

Senate Bill 59

By: Senators Hill of the 6th, Mullis of the 53rd, Gooch of the 51st, Beach of the 21st and Hill of the 32nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
2 and Title 50 of the Official Code of Georgia Annotated, relating to state government, so as
3 to provide for a "Partnership for Public Facilities and Infrastructure Act"; to provide for
4 definitions; to provide guidelines for projects; to create the Partnership for Public Facilities
5 and Infrastructure Act Guidelines Committee and to provide for its membership, terms,
6 allowances, duties, and support; to provide for the manner by which projects may be
7 initiated; to provide for the approval process for projects; to provide for evaluation criteria
8 and review; to provide for agreements; to provide for default and remedies; to provide for
9 financing and grants; to provide for service contracts; to provide for the dedication of certain
10 property interests; to provide for sovereign immunity; to provide for police powers; to
11 provide for application of open meetings and open records laws; to provide a short title; to
12 provide for related matters; to provide an effective date; to repeal conflicting laws; and for
13 other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

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

18 style="text-align:center">**SECTION 2.**

19 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
20 by adding a new chapter to read as follows:

21 style="text-align:center">"CHAPTER 77

22 36-77-1.

23 As used in this chapter, the term:

- 24 (1) 'Affected local jurisdiction' means any county, municipality, or school district in
 25 which all or a portion of a qualifying project is located.
- 26 (2) 'Comprehensive agreement' means the written agreement between the private entity
 27 and the responsible public entity required by Code Section 36-77-6.
- 28 (3) 'Develop' or 'development' means to plan, design, develop, finance, lease, acquire,
 29 install, construct, operate, maintain, or expand.
- 30 (4) 'Local authority' means any local authority created pursuant to a local or general Act
 31 of the General Assembly, including a joint public instrumentality.
- 32 (5) 'Local government' means any county, municipality, consolidated government, or
 33 school district.
- 34 (6) 'Private entity' means any natural person, corporation, general partnership, limited
 35 liability company, limited partnership, joint venture, business trust, public benefit
 36 corporation, nonprofit entity, or other business entity.
- 37 (7) 'Public entity' means a department, agency, board, bureau, commission, authority, or
 38 instrumentality of the State of Georgia, including the Board of Regents of the University
 39 System of Georgia as well as a local government or local authority.
- 40 (8) 'Qualifying project' means any project selected in response to a request from a
 41 responsible public entity or submitted by a private entity as an unsolicited proposal in
 42 accordance with this chapter and subsequently reviewed and approved by a responsible
 43 public entity, within its sole discretion, as meeting a public purpose or public need. This
 44 term shall not include and shall have no application to any project involving:
- 45 (A) The generation of electric energy for sale pursuant to Chapter 3 of Title 46;
 46 (B) Communications services pursuant to Articles 4 and 7 of Chapter 5 of Title 46;
 47 (C) Cable and video services pursuant to Chapter 76 of this title; or
 48 (D) Water reservoir projects as defined in paragraph (10) of Code Section 12-5-471,
 49 which shall be governed by Article 4 of Chapter 91 of this title.
- 50 (9) 'Responsible public entity' means a public entity that has the power to contract with
 51 a private entity to develop the applicable qualifying project. For any qualifying project
 52 identified by a local government or local authority, the sole responsible public entity shall
 53 be the governing authority of the local government.
- 54 (10) 'Revenue' means all revenues, income, earnings, user fees, lease payments, or other
 55 service payments arising out of or in connection with supporting the development or
 56 operation of a qualifying project.
- 57 (11) 'Unsolicited proposal' means a written proposal for a qualifying project that is
 58 received by a public entity or a responsible public entity and is not in response to any
 59 request for proposal for a qualifying project issued by a responsible public entity.

60 36-77-2.

61 (a) The Partnership for Public Facilities and Infrastructure Act Guidelines Committee is
62 established to prepare model guidelines for public entities in the implementation of this
63 chapter.

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

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

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

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

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

72 (D) One licensed member of the State Bar of Georgia with expertise in public works
73 construction.

74 (2) The following members shall be appointed by the Speaker of the House of
75 Representatives:

76 (A) One member of the business community with expertise in construction
77 management employed by a firm with less than \$25 million in annual revenue;

78 (B) One member of the business community who is a licensed architect; and

79 (C) One member of the business community with expertise in real estate development;
80 and

81 (3) The following members shall be appointed by the Lieutenant Governor:

82 (A) One member of the business community with expertise in construction
83 management employed by a firm with more than \$25 million in annual revenue;

84 (B) One member of the business community who is a professional with expertise in
85 engineering; and

86 (C) One member of the business community with expertise in finance.

87 (c) The terms of these committee appointments shall be for two years. The appointments
88 shall be made as soon as feasible, but not later than August 1, 2015. The committee shall
89 meet once a month or as needed and shall issue model guidelines to public entities no later
90 than July 1, 2016. Such guidelines shall be updated every two years. The members of the
91 committee shall elect a chairperson and a vice chairperson who shall serve for two-year
92 terms in such office.

93 (d) Citizen members shall receive a daily expense allowance in the amount specified in
94 subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance
95 authorized for state employees.

96 (e) Staff support shall be provided by the Department of Administrative Services, the
97 Governor's office, and the Office of Planning and Budget.

98 36-77-3.

99 (a) Prior to executing any comprehensive agreement for the development or operation of
100 a qualifying project pursuant to an unsolicited proposal received by a responsible public
101 entity under this chapter, the responsible public entity shall adopt either:

102 (1) The model guidelines from the Partnership for Public Facilities and Infrastructure Act
103 Guidelines Committee; or

104 (2) Its own guidelines as a policy, rule, regulation, or ordinance, which shall not be
105 inconsistent with the model guidelines.

106 (b) The model guidelines shall include, at a minimum, the following:

107 (1) The period of time each calendar year when the responsible public entity will
108 consider receiving, processing, reviewing, or evaluating unsolicited proposals for
109 qualifying projects, and such limited time period shall be established within the sole
110 discretion of the responsible public entity;

111 (2) Procedures for the financial review and analysis of an unsolicited proposal that may
112 include:

113 (A) A cost-benefit analysis;

114 (B) Evaluation of the public need for or benefit derived from the qualifying project;

115 (C) Evaluation of the estimated cost of the qualifying project for reasonableness in
116 relation to similar facilities;

117 (D) Evaluation of the source of funding for the project;

118 (E) Consideration of plans to ensure timely development or operation;

119 (F) Evaluation of risk sharing, including cost or completion guarantees, added value,
120 or debt or equity investments by the private entity; and

121 (G) Consideration of any increase in funding, dedicated revenue source, or other
122 economic benefit that would not otherwise be available;

123 (3) Criteria for determining any fees authorized in Code Section 36-77-4 that the public
124 entity elects to charge the private entity for the processing, review, and evaluation of an
125 unsolicited proposal;

126 (4) A requirement for the issuance of a request for proposals upon a decision by the
127 responsible public entity to proceed with a qualifying project pursuant to an unsolicited
128 proposal;

129 (5) Procedures for posting and publishing notice of the opportunity to offer competing
130 proposals;

131 (6) Procedures for the processing, review, and consideration of competing proposals, and
132 the period for the processing, review, and consideration of competing proposals shall not
133 be less than 90 days; and

134 (7) Procedures for determining whether information included in an unsolicited proposal
135 shall be released as part of any request for proposals to ensure fair competition.

136 36-77-4.

137 (a) If an affected local jurisdiction adopts a rule, regulation, or ordinance affirming its
138 application, a private entity may submit an unsolicited proposal for a project to the
139 responsible public entity for review and determination as a qualifying project in accordance
140 with the guidelines established by the responsible public entity. Any such unsolicited
141 proposal shall be accompanied by the following material and information:

142 (1) A project description, including the location of the project, the conceptual design of
143 such facility or facilities, and a conceptual plan for the provision of services or
144 technology infrastructure;

145 (2) A feasibility statement that includes:

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

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

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

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

156 (4) A financial plan setting forth the private entity's general plans for financing the
157 project, including the sources of the private entity's funds and identification of any
158 dedicated revenue source or proposed debt or equity investment on behalf of the private
159 entity; a description of user fees, lease payments, and other service payments over the
160 term of the comprehensive agreement pursuant to Code Section 36-77-6; and the
161 methodology and circumstances for changes to such user fees, lease payments, and other
162 service payments over time;

163 (5) A business case statement that shall include a basic description of any direct and
164 indirect benefits that the private entity can provide in delivering the project, including
165 relevant cost, quality, methodology, and process for identifying the project and time
166 frame data;

167 (6) The names and addresses of the persons who may be contacted for further
168 information concerning the unsolicited proposal; and

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

171 (b) For any unsolicited proposal of the development of a project received by a responsible
172 public entity, the responsible public entity may charge and retain a reasonable fee to cover
173 the costs of processing, reviewing, and evaluating the unsolicited proposal, including,
174 without limitation, reasonable attorney's fees and fees for financial, technical, and other
175 necessary advisers or consultants.

176 (c) Any private entity submitting an unsolicited proposal under subsection (a) of this Code
177 section to a responsible public entity that is a local government shall notify each affected
178 local jurisdiction by furnishing a copy of its unsolicited proposal to each affected local
179 jurisdiction.

180 (d) Each affected local jurisdiction that is not a responsible public entity for the respective
181 project may, within 45 days after receiving such notice, submit any comments regarding
182 the unsolicited proposal it may have in writing to the responsible public entity and indicate
183 whether the project is compatible with local plans and budgets. Such comments shall be
184 given consideration by the responsible public entity prior to executing a comprehensive
185 agreement with a private entity pursuant to Code Section 33-77-6. A project shall be
186 consistent with zoning and land use regulations of the responsible public entity and each
187 affected local jurisdiction.

188 (e) The responsible public entity may reject any proposal or unsolicited proposal at any
189 time and shall not be required to provide a reason for its denial. If the responsible public
190 entity rejects a proposal or unsolicited proposal submitted by a private entity, it shall have
191 no obligation to return the proposal, unsolicited proposal, or any related materials
192 following such rejection.

193 (f) A private entity assumes all risk in submission of a proposal or unsolicited proposal in
194 accordance with subsections (a) and (b) of this Code section, and a responsible public
195 entity shall not incur any obligation to reimburse a private entity for any costs, damages,
196 or loss of intellectual property incurred by a private entity in the creation, development, or
197 submission of a proposal or unsolicited proposal for a qualifying project.

198 33-77-5.

199 (a) The responsible public entity may approve the project in an unsolicited proposal
200 submitted by a private entity pursuant to Code Section 36-77-4 as a qualifying project.
201 Determination by the responsible public entity of a qualifying project shall not bind the
202 responsible public entity or the private entity to proceed with the qualifying project.

203 (b) Upon the responsible public entity's determination of a qualifying project as provided
204 in subsection (a) of this Code section, the responsible public entity shall:

205 (1) Seek competing proposals for the qualifying project by issuing a request for
206 proposals for not less than 90 days; and

207 (2) Review all proposals submitted in response to the request for proposals based on the
208 criteria established in the request for proposals.

209 (c) The responsible public entity may select the private entity submitting the unsolicited
210 proposal or one of the proposals submitted in response to the request for proposals, or it
211 may, prior to entering into a comprehensive agreement in accordance with Code
212 Section 36-77-6, employ a process of competitive negotiation with some or all private
213 entity proposers. The responsible public entity shall not be required to select the proposal
214 with the lowest price offer, but it may consider price as one of various factors in evaluating
215 the proposals received in response to the request for proposals for a qualifying project.
216 Factors that may be considered include:

217 (1) The proposed cost of the qualifying project;

218 (2) The general reputation, industry experience, and financial capacity of the private
219 entity;

220 (3) The proposed design of the qualifying project;

221 (4) The eligibility of the facility for accelerated selection, review, and documentation
222 timelines under the responsible public entity's guidelines;

223 (5) Benefits to the public;

224 (6) The private entity's compliance with a minority business enterprise participation plan;

225 (7) The private entity's plans to employ local contractors and residents; and

226 (8) Other criteria that the responsible public entity deems appropriate.

227 (d) At any time during the process outlined in this Code section but before the full
228 execution of a comprehensive agreement, the responsible public entity may, without
229 liability to any private entity or third party, cancel its request for proposals or reject all
230 proposals received in response to its request for proposals, including the unsolicited
231 proposal, for any reason whatsoever.

232 (e) Nothing in this chapter or in a comprehensive agreement entered into pursuant to Code
233 Section 36-77-6 shall enlarge, diminish, or affect the authority, if any, otherwise possessed
234 by the responsible public entity to take action that would impact the debt capacity of the
235 State of Georgia or any local government. The credit of the state shall not be pledged or
236 loaned to any private entity. The responsible public entity shall not loan money to the
237 private entity in order to finance all or a portion of the project.

238 36-77-6.

239 (a) The comprehensive agreement entered into between the responsible public entity and
240 the private entity selected in accordance with this chapter shall include:

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

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

244 (3) Any user fees, lease payments, or service payments as may be established by
245 agreement of the parties, as well as any process for changing such fees or payments
246 throughout the term of the agreement, and a copy of any service contract;

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

249 (5) A process for the review of plans and specifications for the qualifying project by the
250 responsible public entity and approval by the responsible public entity if the plans and
251 specifications conform to reasonable standards acceptable to the responsible public entity;

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

255 (7) Delivery of maintenance, performance, and payment bonds; letters of credit; or other
256 forms of security acceptable to the responsible public entity in connection with the
257 development or operation of the qualifying project, in the forms and amounts required in
258 Article 3 of Chapter 91 of this title for those components of the qualifying project that
259 involve construction;

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

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

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

269 (11) Provisions governing the rights and responsibilities of the responsible public entity
270 and the private entity in the event that the comprehensive agreement is terminated or
271 there is a material default by the private entity, including conditions governing
272 assumption of the duties and responsibilities of the private entity by the responsible
273 public entity and the transfer or purchase of property or other interests of the private
274 entity by the responsible public entity, including provisions compliant with state

275 constitutional limitations on public debt by local government. Such policies and
276 procedures shall be consistent with Code Section 36-77-7.

277 (b) The comprehensive agreement may include such other terms and conditions that the
278 responsible public entity determines will serve the public purpose of this chapter and to
279 which the private entity and the responsible public entity mutually agree, including,
280 without limitation, provisions regarding unavoidable delays and provisions where the
281 authority and duties of the private entity under this chapter shall cease, and the qualifying
282 project is dedicated to the responsible public entity or, if the qualifying project was initially
283 dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

284 (c) Any changes in the terms of the comprehensive agreement, as may be agreed upon by
285 the parties from time to time, shall be added to the comprehensive agreement by written
286 amendment.

287 (d) The comprehensive agreement may provide for the development of phases or segments
288 of the qualifying project.

289 36-77-7.

290 (a) In the event of a material default by the private entity, the responsible public entity may
291 terminate, with cause, the comprehensive agreement and exercise any other rights and
292 remedies that may be available to it at law or in equity, including, but not limited to, claims
293 under the maintenance, performance, or payment bonds; other forms of security; or letters
294 of credit required by Code Section 36-77-6.

295 (b) The responsible public entity may elect to assume the responsibilities and duties of the
296 private entity of the qualifying project, and in such case, it shall succeed to all of the right,
297 title, and interest in such qualifying project.

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

305 (d) In the event the responsible public entity elects to take over a qualifying project
306 pursuant to subsection (b) of this Code section, the responsible public entity may develop
307 the qualifying project, impose user fees, and impose and collect lease payments for the use
308 thereof.

309 36-77-8.

310 All power or authority granted by this chapter to public entities shall be in addition and
311 supplemental to, and not in substitution for, the powers conferred by any other general,
312 special, or local law. The limitations imposed by this chapter shall not affect the powers
313 conferred by any other general, special, or local law and shall apply only to the extent that
314 a public entity elects to proceed under this chapter.

315 36-77-9.

316 Nothing in this chapter shall be construed as or deemed a waiver of the sovereign or
317 official immunity of any responsible public entity or any affected local jurisdiction or any
318 officer or employee thereof with respect to the participation in, or approval of, all or any
319 part of the qualifying project or its operation, including, but not limited to, interconnection
320 of the qualifying project with any other infrastructure or project.

321 36-77-10.

322 Any law enforcement officers of the public entity and of each affected local jurisdiction
323 shall have the same powers and jurisdiction within the portion of such qualifying project
324 as they have in their respective areas of jurisdiction, and such law enforcement officers
325 shall have access to the qualifying project at any time for the purpose of exercising such
326 powers and jurisdiction.

327 36-77-11.

328 (a) Responsible public entities that proceed with procurement pursuant to competitive
329 sealed bidding as defined in Code Section 36-91-2, or any other purchasing options
330 available under current law, shall not be required to comply with this chapter.

331 (b) Nothing in this chapter shall apply to or affect the State Transportation Board, the
332 Department of Transportation, or the State Road and Tollway Authority, or any project
333 thereof.

334 (c) Nothing in this chapter shall abrogate the obligations of a responsible public entity or
335 private entity to comply with the public meetings requirement in accordance with
336 Chapter 14 of Title 50 or to disclose public information in accordance with Article 4 of
337 Chapter 18 of Title 50."

338 **SECTION 3.**

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

341 "CHAPTER 5C342 50-5C-1.343 As used in this chapter, the term:344 (1) 'Affected local jurisdiction' means any county, municipality, or school district in
345 which all or a portion of a qualifying project is located.346 (2) 'Comprehensive agreement' means the written agreement between the private entity
347 and the responsible public entity required by Code Section 50-5C-5.348 (3) 'Develop' or 'development' means to plan, design, develop, finance, lease, acquire,
349 install, construct, operate, maintain, or expand.350 (4) 'Person' means an individual, corporation, partnership, trust, association, or other
351 legal entity.352 (5) 'Private entity' means any natural person, corporation, general partnership, limited
353 liability company, limited partnership, joint venture, business trust, public benefit
354 corporation, nonprofit entity, or other business entity.355 (6) 'Public entity' means a department, agency, board, bureau, commission, authority, or
356 instrumentality of the State of Georgia, including the Board of Regents of the University
357 System of Georgia as well as a local government or local authority.358 (7) 'Qualifying project' means any project submitted by a private entity as an unsolicited
359 proposal in accordance with this chapter and subsequently reviewed and approved by a
360 responsible public entity, within its sole discretion, as meeting a public purpose or public
361 need. This term shall not include and shall have no application to any project involving:362 (A) The generation of electric energy for sale pursuant to Chapter 3 of Title 46;363 (B) Communications services pursuant to Articles 4 and 7 of Chapter 5 of Title 46;364 (C) Cable and video services pursuant to Chapter 76 of Title 36; or365 (D) Water reservoir projects as defined in paragraph (10) of Code Section 12-5-471,
366 which shall be governed by Article 4 of Chapter 91 of Title 36.367 (8) 'Responsible public entity' means a public entity that has the power to contract with
368 a private entity to develop an identified qualifying project. For any unsolicited proposal
369 for a project at one or more institutions of the University System of Georgia, the
370 responsible public entity shall be the Board of Regents of the University System of
371 Georgia or its designees. For any unsolicited proposal for a project for one or more state
372 government entities, other than an institution of the University System of Georgia, the
373 responsible public entity shall be the State Properties Commission.374 (9) 'Revenue' means all revenues, income, earnings, user fees, lease payments, or other
375 service payments arising out of or in connection with supporting the development or
376 operation of a qualifying project.

377 (10) 'State government entity' means an office, agency, authority, department,
 378 commission, board, division, or instrumentality created under the laws of the State of
 379 Georgia or an institution of the Board of Regents of the University System of Georgia.

380 (11) 'Unsolicited proposal' means a written proposal for a qualifying project that is
 381 received by a responsible public entity and is not in response to any request for proposal
 382 issued by a responsible public entity.

383 50-5C-2.

384 For any qualifying project undertaken by the State Properties Commission, the Georgia
 385 State Financing and Investment Commission shall be solely authorized to develop
 386 guidelines for this process. For any qualifying project undertaken by the University
 387 System of Georgia, the Board of Regents of the University System of Georgia shall be
 388 solely authorized to develop guidelines for this process.

389 50-5C-3.

390 (a) Between May 1 and June 30 of each year, a private entity may submit an unsolicited
 391 proposal for a project to the responsible public entity for review and determination as a
 392 qualifying project in accordance with the guidelines established by Code Section 50-5C-2.
 393 Any such unsolicited proposal shall be accompanied by the following material and
 394 information:

395 (1) A project description, including the location of the project, the conceptual design of
 396 such facility or facilities, and a conceptual plan for the provision of services or
 397 technology infrastructure;

398 (2) A feasibility statement that includes:

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

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

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

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

409 (4) A financial plan setting forth the private entity's general plans for financing the
 410 project, including the sources of the private entity's funds and identification of any
 411 dedicated revenue source or proposed debt or equity investment on behalf of the private

412 entity; a description of user fees, lease payments, and other service payments over the
413 term of the comprehensive agreement pursuant to Code Section 50-5C-5; and the
414 methodology and circumstances for changes to such user fees, lease payments, and other
415 service payments over time;

416 (5) A business case statement that shall include a basic description of any direct and
417 indirect benefits that the private entity can provide in delivering the project, including
418 relevant cost, quality, methodology, and process for identifying the project and time
419 frame data;

420 (6) The names and addresses of the persons who may be contacted for further
421 information concerning the unsolicited proposal; and

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

424 (b) For any unsolicited proposal for the development of a project received by a responsible
425 public entity, the private entity shall reimburse the responsible public entity for the actual
426 costs incurred to process, review, and evaluate the unsolicited proposal, including, without
427 limitation, reasonable attorney's fees and fees for financial, technical, and other necessary
428 advisers or consultants.

429 (c) Any private entity submitting an unsolicited proposal under subsection (a) of this Code
430 section to a responsible public entity shall also notify each affected local jurisdiction by
431 furnishing a copy of its unsolicited proposal to each affected local jurisdiction.

432 (d) Each affected local jurisdiction that is not a responsible public entity for the respective
433 project may, within 45 days after receiving such notice, submit any comments regarding
434 the unsolicited proposal it may have in writing to the responsible public entity and indicate
435 whether the project is compatible with local plans and budgets. A project shall be
436 consistent with zoning and land use regulations of the responsible public entity and each
437 affected local jurisdiction.

438 (e) The responsible public entity may reject any proposal or unsolicited proposal at any
439 time and shall not be required to provide a reason for its denial. If the responsible public
440 entity rejects a proposal or unsolicited proposal submitted by a private entity, it shall have
441 no obligation to return the proposal, unsolicited proposal, or any related materials
442 following such rejection.

443 (f) A private entity assumes all risks in submission of a proposal or unsolicited proposal
444 in accordance with subsections (a) and (b) of this Code section, and a responsible public
445 entity shall not incur any obligation to reimburse a private entity for any costs, damages,
446 or loss of intellectual property incurred by a private entity in the creation, development, or
447 submission of a proposal or unsolicited proposal for a qualifying project.

448 50-5C-4.

449 (a) The responsible public entity may approve the project as proposed in an unsolicited
450 proposal submitted by a private entity pursuant to Code Section 50-5C-3 as a qualifying
451 project. Determination by the responsible public entity of a qualifying project shall not
452 bind the responsible public entity or the private entity to proceed with the qualifying
453 project.

454 (b) Upon the responsible public entity's determination of a qualifying project as provided
455 in subsection (a) of this Code section, the responsible public entity shall:

456 (1) Seek competing proposals for the qualifying project by issuing a request for
457 proposals for not less than 90 days; and

458 (2) Review all proposals submitted in response to the request for proposals based on the
459 criteria established in the request for proposals.

460 (c) The responsible public entity may select the private entity submitting the unsolicited
461 proposal or one of the proposals submitted in response to the request for proposals, or it
462 may, prior to entering into a comprehensive agreement in accordance with Code
463 Section 50-5C-5, employ a process of competitive negotiation with some or all private
464 entity proposers. The responsible public entity shall not be required to select the proposal
465 with the lowest price offer, but it may consider price as one of various factors in evaluating
466 the proposals received in response to the request for proposals for a qualifying project.

467 Factors that may be considered include:

468 (1) The proposed cost of the qualifying project;

469 (2) The general reputation, industry experience, and financial capacity of the private
470 entity;

471 (3) The proposed design of the qualifying project;

472 (4) The eligibility of the facility for accelerated selection, review, and documentation
473 timelines under the responsible public entity's guidelines;

474 (5) Benefits to the public;

475 (6) The private entity's compliance with a minority business enterprise participation plan;

476 (7) The private entity's plans to employ local contractors and residents; and

477 (8) Other criteria that the responsible public entity deems appropriate.

478 (d) At any time during the process outlined in this Code section but before full execution
479 of a comprehensive agreement, the responsible public entity may, without liability to any
480 private entity or third party, cancel its request for proposals or reject all proposals received
481 in response to its request for proposals, including the unsolicited proposal, for any reason
482 whatsoever.

483 (e) Nothing in this chapter or in a comprehensive agreement entered into pursuant to Code
484 Section 50-5C-5 shall enlarge, diminish, or affect the authority, if any, otherwise possessed

485 by the responsible public entity to take action that would impact the debt capacity of the
486 State of Georgia. The credit of the state shall not be pledged or loaned to any private
487 entity. The responsible public entity shall not loan money to the private entity in order to
488 finance all or a portion of the project.

489 50-5C-5.

490 (a) The comprehensive agreement entered into between the responsible public entity and
491 the private entity selected in accordance with this chapter shall include:

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

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

495 (3) Any user fees, lease payments, or service payments as may be established by
496 agreement of the parties, as well as any process for changing such fees or payments
497 throughout the term of the agreement, and a copy of any service contract;

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

500 (5) A process for the review of plans and specifications for the qualifying project by the
501 responsible public entity and approval by the responsible public entity if the plans and
502 specifications conform to reasonable standards acceptable to the responsible public entity;

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

506 (7) Delivery of maintenance, performance, and payment bonds; letters of credit; or other
507 forms of security acceptable to the responsible public entity in connection with the
508 development or operation of the qualifying project, in the forms and amounts required in
509 Code Sections 13-10-40, 13-10-41, and 13-10-60;

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

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

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

519 (11) Provisions governing the rights and responsibilities of the responsible public entity
520 and the private entity in the event the comprehensive agreement is terminated or there is

521 a material default by the private entity, including conditions governing assumption of the
522 duties and responsibilities of the private entity by the responsible public entity and the
523 transfer or purchase of property or other interests of the private entity by the responsible
524 public entity, including provisions compliant with state constitutional limitations on
525 public debt.

526 (b) The comprehensive agreement may include such other terms and conditions that the
527 responsible public entity determines will serve the public purpose of this chapter and to
528 which the private entity and the responsible public entity mutually agree, including,
529 without limitation, provisions regarding unavoidable delays and provisions where the
530 authority and duties of the private entity under this chapter shall cease, and the qualifying
531 project is dedicated to the responsible public entity.

532 (c) Any changes in the terms of the comprehensive agreement, as may be agreed upon by
533 the parties from time to time, shall be added to the comprehensive agreement by written
534 amendment.

535 (d) The comprehensive agreement may provide for the development of phases or segments
536 of the qualifying project.

537 50-5C-6.

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

544 (b) The responsible public entity may elect to assume the responsibilities and duties of the
545 private entity of the qualifying project, and in such case, it shall succeed to all of the right,
546 title, and interest in such qualifying project.

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

554 (d) In the event the responsible public entity elects to take over a qualifying project
555 pursuant to subsection (b) of this Code section, the responsible public entity may develop

556 the qualifying project, impose user fees, and impose and collect lease payments for the use
557 thereof.

558 50-5C-7.

559 All power or authority granted by this chapter to public entities shall be in addition and
560 supplemental to, and not in substitution for, the powers conferred by any other general or
561 special law. The limitations imposed by this chapter shall not affect the powers conferred
562 by any other general, special, or local law and shall apply only to the extent that a public
563 entity elects to proceed under this chapter.

564 50-5C-8.

565 Nothing in this chapter shall be construed as or deemed a waiver of the sovereign or
566 official immunity of any responsible public entity or any officer or employee thereof with
567 respect to the participation in, or approval of, all or any part of the qualifying project or its
568 operation, including, but not limited to, interconnection of the qualifying project with any
569 other infrastructure or project.

570 50-5C-9.

571 Any law enforcement officers of the public entity shall have the same powers and
572 jurisdiction within the portion of such qualifying project as they have in their respective
573 areas of jurisdiction, and such law enforcement officers shall have access to the qualifying
574 project at any time for the purpose of exercising such powers and jurisdiction.

575 50-5C-10.

576 (a) Responsible public entities that proceed with procurement pursuant to competitive
577 sealed bidding pursuant to Code Section 50-5-67, or any other purchasing options available
578 to them under current law, shall not be required to comply with this chapter.

579 (b) Nothing in this chapter shall apply to or affect the State Transportation Board, the
580 Department of Transportation, or the State Road and Tollway Authority, or any project
581 thereof.

582 (c) Nothing in this chapter shall abrogate the obligations of a responsible public entity or
583 private entity to comply with the public meetings requirement in accordance with
584 Chapter 14 of this title or to disclose public information in accordance with Article 4 of
585 Chapter 18 of this title."

586 **SECTION 4.**

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

589 **SECTION 5.**

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