151 approval and inclusion the facility shall not be approved."

152 **SECTION 3.**

153 All laws and parts of laws in conflict with this Act are repealed.