

The House Committee on Governmental Affairs offers the following substitute to SB 59:

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. At least three of  
 80 these appointees shall reside outside of the metropolitan Atlanta area. The appointments  
 81 shall be made as soon as feasible, but not later than August 1, 2015. The committee shall  
 82 meet once a month or as needed and shall issue model guidelines to local governments no  
 83 later than July 1, 2016. Such guidelines shall be updated every two years. The members  
 84 of the committee shall elect a chairperson and a vice chairperson who shall serve for  
 85 two-year terms in such office.
- 86 (d) Citizen members shall receive a daily expense allowance in the amount specified in  
 87 subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance  
 88 authorized for state employees.
- 89 (e) Staff support shall be provided by the Department of Administrative Services, the  
 90 Governor's office, and the Office of Planning and Budget.

91 36-91-112.

92 (a) Prior to executing any comprehensive agreement for the development or operation of  
 93 a qualifying project pursuant to an unsolicited proposal received by a local government  
 94 under this article, the local government shall adopt either:

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

97 (2) Its own guidelines as a policy, rule, regulation, or ordinance, which shall contain each  
 98 of the factors identified in subsection (b) of this Code section.

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

100 (1) The period of time each calendar year when the local government will consider  
 101 receiving, processing, reviewing, or evaluating unsolicited proposals for qualifying  
 102 projects, and such limited time period shall be established within the sole discretion of  
 103 the local government;

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

106 (A) A cost-benefit analysis;

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

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

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

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

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

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

116 (3) Criteria for determining any fees authorized in Code Section 36-91-113 that the local  
 117 government elects to charge the private entity for the processing, review, and evaluation  
 118 of an unsolicited proposal;

119 (4) A requirement for the issuance of a request for proposals upon a decision by the local  
 120 government to proceed with a qualifying project pursuant to an unsolicited proposal;

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

123 (6) Procedures for the processing, review, and consideration of competing proposals, and  
 124 the period for the processing, review, and consideration of competing proposals shall not  
 125 be less than 90 days; and

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

128 36-91-113.

129 (a) If a local government adopts a rule, regulation, or ordinance affirming its participation  
130 in the process created in this article, a private entity may submit an unsolicited proposal for  
131 a project to the local government for review and determination as a qualifying project in  
132 accordance with the guidelines established by the local government. Any such unsolicited  
133 proposal shall be accompanied by the following material and information:

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

137 (2) A feasibility statement that includes:

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

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

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

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

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

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

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

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

163 (b) For any unsolicited proposal of the development of a project received by a local  
164 government, the local government may charge and retain a reasonable fee to cover the costs

165 of processing, reviewing, and evaluating the unsolicited proposal, including, without  
166 limitation, reasonable attorney's fees and fees for financial, technical, and other necessary  
167 advisers or consultants.

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

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

178 36-91-114.

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

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

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

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

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

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

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

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

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

- 201 (5) Benefits to the public;  
 202 (6) The private entity's compliance with a minority business enterprise participation plan;  
 203 (7) The private entity's plans to employ local contractors and residents; and  
 204 (8) Other criteria that the local government deems appropriate.
- 205 (d) After ranking the proposals, the local government shall begin negotiations with the first  
 206 ranked private entity. If the local government and the first ranked private entity do not  
 207 reach a comprehensive agreement or interim agreement, then the local government may  
 208 conduct negotiations with the next ranked private entity. This process shall continue until  
 209 the local government either voluntarily abandons the process or executes a comprehensive  
 210 agreement or interim agreement with a private entity.
- 211 (e) At any time during the process outlined in this Code section but before the full  
 212 execution of a comprehensive agreement, the local government may, without liability to  
 213 any private entity or third party, cancel its request for proposals or reject all proposals  
 214 received in response to its request for proposals, including the unsolicited proposal, for any  
 215 reason whatsoever.
- 216 (f) Nothing in this article shall enlarge, diminish, or affect the authority, if any, otherwise  
 217 possessed by the local government to take action that would impact the debt capacity of the  
 218 State of Georgia or any local government. The credit of this state shall not be pledged or  
 219 loaned to any private entity. The local government shall not loan money to the private  
 220 entity in order to finance all or a portion of the qualifying project. A multiyear lease entered  
 221 into by a local government which is not terminable at the end of each fiscal year during the  
 222 term of the lease shall be considered a debt of the local government which enters into such  
 223 lease, and such lease shall apply against the debt limitations of the local government.
- 224 36-91-115.
- 225 (a) The comprehensive agreement entered into between the local government and the  
 226 private entity selected in accordance with this article shall include:
- 227 (1) A thorough description of the duties of each party in the completion and operation  
 228 of the qualifying project;
- 229 (2) Dates and schedules for the completion of the qualifying project;
- 230 (3) Any user fees, lease payments, or service payments as may be established by  
 231 agreement of the parties, as well as any process for changing such fees or payments  
 232 throughout the term of the agreement, and a copy of any service contract;
- 233 (4) Any reimbursements to be paid to the local government for services provided by the  
 234 local government;

- 235 (5) A process for the review of plans and specifications for the qualifying project by the  
236 local government and approval by the local government if the plans and specifications  
237 conform to reasonable standards acceptable to the local government;
- 238 (6) A process for the periodic and final inspection of the qualifying project by the local  
239 government to ensure that the private entity's activities are in accordance with the  
240 provisions of the comprehensive agreement;
- 241 (7) Delivery of performance and payment bonds in the amounts required in Code  
242 Sections 36-91-70 and 36-91-90 and in a form acceptable to the local government for  
243 those components of the qualifying project that involve construction, and surety bonds,  
244 letters of credit, or other forms of security acceptable to the local government for other  
245 phases and components of the development of the qualifying project;
- 246 (8) Submission of a policy or policies of public liability insurance, copies of which shall  
247 be filed with the local government accompanied by proofs of coverage, or self-insurance,  
248 each in form and amount satisfactory to the local government and reasonably sufficient  
249 to ensure coverage of tort liability to the public and employees and to enable the  
250 continued operation of the qualifying project;
- 251 (9) A process for monitoring the practices of the private entity by the local government  
252 to ensure that the qualifying project is properly maintained;
- 253 (10) The filing of appropriate financial statements to the local government on a periodic  
254 basis; and
- 255 (11) Provisions governing the rights and responsibilities of the local government and the  
256 private entity in the event that the comprehensive agreement is terminated or there is a  
257 material default by the private entity, including conditions governing assumption of the  
258 duties and responsibilities of the private entity by the local government and the transfer  
259 or purchase of property or other interests of the private entity by the local government,  
260 including provisions compliant with state constitutional limitations on public debt by the  
261 local government. Such policies and procedures shall be consistent with Code  
262 Section 36-91-116.
- 263 (b) The comprehensive agreement may include such other terms and conditions that the  
264 local government determines will serve the public purpose of this article and to which the  
265 private entity and the local government mutually agree, including, without limitation,  
266 provisions regarding unavoidable delays and provisions where the authority and duties of  
267 the private entity under this article shall cease and the qualifying project is dedicated to the  
268 local government for public use.
- 269 (c) Any changes in the terms of the comprehensive agreement, as may be agreed upon by  
270 the parties from time to time, shall be added to the comprehensive agreement by written  
271 amendment.

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

274 36-91-116.

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

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

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

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

293 36-91-117.

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

299 36-91-118.

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

305 36-91-119.

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

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

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

316 **SECTION 3.**

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

319 "CHAPTER 5C

320 50-5C-1.

321 As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

358 50-5C-2.

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

364 50-5C-3.

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

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

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

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

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

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

423 50-5C-4.

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

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

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

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

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

439 Factors that may be considered include:

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

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

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

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

- 446 (5) Benefits to the public;  
 447 (6) The private entity's compliance with a minority business enterprise participation plan;  
 448 (7) The private entity's plans to employ local contractors and residents; and  
 449 (8) Other criteria that the responsible public entity deems appropriate.
- 450 (d) After ranking the proposals, the responsible public entity shall begin negotiations with  
 451 the first ranked private entity. If the responsible public entity and the first ranked private  
 452 entity do not reach a comprehensive agreement or interim agreement, then the responsible  
 453 public entity may conduct negotiations with the next ranked private entity. This process  
 454 shall continue until the responsible public entity either voluntarily abandons the process or  
 455 executes a comprehensive agreement or interim agreement with a private entity.
- 456 (e) At any time during the process outlined in this Code section but before full execution  
 457 of a comprehensive agreement, the responsible public entity may, without liability to any  
 458 private entity or third party, cancel its request for proposals or reject all proposals received  
 459 in response to its request for proposals, including the unsolicited proposal, for any reason  
 460 whatsoever.
- 461 (f) Nothing in this chapter shall enlarge, diminish, or affect the authority, if any, otherwise  
 462 possessed by the responsible public entity to take action that would impact the debt  
 463 capacity of the State of Georgia. The credit of this state shall not be pledged or loaned to  
 464 any private entity. The responsible public entity shall not loan money to the private entity  
 465 in order to finance all or a portion of the qualifying project. All power or authority granted  
 466 by this chapter to public entities shall be in addition to and supplemental to, and not in  
 467 substitution for, the powers conferred by any other general, special, or local law. The  
 468 limitations imposed by this chapter shall not affect the powers conferred by any other  
 469 general, special, or local law and shall apply only to the extent that a public entity elects  
 470 to proceed under this chapter. A multiyear lease entered into by the state as lessee under  
 471 this Code section which is not terminable at the end of each fiscal year during the term of  
 472 the lease shall be subject to and comply with the provisions of Code Section 50-16-41,  
 473 specifically including compliance with any multiyear contract value authority adopted by  
 474 the Georgia State Financing and Investment Commission for each fiscal year.
- 475 50-5C-5.
- 476 (a) The comprehensive agreement entered into between the responsible public entity and  
 477 the private entity selected in accordance with this chapter shall include:
- 478 (1) A thorough description of the duties of each party in the completion and operation  
 479 of the qualifying project;
- 480 (2) Dates and schedules for the completion of the qualifying project;

- 481 (3) Any user fees, lease payments, or service payments as may be established by  
482 agreement of the parties, as well as any process for changing such fees or payments  
483 throughout the term of the agreement, and a copy of any service contract;
- 484 (4) Any reimbursements to be paid to the responsible public entity for services provided  
485 by the responsible public entity;
- 486 (5) A process for the review of plans and specifications for the qualifying project by the  
487 responsible public entity and approval by the responsible public entity if the plans and  
488 specifications conform to reasonable standards acceptable to the responsible public entity;
- 489 (6) A process for the periodic and final inspection of the qualifying project by the  
490 responsible public entity to ensure that the private entity's activities are in accordance  
491 with the provisions of the comprehensive agreement;
- 492 (7) Delivery of performance and payment bonds in the amounts required in Code  
493 Sections 13-10-40, 13-10-41, and 13-10-60 and in a form acceptable to the responsible  
494 public entity for those components of the qualifying project that involve construction, and  
495 bonds, letters of credit, or other forms of security acceptable to the responsible public  
496 entity for other phases and components of the development of the qualifying project;
- 497 (8) Submission of a policy or policies of public liability insurance, copies of which shall  
498 be filed with the responsible public entity accompanied by proofs of coverage, or  
499 self-insurance, each in form and amount satisfactory to the responsible public entity and  
500 reasonably sufficient to ensure coverage of tort liability to the public and employees and  
501 to enable the continued operation of the qualifying project;
- 502 (9) A process for monitoring the practices of the private entity by the responsible public  
503 entity to ensure that the qualifying project is properly maintained;
- 504 (10) The filing of appropriate financial statements to the responsible public entity on a  
505 periodic basis; and
- 506 (11) Provisions governing the rights and responsibilities of the responsible public entity  
507 and the private entity in the event the comprehensive agreement is terminated or there is  
508 a material default by the private entity, including conditions governing assumption of the  
509 duties and responsibilities of the private entity by the responsible public entity and the  
510 transfer or purchase of property or other interests of the private entity by the responsible  
511 public entity, including provisions compliant with state constitutional limitations on  
512 public debt.
- 513 (b) The comprehensive agreement may include such other terms and conditions that the  
514 responsible public entity determines will serve the public purpose of this chapter and to  
515 which the private entity and the responsible public entity mutually agree, including,  
516 without limitation, provisions regarding unavoidable delays and provisions where the

517 authority and duties of the private entity under this chapter shall cease, and the qualifying  
518 project is dedicated to the responsible public entity.

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

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

524 50-5C-6.

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

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

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

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

544 50-5C-7.

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

550 50-5C-8.

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

556 50-5C-9.

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

561 50-5C-10.

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

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

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

572 **SECTION 4.**

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

575 **SECTION 5.**

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