

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.