

The Senate Finance Committee offered the following substitute to SB 194:

A BILL TO BE ENTITLED  
AN ACT

To amend Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to state purchasing in general, so as to revise provisions relating to benefits based funding projects in which payments to vendors depend upon the realization of specified savings or revenue gains; to change provisions relating to such projects, their required and permissible terms, and their funding; to provide for an advisory role by the Georgia Environmental Facilities Authority; to change the membership of an oversight committee; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to state purchasing in general, is amended by revising Code Section 50-5-77, relating to benefits based funding projects, as follows:

"50-5-77.

(a) As used in this Code section, the term:

(1) 'Agency' means every state department, agency, board, bureau, and commission including without limitation the Board of Regents of the University System of Georgia.

(2) 'Authority' means the Georgia Environmental Facilities Authority.

~~(2)~~(3) 'Benefits based funding project' means any governmental improvement project in which payments to vendors depend upon the realization of specified savings or revenue gains attributable solely to the improvements, provided that each benefits based funding project is structured as follows:

(A) The vendor ~~promises, or accepts the condition,~~ guarantees that the improvements will generate actual and quantifiable savings or enhanced revenues;

(B) The agency develops a measurement tool for calculating the savings or enhanced revenues realized from the project; and

(C) The funding for the project shall be attributable solely to its successful implementation for the period specified in the contract, or, where applicable, from sums remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue gains.

~~(3)~~(4) 'External oversight committee' means a committee composed of the executive director of the Georgia Technology Authority, the commissioner of administrative services, the director of the Office of Planning and Budget, the state auditor, the state accounting officer, the Governor's designee, the chairperson of the House Committee on Appropriations, and the chairperson of the Senate ~~Finance~~ Committee on Appropriations.

~~(4)~~(5) 'Measurement tool' means the formula used to measure the actual savings or enhanced revenues and includes a means for distinguishing enhanced revenue or savings from normal activities, including the possibility of no savings or revenue growth or an increased expenditure or decline in revenue. Baseline parameters must be defined based on historical costs or revenues for a minimum of one year. The measurement tool shall use the baseline parameters to forecast savings or enhanced revenues and to determine the overall benefits and fiscal feasibility of the proposed project.

~~(5)~~(6) 'Special dedicated fund' means any fund established pursuant to this Code section from which the vendor or vendors are compensated as part of a benefits based funding project. The moneys in the special dedicated fund shall be deemed contractually obligated and shall not lapse at the end of each fiscal year.

(b) An agency shall be authorized to enter into multiyear lease, purchase, or lease purchase contracts of all kinds for the acquisition of equipment, goods, materials, ~~real or personal~~ property, improvements to real property, services, construction services, renovation services, and supplies as benefits based funding projects; provided, however, that a condition precedent to the award of the contract is a competitive solicitation in compliance with any applicable purchasing laws now or hereafter enacted, including without limitation the provisions of this chapter and Chapter 25 of this title; and provided, further, that the contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the agency at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed;

~~(2) The contract shall terminate absolutely and without further obligation on the part of the agency at such time as the agency determines that actual savings or incremental revenue gains are not being generated to satisfy the obligations under the contract;~~

~~(3)~~(2) The contract may be renewed only by a positive action taken by the agency;

(3) In addition to any other remedies available to the agency, the contract shall provide that at such time as the agency determines that actual savings or incremental revenue

gains are not being generated to satisfy the obligations under the contract, the vendor shall be required to remedy the deficit in actual savings or incremental revenue gains by remitting to the state an amount equal to the deficit. The vendor shall also be required to provide at contract execution and upon execution of any contract renewals an energy savings guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency equal to the value of the project's annual savings or revenue gains;

(4) The contract shall state the total obligation of the agency for repayment for the fiscal year of execution and shall state the total obligation for repayment which will be incurred in each fiscal year renewal term, if renewed; and

(5) The term of the contract, including any renewal periods, may not ~~exceed~~ extend past the date that is ten years from the date of the completion of the project that is the subject of the contract, ~~and~~

~~(6) The agency's financial obligations under the contract are limited to and cannot exceed the savings or incremental revenue gains, as calculated using the measurement tool, actually generated by the benefits based funding project, even if no savings or enhanced revenues are realized from the project.~~

(c) Any contract developed under this Code section containing the provisions enumerated in subsection (b) of this Code section shall be deemed to obligate the agency only for those sums payable during the fiscal year of execution or, in the event of a renewal by the agency, for those sums payable in the individual fiscal year renewal term and only to the extent that savings or enhanced revenues are attributable to the benefits based funding project calculated using the measurement tool and, where applicable, sums remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue gains.

(d) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the state for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.

(e) Any such contract may provide for the payment by the agency of interest or the allocation of a portion of the contract payment to interest, provided that the contract is in compliance with this Code section.

(f) During the term of the contract, including any renewal periods, the agency shall, using the measurement tool, periodically calculate the total amount of the savings or enhanced revenues attributable to the implementation of the benefits based funding project. To the extent that savings or enhanced revenues are realized, the agency shall transfer from its budget into the special dedicated fund an amount up to but not to exceed the amount owed on the contract for the then current fiscal year term's obligation to provide for payments,

100 or, where applicable, sums remitted by the vendor or surety to remedy a deficit in  
101 guaranteed savings or revenue gains may be transferred to the special dedicated fund by  
102 the agency.

103 (g) During the term of the contract, including any renewal periods, the agency shall, using  
104 the measurement tool, calculate the total amount of the savings or enhanced revenues  
105 attributable to the implementation of the benefits based funding project during the then  
106 current fiscal year at least 30 days prior to the end of the then current fiscal year. If the  
107 agency renews the contract and to the extent that savings or enhanced revenues are realized  
108 in excess of the amount due on the contract in the then current fiscal year term, the agency  
109 shall transfer prior to the end of the then current fiscal year from its budget into the special  
110 dedicated fund an amount up to but not to exceed the next fiscal year's obligation to  
111 provide for future payments.

112 (h) Promptly upon nonrenewal, termination, or expiration of the contract, any moneys  
113 remaining in the special dedicated fund shall be deposited in the general fund of the state.

114 (i) Each agency is authorized to accept title to property subject to the benefits based  
115 funding contract and is authorized to transfer title back to the vendor in the event the  
116 contract is not fully consummated.

117 (j) Payments to which a vendor is entitled under the contract may not be assigned without  
118 the approval of the agency. In its discretion, the agency may agree that the vendor may  
119 assign the payments to which it is entitled under the benefits based funding contract to a  
120 third party, provided that the agency will be made party to the assignment agreement and  
121 that any such assignment agreement will not alter the obligations of the agency under the  
122 contract, specifically including, but not limited to, the provisions required by subsection (b)  
123 of this Code section; and provided that the vendor, at the time of the request that the agency  
124 agree to an assignment of payments, must provide to the agency an energy savings  
125 guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee from a  
126 corporation with an investment grade credit rating, or other surety instrument acceptable  
127 to the agency equal to the guaranteed savings for the total project duration including any  
128 anticipated renewal periods and the energy savings guarantee bond, bank letter of credit,  
129 escrowed funds, corporate guarantee from a corporation with an investment grade credit  
130 rating, or other surety instrument acceptable to the agency must remain in force for the  
131 entire project duration including any renewal periods. As savings are realized and verified  
132 by the measurement tool during the term of the contract including renewal periods, the  
133 value of the energy savings guarantee bond, bank letter of credit, escrowed funds, corporate  
134 guarantee from a corporation with an investment grade credit rating, or other surety  
135 instrument acceptable to the agency may decrease proportionately.

~~(j)(k)~~ The external oversight committee shall have the responsibility to review and advise  
direct the authority to perform reviews and to recommend approval of all benefits based  
funding projects advising:

- (1) The overall feasibility of the benefits based funding project;
- (2) The measurement tool;
- (3) The projected savings or enhanced revenues; and
- (4) The dollars to be set aside for vendor payments.

(l) At the recommendation of the authority, each ~~(k) Each~~ benefits based funding project  
and the proposed contract shall be approved by the external oversight committee prior to  
execution of the contract and ~~prior to any renewal thereof~~ shall be subject to further review  
by the authority or the external oversight committee at any time.

~~(h)(m)~~ Each agency shall prepare and certify an annual report ~~to be sent to the external~~  
~~oversight committee, the Governor, and the General Assembly~~ on all contracts entered into  
pursuant to this Code section, describing the benefits based funding ~~project, its projects,~~  
the progress of the projects, its the consolidated savings or enhanced revenues of such  
projects, and such other information as may be relevant. This annual report shall be sent  
to the authority on behalf of the external oversight committee at a date determined by the  
authority. The authority shall review and consolidate all agency reports and submit a  
consolidated report to the Governor, the General Assembly, and the external oversight  
committee."

## SECTION 2.

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