

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

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 supply reservoirs in certain cases; to provide for requests for proposals for projects; to  
4 provide for reimbursement of project advancement costs; to provide for an evaluation  
5 process; to 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 "Public Water Supply-Private Initiative  
10 Act."

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

19 (b)(1) After identifying any site as feasible for a water reservoir pursuant to subsection  
20 (c) of Code Section 12-5-472, the division may evaluate a potential project for such site  
21 to determine, in the judgment of the division, appropriate or desirable levels of state,  
22 local, or private participation in such project for purposes of supplying water to the  
23 division or any county, municipality, or local water authority for resale. In making such  
24 determination, the division shall be authorized and encouraged to seek the advice and  
25 input of the affected local governing authorities, local water authorities, and the private  
26 financial and construction sectors.

27 (2) For any project for which private ownership of a new reservoir is determined by the  
28 division to be feasible and appropriate for purposes of supplying water to the division or  
29 any county, municipality, or local water authority for resale, the division may perform  
30 management, technical, consultative, training, educational, and other project development  
31 and promotion activities, subject to availability of funds from the Georgia Reservoir Fund  
32 established by Code Section 50-23-28 and the requirement that the division be fully  
33 compensated by the private owner of the reservoir for such expenditures. All such  
34 compensation paid to the division shall be deposited in such fund. Any reservoir owned  
35 by a private entity and for which the division is fully compensated for its expenditures  
36 under this paragraph shall be exempt from the provisions of subsection (b) of Code  
37 Section 12-5-472 for the duration of the private ownership.

38 (3) For any project for which private operation or ownership of a new reservoir 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) The division shall engage in individual discussions with two or more respondents  
57 deemed fully qualified, responsible, and suitable on the basis of initial responses and with  
58 emphasis on professional competence and ability to meet the level of private financial  
59 participation called for by the division. Repetitive informal interviews shall be  
60 permissible. In the event that any county, municipality, or local water authority is a  
61 potential customer of a project that is to be privately owned or operated, a representative  
62 of such local government entity, appointed by the same, may participate in such  
63 discussions and interviews. At the discussion stage, the division may discuss estimates

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

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

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

89 (c) No employee, officer, or member of the division, the authority, the department, Board  
90 of Natural Resources, any local governing authority, or any local water authority shall  
91 serve as an agent, lobbyist, or board member for any entity directly or indirectly under  
92 contract with or negotiating a contract with the division under this Code section for one  
93 year after leaving his or her position as such an employee, officer, or member.

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

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

100

**SECTION 2.**

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