

Senate Bill 255

By: Senators Hill of the 6th, Gooch of the 51st, Dugan of the 30th, Davis of the 22nd, Mullis of the 53rd and others

AS PASSED SENATE

**A 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 enact the "Partnership for Public Facilities and Infrastructure Act"; to provide for
3 legislative intent; to provide for definitions; to provide guidelines for projects; to create the
4 Partnership for Public Facilities and Infrastructure Act Guidelines Committee and to provide
5 for its membership, terms, allowances, duties, and support; to provide for the manner by
6 which projects may be initiated; to provide for the approval process for projects; to provide
7 for evaluation criteria and review; to provide for agreements; to provide for default and
8 remedies; to provide for financing and grants; to provide for service contracts; to provide for
9 the dedication of certain property interests; to provide for sovereign immunity; to provide for
10 police powers; to provide for application of open meetings and open records laws; to provide
11 for legislative oversight; to provide for related matters; to provide an effective date; to repeal
12 conflicting laws; and for other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

15 This Act shall be known and may be cited as the "Partnership for Public Facilities and
16 Infrastructure Act."

17 **SECTION 2.**

18 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
19 by adding a new chapter to read as follows:

20 "CHAPTER 5C

21 50-5C-1.

22 (a) The General Assembly finds that:

23 (1) There is a public need for timely acquisition, design, construction, improvement,
 24 renovation, expansion, equipping, maintenance, operation, implementation, or installation
 25 of public infrastructure and government facilities within the state that serve a public need
 26 and purpose;

27 (2) Such public need may not be wholly satisfied by existing methods of procurement
 28 in which qualifying projects are acquired, designed, constructed, improved, renovated,
 29 expanded, equipped, maintained, operated, implemented, or installed;

30 (3) There are inadequate resources to develop public infrastructure and government
 31 facilities for the benefit of citizens of this state, and there is demonstrated evidence that
 32 public-private partnerships can meet these needs by leveraging and supplementing limited
 33 public funds available for public projects and providing other benefits to the public;

34 (4) Financial incentives exist under state and federal tax provisions that promote public
 35 entities to enter into partnerships with private entities to develop qualifying projects; and

36 (5) Authorizing private entities to develop or operate one or more qualifying projects
 37 may result in the availability of such projects to the public in a more timely or less costly
 38 fashion, thereby serving the public safety, benefit, and welfare.

39 (b) Nothing in this chapter shall be construed to delegate the power of eminent domain to
 40 any private entity with respect to any project commenced or proposed pursuant to this
 41 chapter. This chapter does not alter the eminent domain laws of this state or grant the
 42 power of eminent domain to any person who is not expressly granted that power under
 43 other state law.

44 (c) Nothing in this chapter shall apply to or affect the State Transportation Board, the
 45 Department of Transportation, or the State Road and Tollway Authority, or any project
 46 thereof.

47 50-5C-2.

48 As used in this chapter, the term:

49 (1) 'Affected local jurisdiction' means any county, municipality, or school district in
 50 which all or a portion of a qualifying project is located.

51 (2) 'Appropriating body' means the body responsible for appropriating or authorizing
 52 funding to pay for a qualifying project.

53 (3) 'Comprehensive agreement' means the comprehensive agreement between the private
 54 entity and the responsible public entity required by Code Section 50-5C-8.

55 (4) 'Develop' or 'development' means to plan, design, develop, finance, lease, acquire,
 56 install, construct, operate, maintain, or expand.

57 (5) 'Local authority' means any local authority created pursuant to a local or general Act
 58 of the General Assembly, including a joint public instrumentality.

59 (6) 'Local government' means any county, municipality, consolidated government or
60 school district.

61 (7) 'Material default' means any default by the private entity in the performance of its
62 duties under the comprehensive agreement that jeopardizes adequate service to the public
63 from a qualifying project.

64 (8) 'Private entity' means any natural person, corporation, general partnership, limited
65 liability company, limited partnership, joint venture, business trust, public benefit
66 corporation, nonprofit entity, or other business entity.

67 (9) 'Public entity' means the State of Georgia or a board, commission, authority, or
68 department thereof, including, without limitation, public higher education institutions as
69 well as a local government or local authority.

70 (10) 'Qualifying project' means any project that meets a public purpose and public need
71 and is identified as a qualifying project pursuant to Code Section 50-5C-3. Qualifying
72 projects shall be located on real property owned or leased by a public entity or on other
73 property owned or leased by a public entity and shall include, without limitation, any
74 improvements necessary or desirable to any such property; or any airport project as
75 defined in Code Section 6-4-3; or any port project as defined in Code Section 52-2-2; or
76 operation of any existing public facility in a manner that results in reduced operating
77 costs, including, but not limited to, energy conservation measures as defined in Code
78 Section 50-37-2. This term shall not include and shall have no application to any project
79 involving:

80 (A) The generation of electric energy for sale pursuant to Chapter 3 of Title 46;

81 (B) Communications services pursuant to Articles 4 and 7 of Chapter 5 of Title 46;

82 (C) Cable and video services pursuant to Chapter 76 of Title 36; or

83 (D) Water reservoir projects as defined in paragraph (10) of Code Section 12-5-471,
84 which shall be governed by Article 4 of Chapter 91 of Title 36.

85 (11) 'Responsible public entity' means a public entity that has the power to develop the
86 applicable qualifying project. For any qualifying project undertaken by member
87 institutions of the University System of Georgia, the sole responsible public entity shall
88 be the Board of Regents or its designees. For any qualifying project undertaken by a state
89 agency, the sole responsible public entity shall be the Georgia State Financing and
90 Investment Commission. For any qualifying project undertaken by a local government
91 or local authority, the sole responsible public entity shall be the governing authority of
92 the local government undertaking a qualifying project.

93 (12) 'Revenues' means all revenues, income, earnings, user fees, lease payments, or other
94 service payments arising out of or in connection with supporting the development or
95 operation of a qualifying project.

96 (13) 'User fees' mean the rates, fees, or other charges imposed by the responsible public
97 entity or the private entity of a qualifying project for use of all or a portion of such
98 qualifying project pursuant to the comprehensive agreement.

99 50-5C-3.

100 (a) The public entity responsible for the development or operation of a qualifying project
101 shall issue guidelines prior to initiating a project or approving a proposal under this chapter.

102 (b) Guidelines shall be reasonable, promote competition, and guide the selection of
103 projects by the public entity. They shall include, at a minimum, the following:

104 (1) Procedures for preparing and publishing a list of qualifying projects;

105 (2) Financial review and analysis procedures that may include, at a minimum:

106 (A) A cost-benefit analysis;

107 (B) An assessment of opportunity cost and life cycle costs;

108 (C) Consideration of the results of relevant studies;

109 (D) Consideration of the nonfinancial benefits of a proposed project;

110 (E) Evaluation of the public need for or benefit derived from the qualifying project;

111 (F) Evaluation of the estimated cost of the qualifying project for reasonableness in
112 relation to similar facilities;

113 (G) Consideration of plans to ensure timely development or operation;

114 (H) Consideration of the probable scope, complexity, or priority of the project;

115 (I) Evaluation of risk sharing, including guaranteed cost or completion guarantees,
116 added value, or debt or equity investments by the private entity; and

117 (J) Consideration of any increase in funding, dedicated revenue source, or other
118 economic benefit that would not otherwise be available;

119 (3) Reasonable criteria for choosing among competing proposals;

120 (4) Suggested timelines for selecting proposals and negotiating an interim or
121 comprehensive agreement according to Code Section 50-5C-10;

122 (5) Procedures to determine the adequacy of the information released when seeking
123 competing proposals as under Code Section 50-5C-6 and provide for the enhancement
124 of that information, if deemed necessary, to encourage competition;

125 (6) Criteria, key decision points, and approvals required to ensure that the responsible
126 public entity considers the extent of competition before selecting proposals and
127 negotiating an interim or comprehensive agreement;

128 (7) Criteria for determining any fees authorized in Code Section 50-5C-5 that the public
129 entity elects to charge; and

130 (8) A process for posting and publishing of public notice of a private entity's request for
131 approval of a qualifying project, including:

132 (A) Specific information and documentation to be released regarding the nature,
 133 timing, and scope of the qualifying project submitted pursuant to subsection (b) of Code
 134 Section 50-5C-5;

135 (B) A reasonable time period as determined by the responsible public entity to
 136 encourage competition and public-private partnerships in accordance with the goals of
 137 this chapter, such reasonable period not to be less than 90 days, during which time the
 138 responsible public entity shall receive competing proposals pursuant to subsection (d)
 139 of Code Section 50-5C-7;

140 (C) A process for posting such proposal on the Georgia Procurement Registry; and

141 (D) For local government projects, confirmation that the public notice complies with
 142 applicable local laws and regulations.

143 50-5C-4.

144 (a) The Partnership for Public Facilities and Infrastructure Act Guidelines Committee is
 145 established to prepare model guidelines for public entities in the implementation of this
 146 chapter. Such guidelines shall be prepared for the purpose of creating consistent
 147 requirements for private entities who seek to participate in the construction or development
 148 of a qualifying project throughout the State of Georgia. These guidelines shall be
 149 mandatory for all state agencies, the State of Georgia, or a board, commission, authority,
 150 or department thereof, including, without limitation, public higher education institutions,
 151 conducting projects under this chapter, but shall be optional for local governments acting
 152 under this chapter so long as local guidelines are not inconsistent with this chapter. Failure
 153 by a local authority to adopt guidelines that comply with this provision shall result in the
 154 nullification of any agreement entered into pursuant to this chapter.

155 (b) The committee shall be composed of 12 persons. Except for the local government
 156 officials or staff appointed to the committee, each committee member shall have subject
 157 matter expertise in architecture, construction management, engineering, finance, or real
 158 estate development. These appointments shall be made as follows:

159 (1) The following members shall be appointed by the Governor:

160 (A) One member or employee of a county governing authority;

161 (B) One member or employee of a municipal governing authority;

162 (C) One member or employee of a local board of education;

163 (D) One member or employee of the State Properties Commission;

164 (E) One member or employee of the Board of Regents of the University System of
 165 Georgia; and

166 (F) One member or employee of the Georgia State Financing and Investment
 167 Commission;

- 168 (2) The following members shall be appointed by the Speaker of the House of
169 Representatives:
- 170 (A) One member of the business community with expertise in construction
171 management employed by a firm with less than \$25 million in annual revenue;
172 (B) One member of the business community who is a licensed architect; and
173 (C) One member of the business community with expertise in real estate development;
174 and
- 175 (3) The following members shall be appointed by the Lieutenant Governor:
- 176 (A) One member of the business community with expertise in construction
177 management employed by a firm with more than \$25 million in annual revenue;
178 (B) One member of the business community with expertise in engineering; and
179 (C) One member of the business community with expertise in finance.
- 180 (c) The terms of these committee appointments shall be for two years. The committee
181 shall meet once a month or as needed and shall issue model guidance to public entities no
182 later than July 1, 2015. Such guidance shall be updated every two years. The members of
183 the committee shall elect a chairperson and a vice chairperson who shall serve for two-year
184 terms in such office. No member of the committee from the business community or other
185 employee from the member's firm shall submit a proposal for a qualifying project during
186 the member's term of service on the committee and for one year afterward.
- 187 (d) Any legislative members of the committee shall receive the allowances provided for
188 in Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the
189 amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or
190 transportation allowance authorized for state employees. Any members of the committee
191 who are state officials or employees, other than legislative members, shall be reimbursed
192 for expenses incurred by them in the performance of their duties as members of the
193 committee in the same manner as they are reimbursed for expenses in their capacities as
194 state officials or employees. The funds necessary for the reimbursement of expenses of
195 state officials, other than legislative members, and state employees shall come from funds
196 appropriated to or otherwise available in their respective departments. All other funds
197 necessary to carry out the provisions of this chapter shall come from funds appropriated to
198 the House of Representatives and the Senate.
- 199 (e) Staff support shall be provided by the Department of Administrative Services, the
200 Governor's Office, the Office of Planning and Budget, the House of Representatives, the
201 Senate, and the Office of Legislative Counsel.

202 50-5C-5.

203 (a) The responsible public entity may request proposals or invite bids from private entities
204 for the development of qualifying projects according to procedures set forth in Code
205 Section 50-5C-7.

206 (b) A private entity may also request approval of a qualifying project by the responsible
207 public entity, provided that the project has been previously identified in a published list of
208 qualifying projects by the public entity. Any such request shall be accompanied by the
209 following material and information:

210 (1) A project description, including the location of the qualifying project, the conceptual
211 design of such facility or facilities, and a conceptual plan for the provision of services or
212 technology infrastructure;

213 (2) A feasibility statement that includes:

214 (A) The method by which the private entity proposes to secure any necessary property
215 interests required for the qualifying project;

216 (B) A list of all permits and approvals required for the qualifying project from local,
217 state, or federal agencies; and

218 (C) A list of public utility facilities, if any, that will be crossed by the qualifying
219 project and a statement of the plans of the private entity to accommodate such
220 crossings;

221 (3) A schedule for the initiation and completion of the qualifying project to include the
222 proposed major responsibilities and timeline for activities to be performed by both the
223 public and private entity as well as a proposed schedule for obtaining the permits and
224 approvals required in subparagraph (B) of paragraph (2) of this subsection;

225 (4) A financial plan setting forth the private entity's general plans for financing the
226 qualifying project, including the sources of the private entity's funds and identification
227 of any dedicated revenue source or proposed debt or equity investment on the behalf of
228 the private entity; a description of user fees, lease payments, and other service payments
229 over the term of the interim or comprehensive agreement pursuant to Code
230 Section 50-5C-9 or 50-5C-10 and the methodology and circumstances for changes to such
231 user fees, lease payments, and other service payments over time;

232 (5) A business case statement that shall include a basic description of any indirect and
233 direct benefits that the private entity can provide in delivering the qualified project,
234 including relevant cost, quality, and time frame data;

235 (6) The names and addresses of the persons who may be contacted for further
236 information concerning the request; and

237 (7) Such additional material and information as the responsible public entity may
238 reasonably request.

239 (c) The responsible public entity and any affected local jurisdiction may charge a
240 reasonable fee to cover the costs of processing, reviewing, and evaluating the request,
241 including, without limitation, reasonable attorney's fees and fees for financial, technical,
242 and other necessary advisors or consultants as prescribed by paragraph (7) of subsection (b)
243 of Code Section 50-5C-3, subject to the following:

244 (1) The responsible public entity or any affected local jurisdiction may retain such fees
245 regardless of whether it enters into an agreement for a qualifying project with any private
246 entity; and

247 (2) The responsible public entity or any affected local jurisdiction may, at its sole
248 discretion, require fees to be paid by the private entity directly to a consultant designated
249 by the responsible public entity.

250 If a private entity requests a qualifying project for approval and the responsible public
251 entity enters into an interim or comprehensive agreement pursuant to Code
252 Section 50-5C-9 or 50-5C-10 with a competing private entity, the competing private entity
253 shall be required to reimburse any fee charged pursuant to this Code section to the private
254 entity that originally submitted the request.

255 (d) Any private entity submitting a proposal to a responsible public entity under
256 subsection (b) of this Code section shall notify each affected local jurisdiction by
257 furnishing a copy of its request or proposal to each affected local jurisdiction.

258 (e) Each affected local jurisdiction that is not a responsible public entity for the respective
259 qualifying project may, within 60 days after receiving such notice, submit any comments
260 it may have in writing on the proposed qualifying project to the responsible public entity
261 and indicate whether the facility is compatible with local plans and budgets. Such
262 comments shall be given consideration by the responsible public entity prior to entering an
263 interim or comprehensive agreement with a private entity pursuant to Code
264 Section 50-5C-9 or 50-5C-10. A qualifying project shall be consistent with zoning and
265 land use regulations of the responsible public entity and each affected local jurisdiction.

266 (f) Subsection (b) of this Code section shall only apply to a local government or local
267 authority if such local jurisdiction adopts a rule, regulation, or ordinance affirming its
268 application.

269 50-5C-6.

270 (a) Any private entity seeking authorization under this chapter to develop a qualifying
271 project may initiate the approval process by requesting approval pursuant to subsection (b)
272 of Code Section 50-5C-5 or the responsible public entity may request proposals or invite
273 bids pursuant to subsection (a) of Code Section 50-5C-5.

274 (b) Any facility, building, infrastructure, or improvement included in an invitation or
275 request for approval under subsection (a) or (b) of Code Section 50-5C-5 as a part of a
276 qualifying project shall be identified specifically or conceptually.

277 (c) Upon receipt by the responsible public entity of a proposal submitted by a private
278 entity initiating the approval process pursuant to subsection (b) of Code Section 50-5C-5,
279 the responsible public entity shall determine whether to consider such proposal.

280 50-5C-7.

281 (a) The responsible public entity may grant approval of the development of a qualifying
282 project, if the responsible public entity determines that the requirements set forth in the
283 applicable guidelines are satisfied.

284 (b) The approval of the responsible public entity shall be subject to the selected private
285 entity's entering into an interim or comprehensive agreement pursuant to Code
286 Section 50-5C-9 or 50-5C-10 with the responsible public entity.

287 (c) Nothing in this chapter or in an interim or comprehensive agreement entered into
288 pursuant to this chapter shall be deemed to enlarge, diminish, or affect the authority, if any,
289 otherwise possessed by the responsible public entity to take action that would impact the
290 debt capacity of this state or any local government.

291 (d) The responsible public entity may reject any proposal initiated by a private entity
292 pursuant to subsection (b) of Code Section 50-5C-5 at any time and shall not be required
293 to provide a reason for its denial. If the responsible public entity determines not to approve
294 a proposal submitted by the private entity pursuant to subsection (b) of Code
295 Section 50-5C-5, it shall return the proposal together with all accompanying documentation
296 to the private entity.

297 (e) If the responsible public entity chooses to approve a qualifying project submitted
298 according to subsection (b) of Code Section 50-5C-5, the public entity shall make such
299 project public according to guidelines consistent with Code Section 50-5C-3 and shall see
300 competing proposals through the process set forth by the guidelines. Public notice requests
301 shall be made at least 90 days prior to the date set for receipt of proposals by posting the
302 legal notice on the Georgia Procurement Registry. All proposals then submitted for
303 qualifying projects shall be evaluated according to Code Section 50-5C-8 prior to entering
304 into a comprehensive or interim agreement with a private entity for the qualifying project.

305 50-5C-8.

306 (a) The provisions of Article 3 of Chapter 5 of this title shall not apply to this chapter.
307 However, a responsible public entity may enter into a comprehensive or interim agreement
308 only in accordance with guidelines adopted by it as follows:

309 (1) A responsible public entity, other than one that is a local government or local
 310 authority, may enter into the agreement in accordance with guidelines adopted by it that
 311 are consistent with procurement through competitive sealed bidding as defined in Code
 312 Section 50-5-67. A responsible public entity that is a local government or local authority
 313 may enter into a comprehensive agreement in accordance with guidelines adopted by it
 314 that are consistent with procurement through competitive sealed bidding as defined in
 315 Chapter 91 of Title 36; or

316 (2) A responsible public entity may enter into a comprehensive or interim agreement
 317 through a process of competitive negotiation. Such responsible public entity shall not be
 318 required to select the proposal with the lowest price offer, but may consider price as one
 319 factor in evaluating the proposals received. Other factors that may be considered include:

320 (A) The proposed cost of the qualifying project;

321 (B) The general reputation, industry experience, and financial capacity of the private
 322 entity;

323 (C) The proposed design of the qualifying project;

324 (D) The eligibility of the facility for accelerated selection, review, and documentation
 325 timelines under the responsible public entity's guidelines;

326 (E) Local citizen and government comments;

327 (F) Benefits to the public;

328 (G) The private entity's compliance with a minority business enterprise participation
 329 plan;

330 (H) The private entity's plans to employ local contractors and residents; and

331 (I) Other criteria that the responsible public entity deems appropriate.

332 (b) When the time for receiving proposals expires, the responsible public entity shall first
 333 rank the proposals in accordance with the factors set forth in the request for proposal or
 334 invitation for bids. After ranking the proposals, the responsible public entity shall begin
 335 negotiations with the first-ranked private entity. If the responsible public entity and the
 336 first-ranked private entity do not reach a comprehensive agreement or interim agreement,
 337 then the responsible public entity may conduct negotiations with the next-ranked private
 338 entity. This process shall continue until the responsible public entity either voluntarily
 339 abandons the process or executes a comprehensive agreement or interim agreement with
 340 a private entity.

341 50-5C-9.

342 After the selection of a private entity pursuant to the competitive process set forth in Code
 343 Section 50-5C-7, the responsible public entity may enter into an interim agreement with

344 the selected private entity proposing the development or operation of the qualifying project.

345 Such interim agreement may:

346 (1) Permit the private entity to commence activities for which it may be compensated
347 relating to the proposed qualifying project, including, but not limited to, project planning
348 and development, design and engineering, environmental analysis and mitigation, survey,
349 and ascertaining the availability of financing for the proposed facility or facilities;

350 (2) Establish the process and timing of the negotiation of the comprehensive agreement;
351 and

352 (3) Contain any other provisions related to any aspect of the development or operation
353 of a qualifying project that the parties may deem appropriate.

354 50-5C-10.

355 (a) Prior to developing or operating the qualifying project, the private entity shall enter
356 into a comprehensive agreement with the responsible public entity.

357 (b) The comprehensive agreement shall include:

358 (1) A thorough description of the duties of each party in the completion and operation
359 of the qualifying project;

360 (2) Dates and schedules for the completion of the qualifying project;

361 (3) Any user fees, lease payments, or service payments as may be established by
362 agreement of the parties as well as any process for changing these fees or payments
363 throughout the term of the agreement as well as a copy of any service contract;

364 (4) Any reimbursements to be paid to the responsible public entity for services provided
365 by the responsible public entity;

366 (5) A process for the review of plans and specifications for the qualifying project by the
367 responsible public entity and approval by the responsible public entity if the plans and
368 specifications conform to reasonable standards acceptable to the responsible public entity.

369 This shall not be construed as requiring the private entity to complete design of a
370 qualifying project prior to the execution of a comprehensive agreement;

371 (6) A process for the periodic and final inspection of the qualifying project by the
372 responsible public entity to ensure that the private entity's activities are acceptable to the
373 responsible public entity in accordance with the provisions of the comprehensive
374 agreement;

375 (7) Delivery of maintenance, performance and payment bonds, letters of credit, or other
376 form of security acceptable to the responsible public entity in connection with the
377 development or operation of the qualifying project, in the forms and amounts required in
378 Code Sections 13-10-40, 13-10-41, and 13-10-60 or, for local government projects,

379 Article 3 of Chapter 91 of Title 36 for those components of the qualifying project that
380 involve construction;

381 (8) Submission of a policy or policies of public liability insurance, copies of which shall
382 be filed with the responsible public entity accompanied by proofs of coverage, or
383 self-insurance, each in form and amount satisfactory to the responsible public entity and
384 reasonably sufficient to ensure coverage of tort liability to the public and employees and
385 to enable the continued operation of the qualifying project;

386 (9) A process for monitoring of the practices of the private entity by the responsible
387 public entity to ensure that the qualifying project is properly maintained;

388 (10) The filing of appropriate financial statements to the responsible public entity on a
389 periodic basis; and

390 (11) Policies and procedures governing the rights and responsibilities of the responsible
391 public entity and the private entity in the event the comprehensive agreement is
392 terminated or there is a material default by the private entity. Such policies and
393 guidelines shall include conditions governing assumption of the duties and
394 responsibilities of the private entity by the responsible public entity and the transfer or
395 purchase of property or other interests of the private entity by the responsible public
396 entity. Such policies and procedure shall be consistent with Code Section 50-5C-11.

397 (c) The comprehensive agreement may include such other terms and conditions that the
398 responsible public entity determines serve the public purpose of this chapter and to which
399 the private entity and the responsible public entity mutually agree, including, without
400 limitation, provisions regarding unavoidable delays or provisions providing for a loan of
401 public funds to the private entity to develop one or more qualifying projects. The
402 comprehensive agreement may also contain provisions where the authority and duties of
403 the private entity under this chapter shall cease, and the qualifying project is dedicated to
404 the responsible public entity or, if the qualifying project was initially dedicated by an
405 affected local jurisdiction, to such affected local jurisdiction for public use.
406 Notwithstanding any other provision of law, in the event that the qualifying project
407 provides for the lease of property to or by a public entity, the selection of lessees and
408 lessors and the terms of the lease shall be governed by the comprehensive agreement.

409 (d) Any changes in the terms of the comprehensive agreement, as may be agreed upon by
410 the parties from time to time, shall be added to the comprehensive agreement by written
411 amendment.

412 (e) The comprehensive agreement may provide for the development of phases or segments
413 of the qualifying project.

414 (f) In the event that the comprehensive agreement allows for the transfer of real property
415 subject to a qualifying project from the private entity to the public entity within 12 months

416 of the issuance of a certificate of occupancy for the qualifying project, then the
417 comprehensive agreement shall require a payment bond in accordance with Code
418 Section 13-10-60 or 36-91-90.

419
420 50-5C-11.

421 (a) In the event of a material default by the private entity, the responsible public entity may
422 terminate, with cause, the interim or comprehensive agreement and exercise any other
423 rights and remedies that may be available to it at law or in equity, including, but not limited
424 to, claims under the maintenance, performance, or payment bonds or other forms of
425 security; or lines of credit required by Code Section 50-5C-10 in accordance with Code
426 Sections 13-10-40 through 13-10-65.

427 (b) The responsible public entity may elect to assume the responsibilities and duties of the
428 private entity of the qualifying project, and in such case, it shall succeed to all of the right,
429 title, and interest in such qualifying project, subject to any liens on revenues previously
430 granted by the private entity to any person providing financing thereof.

431 (c) The power of eminent domain shall not be delegated to any private entity with respect
432 to any project commenced or proposed pursuant to this chapter. Any responsible public
433 entity having the power of condemnation under state law may exercise such power of
434 condemnation to acquire the qualifying project in the event of a material default by the
435 private entity. Any person who has provided financing for the qualifying project, and the
436 private entity, to the extent of its capital investment, may participate in the condemnation
437 proceedings with the standing of a property owner.

438 (d) In the event the responsible public entity elects to take over a qualifying project
439 pursuant to subsection (b) of this Code section, the responsible public entity may develop
440 the qualifying project, impose user fees, impose and collect lease payments for the use
441 thereof, and comply with any service contracts as if it were the private entity. Any
442 revenues that are subject to a lien shall be collected for the benefit of and paid to secured
443 parties, as their interests may appear, to the extent necessary to satisfy the private entity's
444 obligations to secured parties, including the maintenance of reserves. Such liens shall be
445 correspondingly reduced and, when paid off, released. Before any payments to, or for the
446 benefit of, secured parties, the responsible public entity may use revenues to pay current
447 operation and maintenance costs of the qualifying project, including compensation to the
448 responsible public entity for its services in operating and maintaining the qualifying
449 project. The right to receive such payment, if any, shall be considered just compensation
450 for the qualifying project. The full faith and credit of the responsible public entity shall not
451 be pledged to secure any financing of the private entity by the election to take over the
452 qualifying project. Assumption of operation of the qualifying project shall not obligate the

453 responsible public entity to pay any obligation of the private entity from sources other than
454 revenues from the qualifying project.

455 50-5C-12.

456 (a) Any financing of a qualifying project may be in such amounts and upon such terms and
457 conditions as may be determined by the parties to the interim or comprehensive agreement.
458 Without limiting the generality of the terms and conditions of the financing, the private
459 entity and the responsible public entity may propose to utilize any and all funding resources
460 that may be available to them and may, to the fullest extent permitted by applicable law,
461 issue debt, equity, or other securities or obligations, enter into leases, access any designated
462 trust funds, borrow or accept grants from any state infrastructure bank, and secure any
463 financing with a pledge of, security interest in, or lien on, any or all of its property,
464 including all of its property interests in the qualifying project.

465 (b) The responsible public entity may take any action to obtain federal, state, or local
466 assistance for a qualifying project that serves the public purpose of this chapter and may
467 enter into any contracts required to receive such assistance. The responsible public entity
468 may determine that it serves the public purpose of this chapter for all or any portion of the
469 costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant
470 or loan made by the local, state, or federal government or any agency or instrumentality
471 thereof.

472 50-5C-13.

473 In addition to any authority otherwise conferred by law, any public entity may contract
474 with a private entity for the delivery of services to be provided as part of a qualifying
475 project in exchange for such service payments and other consideration as such public entity
476 may deem appropriate. All power or authority granted by this chapter to public entities
477 shall be in addition and supplemental to, and not in substitution for, the powers conferred
478 by any other general, special, or local law. The limitations imposed by this chapter shall
479 not affect the powers conferred by any other general, special, or local law and shall apply
480 only to the extent that a public entity elects to proceed under this chapter. However, any
481 local authority that elects to proceed with a qualifying project under this chapter shall
482 comply with all applicable provisions contained herein.

483 50-5C-14.

484 Nothing in this chapter shall be construed as or deemed a waiver of the sovereign or
485 official immunity of any responsible public entity or any affected local jurisdiction or any
486 officer or employee thereof with respect to the participation in, or approval of, all or any

487 part of the qualifying project or its operation, including, but not limited to, interconnection
488 of the qualifying project with any other infrastructure or project.

489 50-5C-15.

490 Any law enforcement officers of the public entity and of each affected local jurisdiction
491 shall have the same powers and jurisdiction within the limits of such qualifying project as
492 they have in their respective areas of jurisdiction and such law enforcement officers shall
493 have access to the qualifying project at any time for the purpose of exercising such powers
494 and jurisdiction.

495 50-5C-16.

496 Nothing in this chapter shall abrogate the obligations of a responsible public entity or
497 private entity to comply with public meetings requirement in accordance with Chapter 14
498 of this title, or to disclose public information in accordance with Article 4 of Chapter 18
499 of this title.

500 50-5C-17.

501 There is created as a joint committee of the General Assembly the Georgia Partnership for
502 Public Facilities and Infrastructure Act Legislative Oversight Committee to be composed
503 of the members of the House Committee on State Properties and the Senate Committee on
504 State and Local Governmental Operations. The chairpersons of such committees shall
505 serve as cochairpersons of the oversight committee. The oversight committee shall
506 periodically inquire into and review the operations of the Partnership for Public Facilities
507 and Infrastructure Act Guidelines Committee, as well as periodically review and evaluate
508 the success with which the committee is accomplishing its statutory duties and functions
509 as provided in this chapter. The oversight committee may conduct any independent audit
510 or investigation of the division it deems necessary."

511 **SECTION 3.**

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

514 **SECTION 4.**

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