

COMMITTEE OF CONFERENCE SUBSTITUTE TO SB 194

LOSTA 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 revise provisions relating to fiscal management and administration of the state; to
 3 provide that state government entities shall be exempt from local government storm-water
 4 utility charges; to revise provisions relating to benefits based funding projects in which
 5 payments to vendors depend upon the realization of specified savings or revenue gains; to
 6 change provisions relating to such projects, their required and permissible terms, and their
 7 funding; to provide for an advisory role by the Georgia Environmental Facilities Authority;
 8 to change the membership of an oversight committee; to exempt the Georgia Building
 9 Authority from certain sales and use tax; to provide an effective date; to repeal conflicting
 10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

12 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
 13 by adding at the end of Chapter 1 a new Code section to read as follows:

14 "50-1-9.

15 The state and any department, agency, board, commission, or authority thereof shall be
 16 exempt from any storm-water utility charges imposed by any county, municipality, or local
 17 government authority."
 18

SECTION 2.

19 Said title is further amended by revising Code Section 50-5-77, relating to benefits based
 20 funding projects, as follows:

21 "50-5-77.

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

23 (1) 'Agency' means every state department, agency, board, bureau, and commission
 24 including without limitation the Board of Regents of the University System of Georgia.
 25

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

27 ~~(2)~~(3) 'Benefits based funding project' means any governmental improvement project in
 28 which payments to vendors depend upon the realization of specified savings or revenue
 29 gains attributable solely to the improvements, provided that each benefits based funding
 30 project is structured as follows:

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

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

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

39 ~~(3)~~(4) 'External oversight committee' means a committee composed of the executive
 40 director of the Georgia Technology Authority, the commissioner of administrative
 41 services, the director of the Office of Planning and Budget, the state auditor, the state
 42 accounting officer, the Governor's designee, the chairperson of the House Committee on
 43 Appropriations, and the chairperson of the Senate ~~Finance~~ Committee on Appropriations.

44 ~~(4)~~(5) 'Measurement tool' means the formula used to measure the actual savings or
 45 enhanced revenues and includes a means for distinguishing enhanced revenue or savings
 46 from normal activities, including the possibility of no savings or revenue growth or an
 47 increased expenditure or decline in revenue. Baseline parameters must be defined based
 48 on historical costs or revenues for a minimum of one year. The measurement tool shall
 49 use the baseline parameters to forecast savings or enhanced revenues and to determine
 50 the overall benefits and fiscal feasibility of the proposed project.

51 ~~(5)~~(6) 'Special dedicated fund' means any fund established pursuant to this Code section
 52 from which the vendor or vendors are compensated as part of a benefits based funding
 53 project. The moneys in the special dedicated fund shall be deemed contractually
 54 obligated and shall not lapse at the end of each fiscal year.

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

- 63 (1) The contract shall terminate absolutely and without further obligation on the part of
 64 the agency at the close of the fiscal year in which it was executed and at the close of each
 65 succeeding fiscal year for which it may be renewed;
- 66 ~~(2) The contract shall terminate absolutely and without further obligation on the part of~~
 67 ~~the agency at such time as the agency determines that actual savings or incremental~~
 68 ~~revenue gains are not being generated to satisfy the obligations under the contract;~~
- 69 ~~(3)~~(2) The contract may be renewed only by a positive action taken by the agency;
- 70 (3) In addition to any other remedies available to the agency, the contract shall provide
 71 that at such time as the agency determines that actual savings or incremental revenue
 72 gains are not being generated to satisfy the obligations under the contract, the vendor
 73 shall be required to remedy the deficit in actual savings or incremental revenue gains by
 74 remitting to the state an amount equal to the deficit. The vendor shall also be required
 75 to provide at contract execution and upon execution of any contract renewals an energy
 76 savings guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee
 77 from a corporation with an investment grade credit rating, or other surety instrument
 78 acceptable to the agency equal to the value of the project's annual savings or revenue
 79 gains;
- 80 (4) The contract shall state the total obligation of the agency for repayment for the fiscal
 81 year of execution and shall state the total obligation for repayment which will be incurred
 82 in each fiscal year renewal term, if renewed; and
- 83 (5) The term of the contract, including any renewal periods, may not ~~exceed~~ extend past
 84 the date that is ten years from the date of the completion of the project that is the subject
 85 of the contract.; ~~and~~
- 86 ~~(6) The agency's financial obligations under the contract are limited to and cannot exceed~~
 87 ~~the savings or incremental revenue gains, as calculated using the measurement tool,~~
 88 ~~actually generated by the benefits based funding project, even if no savings or enhanced~~
 89 ~~revenues are realized from the project.~~
- 90 (c) Any contract developed under this Code section containing the provisions enumerated
 91 in subsection (b) of this Code section shall be deemed to obligate the agency only for those
 92 sums payable during the fiscal year of execution or, in the event of a renewal by the
 93 agency, for those sums payable in the individual fiscal year renewal term and only to the
 94 extent that savings or enhanced revenues are attributable to the benefits based funding
 95 project calculated using the measurement tool and, where applicable, sums remitted by the
 96 vendor or surety to remedy a deficit in guaranteed savings or revenue gains.
- 97 (d) No contract developed and executed pursuant to this Code section shall be deemed to
 98 create a debt of the state for the payment of any sum beyond the fiscal year of execution
 99 or, in the event of a renewal, beyond the fiscal year of such renewal.

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

103 (f) During the term of the contract, including any renewal periods, the agency shall, using
104 the measurement tool, periodically calculate the total amount of the savings or enhanced
105 revenues attributable to the implementation of the benefits based funding project. To the
106 extent that savings or enhanced revenues are realized, the agency shall transfer from its
107 budget into the special dedicated fund an amount up to but not to exceed the amount owed
108 on the contract for the then current fiscal year term's obligation to provide for payments,
109 or, where applicable, sums remitted by the vendor or surety to remedy a deficit in
110 guaranteed savings or revenue gains may be transferred to the special dedicated fund by
111 the agency.

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

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

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

126 (j) Payments to which a vendor is entitled under the contract may not be assigned without
127 the approval of the agency. In its discretion, the agency may agree that the vendor may
128 assign the payments to which it is entitled under the benefits based funding contract to a
129 third party, provided that the agency will be made party to the assignment agreement and
130 that any such assignment agreement will not alter the obligations of the agency under the
131 contract, specifically including, but not limited to, the provisions required by subsection (b)
132 of this Code section; and provided that the vendor, at the time of the request that the agency
133 agree to an assignment of payments, must provide to the agency an energy savings
134 guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee from a
135 corporation with an investment grade credit rating, or other surety instrument acceptable
136 to the agency equal to the guaranteed savings for the total project duration including any

137 anticipated renewal periods and the energy savings guarantee bond, bank letter of credit,
 138 escrowed funds, corporate guarantee from a corporation with an investment grade credit
 139 rating, or other surety instrument acceptable to the agency must remain in force for the
 140 entire project duration including any renewal periods. As savings are realized and verified
 141 by the measurement tool during the term of the contract including renewal periods, the
 142 value of the energy savings guarantee bond, bank letter of credit, escrowed funds, corporate
 143 guarantee from a corporation with an investment grade credit rating, or other surety
 144 instrument acceptable to the agency may decrease proportionately.

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

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

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

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

165 SECTION 3.

166 Said title is further amended by revising Code Section 50-9-13, relating to exemption of the
 167 Georgia Building Authority from taxation, as follows:

168 "50-9-13.

169 It is found, determined, and declared that the creation of the authority and the carrying out
 170 of its corporate purpose are in all respects for the benefit of the people of this state and are
 171 a public purpose and the authority will be performing an essential governmental function
 172 in the exercise of the power conferred upon it by this article and Article 2 of this chapter.

173 This state covenants with the holders of the bonds that the authority shall be required to pay
174 no taxes or assessments upon any of the property acquired or leased by it or under its
175 jurisdiction, control, possession, or supervision or upon its activities in the operation or
176 maintenance of the buildings erected or acquired by it or any fees, rentals, or other charges
177 for the use of such buildings or other income received by the authority and that the bonds
178 of the authority, their transfer, and the income therefrom shall at all times be exempt from
179 taxation within the state. The tax exemption provided in this Code section shall include an
180 exemption from all sales and use tax on property purchased, leased, or used by the
181 authority."

182 **SECTION 4.**

183 This Act shall become effective upon its approval by the Governor or upon its becoming law
184 without such approval.

185 **SECTION 5.**

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