

The House Committee on Governmental Affairs offers the following substitute to SB 122:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to local
2 government public works bidding, so as to provide for local government contracts related to
3 planning, financing, constructing, acquiring, operating, or maintaining certain water
4 reservoirs, facilities, and systems; to amend Part 2 of Article 1 of Chapter 23 of Title 50 of
5 the Official Code of Georgia Annotated, relating to the Water Supply Division of the Georgia
6 Environmental Finance Authority, so as to provide for participation by the division in certain
7 local water reservoir, facilities, and systems projects; to provide for related matters; to
8 provide an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to local
12 government public works bidding, is amended by adding a new article as follows:

13 "ARTICLE 4

14 36-91-100.

15 As used in this article, the term:

16 (1) 'Affected local government' means any county, municipality, or consolidated
17 government in which water storage facilities of a project are located or proposed to be
18 located, which will receive for local use water or services from such project, or which,
19 under a service delivery agreement entered into pursuant to Article 2 of Chapter 70 of
20 Title 36, provides or is authorized to provide within an area water facilities or services
21 similar to water facilities and services proposed to be provided by a project in such area.

22 (2) 'Lead local authority' means the sole local governing authority or local authority
23 participating in a project or the local governing authority or local authority designated
24 pursuant to subsection (b) of Code Section 36-91-102.

25 (3) 'Local authority' means any local water authority created by Act of the General
26 Assembly, any authority created pursuant to the provisions of Chapter 62 of Title 36, and
27 any authority created by a county, municipality, or consolidated government which
28 provides water, sewer, or waste-water treatment services.

29 (4) 'Local governing authority' means any county, municipality, or consolidated
30 government.

31 (5) 'Project' has the meaning provided by paragraph (10) of Code Section 12-5-471 and
32 includes environmental facilities as defined in subparagraph (B) of paragraph (5) of Code
33 Section 50-23-4.

34 36-91-101.

35 (a) Local governing authorities and local authorities shall be authorized to enter into
36 contracts provided for by this article with private persons, firms, associations, or
37 corporations providing for or delegating the responsibility for procuring all permits,
38 licenses, and permissions from the United States of America or any agency or
39 instrumentality thereof; the State of Georgia, its departments, agencies, or authorities; or
40 any county or municipality of this state as necessary or required for the purpose of
41 constructing projects within this state, and to plan, finance, construct, acquire, lease,
42 operate, or maintain such projects or cause such projects to be planned, financed,
43 constructed, acquired, leased, operated, or maintained. Such contracts may provide for the
44 reimbursement to the private person, firm, association, or corporation of costs and expenses
45 associated with the execution thereof through service payments, user fees, purchase
46 payments, and such other consideration as the local governing authority or local authority
47 may deem appropriate. Such contracts may provide for the assumption by such local
48 governing authority or local authority of such projects, permits, licenses, and permissions
49 at such times as appropriate for the construction of the project or as otherwise agreed upon.

50 (b) A local governing authority or local authority may take any action to obtain federal,
51 state, or local assistance for a project that serves the public purpose of this article and may
52 enter into any contracts required to receive such assistance. A local governing authority
53 or local authority may determine that it serves the public purpose of this article for all or
54 any portion of the costs of a project to be paid, directly or indirectly, from the proceeds of
55 a grant or loan made by the federal, state, or local government or any instrumentality
56 thereof. A local governing authority or local authority may agree to make grants or loans
57 to the operator of a project from time to time from amounts received from the federal, state,
58 or local government or any agency or instrumentality thereof.

59 (c) Nothing in this article shall be construed to delegate the power of eminent domain to
60 any private entity with respect to any project commenced or proposed pursuant to this

61 article. Any local governing authority may exercise the power of eminent domain in the
62 manner provided by law for the purpose of acquiring any property or interests therein to
63 the extent that such action serves the public purpose of this article.

64 36-91-102.

65 (a) In addition to other methods of procurement authorized by law, local governing
66 authorities and local authorities shall be authorized to utilize the procedures of this article
67 to provide for the planning, finance, construction, acquisition, leasing, operation, and
68 maintenance of projects. The provisions of this article shall be an alternative to such other
69 methods to be exercised at the option of each local governing authority or local authority.

70 (b) After identifying or being informed of any project that may be suitable for utilization
71 of the procedures of this article, one or more local governing authorities and local
72 authorities may participate in consideration and implementation of a project. Where more
73 than one local governing authority or local authority agrees to participate in consideration
74 or implementation of a project, the participants shall designate one of their number to be
75 the lead local authority for purposes of implementing the procedures of this article;
76 provided, however, that not less than one representative of each such participating local
77 governing authority or local authority, as agreed to by such local governing authorities or
78 local authorities, shall have the right to participate in all aspects of such implementation.

79 (c)(1) The lead local authority shall evaluate a project to determine, in the judgment of
80 the lead local authority, appropriate or desirable levels of state, local, and private
81 participation in financing, constructing, and operating such project. In making such
82 determinations, the lead local authority shall seek the advice and input of affected local
83 governments and is encouraged to seek the advice and input of the Water Supply Division
84 of the Georgia Environmental Finance Authority, affected local governing authorities,
85 applicable planning organizations, and the private financial and construction sectors.

86 (2) The lead local authority shall be authorized to issue a written request for proposals
87 indicating the scope of the project, the proposed financial participations in the project,
88 and the factors that will be used in evaluating the proposals as well as the relative
89 importance of the evaluation factors, and containing or incorporating by reference other
90 applicable contractual terms and conditions, including any unique capabilities or
91 qualifications that will be required of the contractor. Public notice of such request for
92 proposal shall be made at least 90 days prior to the date set for receipt of proposals by
93 posting the legal notice on the websites of each participating local governing authority
94 and local authority in substantially the same manner utilized by such authority to solicit
95 requests for proposals, with a copy of such notice provided simultaneously to each
96 affected local government.

97 (3) Upon receipt of a proposal or proposals responsive to the request for proposals, the
 98 lead local authority shall accept written public comment, solicited in the same manner as
 99 provided for notice of proposals, for a period of 30 days beginning at least ten days after
 100 the date set for receipt of proposals. In addition, the lead local authority shall hold at
 101 least one public hearing on such proposals within the jurisdiction of each participating
 102 local governing authority, participating local authority, or affected local government not
 103 later than the conclusion of the period for public comment.

104 (4)(A) The lead local authority, acting by and through a designated representative
 105 appointed for such purposes, and with the participation of any designated
 106 representatives of other participating local governing authorities or local authorities,
 107 shall engage in individual discussions with each respondent deemed fully qualified,
 108 responsible, and suitable on the basis of initial responses and with emphasis on
 109 professional competence and ability to meet the level of private financial participation
 110 called for by the local governing authority. Repetitive informal interviews shall be
 111 permissible. Any affected local governments shall receive ten days notice of any such
 112 individual discussions and interviews and may participate through an appointed
 113 representative. In the event that the Georgia Environmental Finance Authority or any
 114 other state authority or agency agrees to consider or participate in the project, a
 115 representative of such authority or agency appointed by such authority or agency may
 116 participate in such discussions and interviews.

117 (B) At the discussion stage, the representatives may discuss estimates of total project
 118 costs, including, but not limited to, life cycle costing and nonbinding estimates of price
 119 for services. Discussions conducted with respondents pursuant to this subparagraph
 120 shall not be public meetings subject to the provisions of Chapter 14 of Title 50.
 121 Proprietary information or trade secrets may be designated by a respondent as subject
 122 to one or more exemptions from public disclosure pursuant to the provisions of Code
 123 Section 50-18-72, but such designation shall not be binding on the participating local
 124 governing authorities, local authorities, and affected local governments unless
 125 consistent with applicable law.

126 (C)(i) At the conclusion of the discussion stage, on the basis of evaluation factors
 127 published in the request for proposal and all information developed in the selection
 128 process, the designated representative, with the input of the representatives of any
 129 other participating entity and in an open and public meeting subject to the provisions
 130 of Chapter 14 of Title 50, shall select in the order of preference one or more
 131 respondents whose qualifications and proposed services are deemed most meritorious.
 132 (ii) Negotiations shall then be conducted by the designated representative with the
 133 selected respondents. A representative of any participating local governing authority,

134 participating local authority, and participating state agency or authority shall have the
135 right to notice of and participation in such negotiations. Negotiations conducted with
136 selected respondents pursuant to this division shall not be public meetings subject to
137 the provisions of Chapter 14 of Title 50.

138 (D) The designated representative shall select for approval by the lead local authority
139 the respondent for project implementation based upon contract terms that are the most
140 satisfactory and advantageous to the participating local governing authorities and local
141 authorities based upon a thorough assessment of value and the ability of the final
142 project's characteristics to meet the goals of the participating local governing authorities
143 and local authorities, consistent with applicable state-wide and regional water plans and
144 local comprehensive plans. Before making such selection, the designated
145 representative shall consult in an open and public meeting subject to the provisions of
146 Chapter 14 of Title 50 with the representatives of any participating local governing
147 authority, participating local authority, participating state agency or authority, and
148 affected local government. Notwithstanding the foregoing, if the terms and conditions
149 for multiple awards are included in the request for proposal, the lead local authority
150 may award contracts to more than one respondent. Should the lead local authority
151 determine in writing that only one respondent is fully qualified, or that one respondent
152 is clearly more highly qualified and suitable than the others under consideration, a
153 contract may be negotiated and awarded to that respondent.

154 (E) Upon approval of the selection by the lead local authority, a contract or contracts
155 not exceeding 50 years in duration may be entered into with the selected respondents
156 on behalf of all participating entities, subject to approval by each such participating
157 entity and by each affected local government.

158 (5) A dispute over the award of a contract under this article shall be resolved by the filing
159 of a petition in the superior court of the county in which the lead local authority is located
160 within 30 days of the awarding of such contract and shall be determined through the use
161 of a special master appointed by the judge of the superior court of the county in which
162 the lead local authority is located. The decision of the special master with regard to such
163 dispute shall be appealable for a de novo review to the superior court of the county in
164 which the lead local authority is located within 30 days following the decision of the
165 special master. Neither the special master nor the superior court shall be authorized to
166 enjoin or otherwise delay or suspend the execution of the contract and any work to be
167 performed under such contract.

168 (6) Nothing in this Code section shall require the designated representatives, the lead
169 local authority, or any local governing authority, local authority, or state agency or
170 authority to continue negotiations or discussions arising out of any request for proposal.

171 (7) Every local governing authority and local authority shall be authorized to promulgate
 172 reasonable rules or regulations to assist in its evaluation of proposals and to implement
 173 the purposes of this article.

174 (d) No public officer, employee, or member of a local governing authority or local
 175 authority, with respect to contracts of such local governing authority or local authority, or
 176 the General Assembly shall serve as an agent, lobbyist, or board member for any private
 177 entity directly or indirectly under a contract or negotiating a contract provided for by this
 178 article for three years after leaving his or her position as a public officer, employee, or
 179 member of the local governing authority, local authority, or the General Assembly."

180 **SECTION 2.**

181 Part 2 of Article 1 of Chapter 23 of Title 50 of the Official Code of Georgia Annotated,
 182 relating to the Water Supply Division of the Georgia Environmental Finance Authority, is
 183 amended by adding a new Code Section as follows:

184 "50-23-28.2.

185 (a) Those definitions made applicable to Article 4 of Chapter 91 of Title 36 by Code
 186 Section 36-91-100 shall be applicable to this Code section.

187 (b) The division may evaluate any project to determine, in the judgment of the division,
 188 appropriate or desirable levels of state or private participation in such project. In
 189 identifying any such project and making such determination, the division shall seek the
 190 advice and input of the affected local governments and shall be authorized to seek and
 191 receive advice and input from local authorities and the private financial and construction
 192 sectors. The division may also propose projects to local governing authorities and local
 193 authorities as appropriate for the procedures of Article 4 of Chapter 91 of Title 36. The
 194 division shall be authorized to consult with local governing authorities and local authorities
 195 regarding its conclusions with respect to projects subject to this subsection.

196 (c) Local governing authorities and local authorities participating in the consideration of
 197 a project may, by mutual consent, request in writing that the division participate in the
 198 project in any capacity authorized by law, pursuant to the provisions of paragraph (7) of
 199 subsection (b) of Code Section 50-23-5 and Code Section 50-23-6. The participating local
 200 governments and local authorities may request in writing that the division serve as the lead
 201 local authority for such project, and if the division accedes to such request, the division
 202 shall assume all of the duties and responsibilities of the lead local authority pursuant to the
 203 provisions of Article 4 of Chapter 91 of Title 36, for itself and on behalf of such local
 204 governing authorities and local authorities, subject to the conditions and limitations of such
 205 article.

206 (d) In addition to the conditions and limitations of Article 4 of Chapter 91 of Title 36, the
207 following shall be applicable to the division when acting pursuant to this Code section:

208 (1) Public notice of any request for proposals shall be made at least 90 days prior to the
209 date set for receipt of proposals by posting a legal notice on the website of the
210 Department of Administrative Services;

211 (2) The designated representative of the lead local authority, when the division is such
212 lead local authority, shall be the director;

213 (3) No contract awarded under this subsection shall be operative until the governing
214 authority of each participating local governing authority and local authority and each
215 affected local government has approved the contract;

216 (4) For any project for which participation or a lead local authority role is determined by
217 the division to be feasible and appropriate, the division may perform management,
218 technical, consultative, training, educational, and other project development and
219 promotion activities, subject to availability of funds from the Georgia Reservoir Fund
220 established by Code Section 50-23-28, approval by the executive director of the authority,
221 and the requirement that the fund be fully compensated by any private owner of the
222 project for such expenditures; and

223 (5) Any project financed or constructed in whole or in part by the division shall be
224 subject to environmental and development restrictions imposed on projects of the division
225 by law.

226 (e) In discharging its duties and responsibilities under this Code section, the division:

227 (1) Shall to the maximum extent feasible expedite the issuance of the permits, licenses,
228 and permissions from the United States of America or any agency or instrumentality
229 thereof; the State of Georgia, its departments, agencies, or authorities; or any county,
230 municipality, consolidated government, or local agency or authority of this state
231 necessary and convenient for the purposes of this article;

232 (2) May enter into lease, use, or water supply agreements with the owner or operator of
233 any project or water facility;

234 (3) May lease to an owner or operator of a project any state-owned facilities or property
235 which the division is managing in connection with a project;

236 (4) May utilize the competitive bidding and competitive sealed proposal procedures
237 adopted by the Department of Administrative Services under Code Section 50-5-67 and
238 regulations promulgated pursuant to the authority thereof; and

239 (5) May enter into agreements with local governing authorities, local authorities, or an
240 owner or operator or proposed operator of a project, setting fees to be paid to the division
241 or the Department of Natural Resources for the purpose of enabling the division or the

242 Department of Natural Resources to expedite or enhance the state or federal regulatory
 243 process.

244 (f) The director shall be authorized to delegate such duties and responsibilities under this
 245 Code section as he or she deems appropriate from time to time; provided, however, that the
 246 final approval of state projects and contracts provided for in this article shall be by action
 247 of the director.

248 (g) Nothing in this Code section shall be construed to delegate the power of eminent
 249 domain to any private entity with respect to any project commenced or proposed pursuant
 250 to this Code section. The state and any local government may exercise the power of
 251 eminent domain in the manner provided by law for the purpose of acquiring any property
 252 or interests therein to the extent that such action serves the public purpose of this Code
 253 section.

254 (h) All affected local governments which approve a project shall have agreed, by reason
 255 of such approval, to amend and to have amended, consistent with such approval, any
 256 service delivery strategy agreement required by Article 2 of Chapter 70 of Title 36 to which
 257 they are a party.

258 (i)(1) With respect to contracts of such state agency or authority, no employee, officer,
 259 or member of any state agency or authority or board thereof shall serve as an employee,
 260 agent, lobbyist, or board member for any private entity directly or indirectly under
 261 contract with or negotiating a contract with any state agency or authority under this article
 262 for three years after leaving his or her position as such an employee, officer, or member.

263 (2) No employee, officer, or member of the General Assembly shall serve as an
 264 employee, agent, lobbyist, or board member for any private entity directly or indirectly
 265 under contract with or negotiating a contract with any state agency or authority under this
 266 article for three years after leaving his or her position as such an employee, officer, or
 267 member.

268 (3) With respect to contracts of such local governing authority or local authority, no
 269 employee, officer, or member of any local governing authority or local authority shall
 270 serve as an employee, agent, lobbyist, or board member for any private entity directly or
 271 indirectly under contract with or negotiating a contract with any state agency or authority
 272 under this article for three years after leaving his or her position as such an employee,
 273 officer, or member."

274 **SECTION 3.**

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

277

SECTION 4.

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