

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

**AS PASSED SENATE**

**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 definitions; to provide guidelines for projects; to create the Partnership for  
 4 Public Facilities and Infrastructure Act Guidelines Committee and to provide for its  
 5 membership, terms, allowances, duties, and support; to provide for the manner by which  
 6 projects may be initiated; to provide for the approval process for projects; to provide for  
 7 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 a short title; to provide for related matters; to provide an effective date; to repeal conflicting  
 12 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 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
 19 by adding a new article to Chapter 91, relating to public works bidding, to read as follows:

20 "ARTICLE 5

21 36-91-110.

22 As used in this article, the term:

23 (1) 'Comprehensive agreement' means the written agreement between the private entity  
 24 and the local government required by Code Section 36-91-115.

25 (2) 'Develop' or 'development' means to plan, design, develop, finance, lease, acquire,  
 26 install, construct, operate, maintain, or expand.

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

29 (4) 'Local government' means any county, municipality, consolidated government, or  
 30 board of education.

31 (5) 'Private entity' means any natural person, corporation, general partnership, limited  
 32 liability company, limited partnership, joint venture, business trust, public benefit  
 33 corporation, nonprofit entity, or other business entity.

34 (6) 'Qualifying project' means any project selected in response to a request from a local  
 35 government or submitted by a private entity as an unsolicited proposal in accordance with  
 36 this article and subsequently reviewed and approved by a local government, within its  
 37 sole discretion, as meeting a public purpose or public need. This term shall not include  
 38 and shall have no application to any project involving:

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

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

41 (C) Cable and video services pursuant to Chapter 76 of this title; or

42 (D) Water reservoir projects as defined in paragraph (10) of Code Section 12-5-471,  
 43 which shall be governed by Article 4 of this chapter.

44 (7) 'Revenue' means all revenues, income, earnings, user fees, lease payments, or other  
 45 service payments arising out of or in connection with supporting the development or  
 46 operation of a qualifying project.

47 (8) 'Unsolicited proposal' means a written proposal for a qualifying project that is  
 48 received by a local government and is not in response to any request for proposal for a  
 49 qualifying project issued by a local government.

50 36-91-111.

51 (a) The Partnership for Public Facilities and Infrastructure Act Guidelines Committee is  
 52 established to prepare model guidelines for local governments in the implementation of this  
 53 article.

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

- 58 (1) The following members shall be appointed by the Governor:
- 59 (A) One member or employee of a county governing authority;
- 60 (B) One member or employee of a municipal governing authority;
- 61 (C) One member or employee of a local board of education; and
- 62 (D) One licensed member of the State Bar of Georgia with expertise in representing
- 63 local government in public works construction.
- 64 (2) The following members shall be appointed by the Speaker of the House of
- 65 Representatives, provided that one of these appointees shall have expertise in working
- 66 with local government:
- 67 (A) One member of the business community with expertise in construction
- 68 management employed by a firm with less than \$25 million in annual revenue;
- 69 (B) One member of the business community who is a licensed architect; and
- 70 (C) One member of the business community with expertise in real estate development;
- 71 and
- 72 (3) The following members shall be appointed by the Lieutenant Governor, provided that
- 73 one of these appointees shall have expertise in working with local government:
- 74 (A) One member of the business community with expertise in construction
- 75 management employed by a firm with more than \$25 million in annual revenue;
- 76 (B) One member of the business community who is a licensed professional engineer;
- 77 and
- 78 (C) One member of the business community with expertise in finance.
- 79 (c) The terms of these committee appointments shall be for two years. The appointments
- 80 shall be made as soon as feasible, but not later than August 1, 2015. The committee shall
- 81 meet once a month or as needed and shall issue model guidelines to local governments no
- 82 later than July 1, 2016. Such guidelines shall be updated every two years. The members
- 83 of the committee shall elect a chairperson and a vice chairperson who shall serve for
- 84 two-year terms in such office.
- 85 (d) Citizen members shall receive a daily expense allowance in the amount specified in
- 86 subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance
- 87 authorized for state employees.
- 88 (e) Staff support shall be provided by the Department of Administrative Services, the
- 89 Governor's office, and the Office of Planning and Budget.
- 90 36-91-112.
- 91 (a) Prior to executing any comprehensive agreement for the development or operation of
- 92 a qualifying project pursuant to an unsolicited proposal received by a local government
- 93 under this article, the local government shall adopt either:

- 94 (1) The model guidelines from the Partnership for Public Facilities and Infrastructure Act  
 95 Guidelines Committee; or  
 96 (2) Its own guidelines as a policy, rule, regulation, or ordinance, which shall not be  
 97 inconsistent with the model guidelines.
- 98 (b) The model guidelines shall include, at a minimum, the following:
- 99 (1) The period of time each calendar year when the local government will consider  
 100 receiving, processing, reviewing, or evaluating unsolicited proposals for qualifying  
 101 projects, and such limited time period shall be established within the sole discretion of  
 102 the local government;
- 103 (2) Procedures for the financial review and analysis of an unsolicited proposal that may  
 104 include:
- 105 (A) A cost-benefit analysis;  
 106 (B) Evaluation of the public need for or benefit derived from the qualifying project;  
 107 (C) Evaluation of the estimated cost of the qualifying project for reasonableness in  
 108 relation to similar facilities;  
 109 (D) Evaluation of the source of funding for the project;  
 110 (E) Consideration of plans to ensure timely development or operation;  
 111 (F) Evaluation of risk sharing, including cost or completion guarantees, added value,  
 112 or debt or equity investments by the private entity; and  
 113 (G) Consideration of any increase in funding, dedicated revenue source, or other  
 114 economic benefit that would not otherwise be available;
- 115 (3) Criteria for determining any fees authorized in Code Section 36-91-113 that the local  
 116 government elects to charge the private entity for the processing, review, and evaluation  
 117 of an unsolicited proposal;
- 118 (4) A requirement for the issuance of a request for proposals upon a decision by the local  
 119 government to proceed with a qualifying project pursuant to an unsolicited proposal;
- 120 (5) Procedures for posting and publishing notice of the opportunity to offer competing  
 121 proposals;
- 122 (6) Procedures for the processing, review, and consideration of competing proposals, and  
 123 the period for the processing, review, and consideration of competing proposals shall not  
 124 be less than 90 days; and
- 125 (7) Procedures for determining whether information included in an unsolicited proposal  
 126 shall be released as part of any request for proposals to ensure fair competition.
- 127 36-91-113.
- 128 (a) If a local government adopts a rule, regulation, or ordinance affirming its participation  
 129 in the process created in this article, a private entity may submit an unsolicited proposal for

130 a project to the local government for review and determination as a qualifying project in  
131 accordance with the guidelines established by the local government. Any such unsolicited  
132 proposal shall be accompanied by the following material and information:

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

136 (2) A feasibility statement that includes:

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

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

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

143 (3) A schedule for the initiation and completion of the project to include the proposed  
144 major responsibilities and timeline for activities to be performed by both the local  
145 government and private entity as well as a proposed schedule for obtaining the permits  
146 and approvals required in subparagraph (B) of paragraph (2) of this subsection;

147 (4) A financial plan setting forth the private entity's general plans for financing the  
148 project, including the sources of the private entity's funds and identification of any  
149 dedicated revenue source or proposed debt or equity investment on behalf of the private  
150 entity; a description of user fees, lease payments, and other service payments over the  
151 term of the comprehensive agreement pursuant to Code Section 36-91-115; and the  
152 methodology and circumstances for changes to such user fees, lease payments, and other  
153 service payments over time;

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

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

160 (7) Such additional material and information as the local government may reasonably  
161 request.

162 (b) For any unsolicited proposal of the development of a project received by a local  
163 government, the local government may charge and retain a reasonable fee to cover the costs  
164 of processing, reviewing, and evaluating the unsolicited proposal, including, without  
165 limitation, reasonable attorney's fees and fees for financial, technical, and other necessary  
166 advisers or consultants.

167 (c) The local government may reject any proposal or unsolicited proposal at any time and  
 168 shall not be required to provide a reason for its denial. If the local government rejects a  
 169 proposal or unsolicited proposal submitted by a private entity, it shall have no obligation  
 170 to return the proposal, unsolicited proposal, or any related materials following such  
 171 rejection.

172 (d) A private entity assumes all risk in submission of a proposal or unsolicited proposal  
 173 in accordance with subsections (a) and (b) of this Code section, and a local government  
 174 shall not incur any obligation to reimburse a private entity for any costs, damages, or loss  
 175 of intellectual property incurred by a private entity in the creation, development, or  
 176 submission of a proposal or unsolicited proposal for a qualifying project.

177 36-91-114.

178 (a) The local government may approve the project in an unsolicited proposal submitted by  
 179 a private entity pursuant to Code Section 36-91-113 as a qualifying project. Determination  
 180 by the local government of a qualifying project shall not bind the local government or the  
 181 private entity to proceed with the qualifying project.

182 (b) Upon the local government's determination of a qualifying project as provided in  
 183 subsection (a) of this Code section, the local government shall:

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

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

188 (c) When the time for receiving proposals expires, the local government shall first rank the  
 189 proposals in accordance with the factors set forth in the request for proposal or invitation  
 190 for bids. The local government shall not be required to select the proposal with the lowest  
 191 price offer, but it may consider price as one of various factors in evaluating the proposals  
 192 received in response to the request for proposals for a qualifying project. Factors that may  
 193 be considered include:

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

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

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

198 (4) The eligibility of the facility for accelerated selection, review, and documentation  
 199 timelines under the local government's guidelines;

200 (5) Benefits to the public;

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

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

203 (8) Other criteria that the local government deems appropriate.

204 (d) After ranking the proposals, the local government shall begin negotiations with the first  
205 ranked private entity. If the local government and the first ranked private entity do not  
206 reach a comprehensive agreement or interim agreement, then the local government may  
207 conduct negotiations with the next ranked private entity. This process shall continue until  
208 the local government either voluntarily abandons the process or executes a comprehensive  
209 agreement or interim agreement with a private entity.

210 (e) At any time during the process outlined in this Code section but before the full  
211 execution of a comprehensive agreement, the local government may, without liability to  
212 any private entity or third party, cancel its request for proposals or reject all proposals  
213 received in response to its request for proposals, including the unsolicited proposal, for any  
214 reason whatsoever.

215 (f) Nothing in this article shall enlarge, diminish, or affect the authority, if any, otherwise  
216 possessed by the local government to take action that would impact the debt capacity of the  
217 State of Georgia or any local government. The credit of this state shall not be pledged or  
218 loaned to any private entity. The local government shall not loan money to the private  
219 entity in order to finance all or a portion of the qualifying project. A multiyear lease entered  
220 into by a local government which is not terminable at the end of each fiscal year during the  
221 term of the lease shall be considered a debt of the local government which enters into such  
222 lease, and such lease shall apply against the debt limitations of the local government.

223 36-91-115.

224 (a) The comprehensive agreement entered into between the local government and the  
225 private entity selected in accordance with this article shall include:

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

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

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

232 (4) Any reimbursements to be paid to the local government for services provided by the  
233 local government;

234 (5) A process for the review of plans and specifications for the qualifying project by the  
235 local government and approval by the local government if the plans and specifications  
236 conform to reasonable standards acceptable to the local government;

237 (6) A process for the periodic and final inspection of the qualifying project by the local  
238 government to ensure that the private entity's activities are in accordance with the  
239 provisions of the comprehensive agreement;

240 (7) Delivery of performance and payment bonds in the amounts required in Code  
241 Sections 36-91-70 and 36-91-90 and in a form acceptable to the local government for  
242 those components of the qualifying project that involve construction, and surety bonds,  
243 letters of credit, or other forms of security acceptable to the local government for other  
244 phases and components of the development of the qualifying project;

245 (8) Submission of a policy or policies of public liability insurance, copies of which shall  
246 be filed with the local government accompanied by proofs of coverage, or self-insurance,  
247 each in form and amount satisfactory to the local government and reasonably sufficient  
248 to ensure coverage of tort liability to the public and employees and to enable the  
249 continued operation of the qualifying project;

250 (9) A process for monitoring the practices of the private entity by the local government  
251 to ensure that the qualifying project is properly maintained;

252 (10) The filing of appropriate financial statements to the local government on a periodic  
253 basis; and

254 (11) Provisions governing the rights and responsibilities of the local government and the  
255 private entity in the event that the comprehensive agreement is terminated or there is a  
256 material default by the private entity, including conditions governing assumption of the  
257 duties and responsibilities of the private entity by the local government and the transfer  
258 or purchase of property or other interests of the private entity by the local government,  
259 including provisions compliant with state constitutional limitations on public debt by the  
260 local government. Such policies and procedures shall be consistent with Code  
261 Section 36-91-116.

262 (b) The comprehensive agreement may include such other terms and conditions that the  
263 local government determines will serve the public purpose of this article and to which the  
264 private entity and the local government mutually agree, including, without limitation,  
265 provisions regarding unavoidable delays and provisions where the authority and duties of  
266 the private entity under this article shall cease and the qualifying project is dedicated to the  
267 local government for public use.

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

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

273 36-91-116.

274 (a) In the event of a material default by the private entity, the local government may  
275 terminate, with cause, the comprehensive agreement and exercise any other rights and  
276 remedies that may be available to it at law or in equity, including, but not limited to, claims  
277 under the maintenance, performance, or payment bonds; other forms of security; or letters  
278 of credit required by Code Section 36-91-115.

279 (b) The local government may elect to assume the responsibilities and duties of the private  
280 entity of the qualifying project, and in such case, it shall succeed to all of the right, title,  
281 and interest in such qualifying project subject to statutory limitations on the availability of  
282 future appropriated or otherwise unobligated funds.

283 (c) The power of eminent domain shall not be delegated to any private entity with respect  
284 to any project commenced or proposed pursuant to this article. Any local government  
285 having the power of condemnation under state law may exercise such power of  
286 condemnation to acquire the qualifying project in the event of a material default by the  
287 private entity. Any person who has perfected a security interest in the qualifying project,  
288 may participate in the condemnation proceedings with the standing of a property owner.

289 (d) In the event the local government elects to take over a qualifying project pursuant to  
290 subsection (b) of this Code section, the local government may develop the qualifying  
291 project, impose user fees, and impose and collect lease payments for the use thereof.

292 36-91-117.

293 All power or authority granted by this article to public entities shall be in addition and  
294 supplemental to, and not in substitution for, the powers conferred by any other general,  
295 special, or local law. The limitations imposed by this article shall not affect the powers  
296 conferred by any other general, special, or local law and shall apply only to the extent that  
297 a local government elects to proceed under this article.

298 36-91-118.

299 Nothing in this article shall be construed as or deemed a waiver of the sovereign or official  
300 immunity of any local government or any officer or employee thereof with respect to the  
301 participation in, or approval of, all or any part of the qualifying project or its operation,  
302 including, but not limited to, interconnection of the qualifying project with any other  
303 infrastructure or project.

304 36-91-119.

305 (a) Local governments that proceed with procurement pursuant to competitive sealed  
 306 bidding as defined in Code Section 36-91-2, or any other purchasing options available  
 307 under current law, shall not be required to comply with this article.

308 (b) Nothing in this article shall apply to or affect the State Transportation Board, the  
 309 Department of Transportation, or the State Road and Tollway Authority, or any project  
 310 thereof.

311 (c) Nothing in this article shall abrogate the obligations of a local government or private  
 312 entity to comply with the public meetings requirement in accordance with Chapter 14 of  
 313 Title 50 or to disclose public information in accordance with Article 4 of Chapter 18 of  
 314 Title 50."

315 **SECTION 3.**

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

318 "CHAPTER 5C

319 50-5C-1.

320 As used in this chapter, the term:

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

323 (2) 'Comprehensive agreement' means the written agreement between the private entity  
 324 and the responsible public entity required by Code Section 50-5C-5.

325 (3) 'Develop' or 'development' means to plan, design, develop, finance, lease, acquire,  
 326 install, construct, operate, maintain, or expand.

327 (4) 'Person' means an individual, corporation, partnership, trust, association, or other  
 328 legal entity.

329 (5) 'Private entity' means any natural person, corporation, general partnership, limited  
 330 liability company, limited partnership, joint venture, business trust, public benefit  
 331 corporation, nonprofit entity, or other business entity.

332 (6) 'Public entity' means a department, agency, board, bureau, commission, authority, or  
 333 instrumentality of the State of Georgia, including the Board of Regents of the University  
 334 System of Georgia as well as a local government or local authority.

335 (7) 'Qualifying project' means any project submitted by a private entity as an unsolicited  
 336 proposal in accordance with this chapter and subsequently reviewed and approved by a

337 responsible public entity, within its sole discretion, as meeting a public purpose or public  
 338 need. This term shall not include and shall have no application to any project involving:

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

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

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

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

344 (8) 'Responsible public entity' means a public entity that has the power to contract with  
 345 a private entity to develop an identified qualifying project. For any unsolicited proposal  
 346 for a project at one or more institutions of the University System of Georgia, the  
 347 responsible public entity shall be the Board of Regents of the University System of  
 348 Georgia or its designees. For any unsolicited proposal for a project for one or more state  
 349 government entities, other than an institution of the University System of Georgia, the  
 350 responsible public entity shall be the State Properties Commission.

351 (9) 'Revenue' means all revenues, income, earnings, user fees, lease payments, or other  
 352 service payments arising out of or in connection with supporting the development or  
 353 operation of a qualifying project.

354 (10) 'Unsolicited proposal' means a written proposal for a qualifying project that is  
 355 received by a responsible public entity and is not in response to any request for proposal  
 356 issued by a responsible public entity.

357 50-5C-2.

358 For any qualifying project undertaken by the State Properties Commission, the Georgia  
 359 State Financing and Investment Commission shall be solely authorized to develop  
 360 guidelines for this process. For any qualifying project undertaken by the University  
 361 System of Georgia, the Board of Regents of the University System of Georgia shall be  
 362 solely authorized to develop guidelines for this process.

363 50-5C-3.

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

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

- 372 (2) A feasibility statement that includes:  
373 (A) The method by which the private entity proposes to secure any necessary property  
374 interests required for the project;  
375 (B) A list of all permits and approvals required for the project from local, state, or  
376 federal agencies; and  
377 (C) A list of public utility facilities, if any, that will be crossed by the project and a  
378 statement of the plans of the private entity to accommodate such crossings;  
379 (3) A schedule for the initiation and completion of the project to include the proposed  
380 major responsibilities and timeline for activities to be performed by both the public and  
381 private entity as well as a proposed schedule for obtaining the permits and approvals  
382 required in subparagraph (B) of paragraph (2) of this subsection;  
383 (4) A financial plan setting forth the private entity's general plans for financing the  
384 project, including the sources of the private entity's funds and identification of any  
385 dedicated revenue source or proposed debt or equity investment on behalf of the private  
386 entity; a description of user fees, lease payments, and other service payments over the  
387 term of the comprehensive agreement pursuant to Code Section 50-5C-5; and the  
388 methodology and circumstances for changes to such user fees, lease payments, and other  
389 service payments over time;  
390 (5) A business case statement that shall include a basic description of any direct and  
391 indirect benefits that the private entity can provide in delivering the project, including  
392 relevant cost, quality, methodology, and process for identifying the project and time  
393 frame data;  
394 (6) The names and addresses of the persons who may be contacted for further  
395 information concerning the unsolicited proposal; and  
396 (7) Such additional material and information as the responsible public entity may  
397 reasonably request.
- 398 (b) For any unsolicited proposal for the development of a project received by a responsible  
399 public entity, the private entity shall reimburse the responsible public entity for the actual  
400 costs incurred to process, review, and evaluate the unsolicited proposal, including, without  
401 limitation, reasonable attorney's fees and fees for financial, technical, and other necessary  
402 advisers or consultants.
- 403 (c) Any private entity submitting an unsolicited proposal under subsection (a) of this Code  
404 section to a responsible public entity shall also notify each affected local jurisdiction by  
405 furnishing a copy of its unsolicited proposal to each affected local jurisdiction.
- 406 (d) Each affected local jurisdiction that is not a responsible public entity for the respective  
407 project may, within 45 days after receiving such notice, submit any comments regarding  
408 the unsolicited proposal it may have in writing to the responsible public entity and indicate

409 whether the project is compatible with local plans and budgets. A project shall be  
410 consistent with zoning and land use regulations of the responsible public entity and each  
411 affected local jurisdiction.

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

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

422 50-5C-4.

423 (a) The responsible public entity may approve the project in an unsolicited proposal  
424 submitted by a private entity pursuant to Code Section 50-5C-3 as a qualifying project.  
425 Determination by the responsible public entity of a qualifying project shall not bind the  
426 responsible public entity or the private entity to proceed with the qualifying project.

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

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

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

433 (c) When the time for receiving proposals expires, the responsible public entity shall first  
434 rank the proposals in accordance with the factors set forth in the request for proposal or  
435 invitation for bids. The responsible public entity shall not be required to select the proposal  
436 with the lowest price offer, but it may consider price as one of various factors in evaluating  
437 the proposals received in response to the request for proposals for a qualifying project.

438 Factors that may be considered include:

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

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

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

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

445 (5) Benefits to the public;

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

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

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

449 (d) After ranking the proposals, the responsible public entity shall begin negotiations with  
 450 the first ranked private entity. If the responsible public entity and the first ranked private  
 451 entity do not reach a comprehensive agreement or interim agreement, then the responsible  
 452 public entity may conduct negotiations with the next ranked private entity. This process  
 453 shall continue until the responsible public entity either voluntarily abandons the process or  
 454 executes a comprehensive agreement or interim agreement with a private entity.

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

460 (f) Nothing in this chapter shall enlarge, diminish, or affect the authority, if any, otherwise  
 461 possessed by the responsible public entity to take action that would impact the debt  
 462 capacity of the State of Georgia. The credit of this state shall not be pledged or loaned to  
 463 any private entity. The responsible public entity shall not loan money to the private entity  
 464 in order to finance all or a portion of the qualifying project. All power or authority granted  
 465 by this chapter to public entities shall be in addition to and supplemental to, and not in  
 466 substitution for, the powers conferred by any other general, special, or local law. The  
 467 limitations imposed by this chapter shall not affect the powers conferred by any other  
 468 general, special, or local law and shall apply only to the extent that a public entity elects  
 469 to proceed under this chapter. A multiyear lease entered into by the state which is not  
 470 terminable at the end of each fiscal year during the term of the lease shall be considered a  
 471 debt of the state, and such lease shall apply against the debt limitations of the state.

472 50-5C-5.

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

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

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

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

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

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

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

489 (7) Delivery of performance and payment bonds in the amounts required in Code  
490 Sections 13-10-40, 13-10-41, and 13-10-60 and in a form acceptable to the responsible  
491 public entity for those components of the qualifying project that involve construction, and  
492 bonds, letters of credit, or other forms of security acceptable to the responsible public  
493 entity for other phases and components of the development of the qualifying project;

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

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

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

503 (11) Provisions governing the rights and responsibilities of the responsible public entity  
504 and the private entity in the event the comprehensive agreement is terminated or there is  
505 a material default by the private entity, including conditions governing assumption of the  
506 duties and responsibilities of the private entity by the responsible public entity and the  
507 transfer or purchase of property or other interests of the private entity by the responsible  
508 public entity, including provisions compliant with state constitutional limitations on  
509 public debt.

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

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

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

521 50-5C-6.

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

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

531 (c) The power of eminent domain shall not be delegated to any private entity with respect  
532 to any project commenced or proposed pursuant to this chapter. Any responsible public  
533 entity having the power of condemnation under state law may exercise such power of  
534 condemnation to acquire the qualifying project in the event of a material default by the  
535 private entity. Any person who has perfected a security interest in the qualifying project,  
536 may participate in the condemnation proceedings with the standing of a property owner.

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

541 50-5C-7.

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

547 50-5C-8.

548 Nothing in this chapter shall be construed as or deemed a waiver of the sovereign or  
549 official immunity of any responsible public entity or any officer or employee thereof with

550 respect to the participation in, or approval of, all or any part of the qualifying project or its  
 551 operation, including, but not limited to, interconnection of the qualifying project with any  
 552 other infrastructure or project.

553 50-5C-9.

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

558 50-5C-10.

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

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

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

569 **SECTION 4.**

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

572 **SECTION 5.**

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