

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

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;

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; and

128 (8) Procedures for identifying and appointing an independent owner adviser to the local
 129 government with expertise in architecture, engineering, or construction management to
 130 assist in the evaluation of an unsolicited proposal and to serve as owner adviser to the local
 131 government if the local government chooses to pursue any ensuing solicited bid process.
 132 The local government shall not be obligated to engage such services.

133 36-91-113.

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

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

142 (2) A feasibility statement that includes:

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

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

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

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

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

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

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

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

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

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

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

183 36-91-114.

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

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

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

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

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

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

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

272 the private entity under this article shall cease and the qualifying project is dedicated to the
 273 local government for public use.

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

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

279 36-91-116.

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

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

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

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

298 36-91-117.

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

304 36-91-118.
 305 Nothing in this article shall be construed as or deemed a waiver of the sovereign or official
 306 immunity of any local government or any officer or employee thereof with respect to the
 307 participation in, or approval of, all or any part of the qualifying project or its operation,
 308 including, but not limited to, interconnection of the qualifying project with any other
 309 infrastructure or project.

310 36-91-119.
 311 (a) Local governments that proceed with procurement pursuant to competitive sealed
 312 bidding as defined in Code Section 36-91-2, or any other purchasing options available
 313 under current law, shall not be required to comply with this article.
 314 (b) Nothing in this article shall apply to or affect the State Transportation Board, the
 315 Department of Transportation, or the State Road and Tollway Authority, or any project
 316 thereof.
 317 (c) Nothing in this article shall abrogate the obligations of a local government or private
 318 entity to comply with the public meetings requirement in accordance with Chapter 14 of
 319 Title 50 or to disclose public information in accordance with Article 4 of Chapter 18 of
 320 Title 50."

321 **SECTION 3.**
 322 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
 323 by adding a new chapter to read as follows:

324 "CHAPTER 5C

325 50-5C-1.
 326 As used in this chapter, the term:
 327 (1) 'Affected local jurisdiction' means any county, municipality, or school district in
 328 which all or a portion of a qualifying project is located.
 329 (2) 'Comprehensive agreement' means the written agreement between the private entity
 330 and the responsible public entity required by Code Section 50-5C-5.
 331 (3) 'Develop' or 'development' means to plan, design, develop, finance, lease, acquire,
 332 install, construct, operate, maintain, or expand.
 333 (4) 'Person' means an individual, corporation, partnership, trust, association, or other
 334 legal entity.

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

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

341 (7) 'Qualifying project' means any project submitted by a private entity as an unsolicited
 342 proposal in accordance with this chapter and subsequently reviewed and approved by a
 343 responsible public entity, within its sole discretion, as meeting a public purpose or public
 344 need. This term shall not include and shall have no application to any project involving:

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

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

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

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

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

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

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

363 50-5C-2.

364 For any qualifying project undertaken by the State Properties Commission, the Georgia
 365 State Financing and Investment Commission shall be solely authorized to develop
 366 guidelines for this process. For any qualifying project undertaken by the University
 367 System of Georgia, the Board of Regents of the University System of Georgia shall be
 368 solely authorized to develop guidelines for this process.

369 50-5C-3.

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

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

378 (2) A feasibility statement that includes:

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

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

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

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

389 (4) A financial plan setting forth the private entity's general plans for financing the
390 project, including the sources of the private entity's funds and identification of any
391 dedicated revenue source or proposed debt or equity investment on behalf of the private
392 entity; a description of user fees, lease payments, and other service payments over the
393 term of the comprehensive agreement pursuant to Code Section 50-5C-5; and the
394 methodology and circumstances for changes to such user fees, lease payments, and other
395 service payments over time;

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

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

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

404 (b) For any unsolicited proposal for the development of a project received by a responsible
405 public entity, the private entity shall reimburse the responsible public entity for the actual

406 costs incurred to process, review, and evaluate the unsolicited proposal, including, without
 407 limitation, reasonable attorney's fees and fees for financial, technical, and other necessary
 408 advisers or consultants.

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

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

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

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

428 50-5C-4.

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

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

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

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

439 (c) When the time for receiving proposals expires, the responsible public entity shall first
 440 rank the proposals in accordance with the factors set forth in the request for proposal or
 441 invitation for bids. The responsible public entity shall not be required to select the proposal

442 with the lowest price offer, but it may consider price as one of various factors in evaluating
443 the proposals received in response to the request for proposals for a qualifying project.
444 Factors that may be considered include:

- 445 (1) The proposed cost of the qualifying project;
- 446 (2) The general reputation, industry experience, and financial capacity of the private
447 entity;
- 448 (3) The proposed design of the qualifying project;
- 449 (4) The eligibility of the facility for accelerated selection, review, and documentation
450 timelines under the responsible public entity's guidelines;
- 451 (5) Benefits to the public;
- 452 (6) The private entity's compliance with a minority business enterprise participation plan;
- 453 (7) The private entity's plans to employ local contractors and residents; and
- 454 (8) Other criteria that the responsible public entity deems appropriate.

455 (d) After ranking the proposals, the responsible public entity shall begin negotiations with
456 the first ranked private entity. If the responsible public entity and the first ranked private
457 entity do not reach a comprehensive agreement or interim agreement, then the responsible
458 public entity may conduct negotiations with the next ranked private entity. This process
459 shall continue until the responsible public entity either voluntarily abandons the process or
460 executes a comprehensive agreement or interim agreement with a private entity.

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

466 (f) Nothing in this chapter shall enlarge, diminish, or affect the authority, if any, otherwise
467 possessed by the responsible public entity to take action that would impact the debt
468 capacity of the State of Georgia. The credit of this state shall not be pledged or loaned to
469 any private entity. The responsible public entity shall not loan money to the private entity
470 in order to finance all or a portion of the qualifying project. All power or authority granted
471 by this chapter to public entities shall be in addition to and supplemental to, and not in
472 substitution for, the powers conferred by any other general, special, or local law. The
473 limitations imposed by this chapter shall not affect the powers conferred by any other
474 general, special, or local law and shall apply only to the extent that a public entity elects
475 to proceed under this chapter. A multiyear lease entered into by the state as lessee under
476 this Code section which is not terminable at the end of each fiscal year during the term of
477 the lease shall be subject to and comply with the provisions of Code Section 50-16-41,

478 specifically including compliance with any multiyear contract value authority adopted by
479 the Georgia State Financing and Investment Commission for each fiscal year.

480 50-5C-5.

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

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

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

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

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

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

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

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

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

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

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

511 (11) Provisions governing the rights and responsibilities of the responsible public entity
512 and the private entity in the event the comprehensive agreement is terminated or there is
513 a material default by the private entity, including conditions governing assumption of the

514 duties and responsibilities of the private entity by the responsible public entity and the
515 transfer or purchase of property or other interests of the private entity by the responsible
516 public entity, including provisions compliant with state constitutional limitations on
517 public debt.

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

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

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

529 50-5C-6.

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

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

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

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

549 50-5C-7.

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

555 50-5C-8.

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

561 50-5C-9.

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

566 50-5C-10.

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

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

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

577 **SECTION 4.**

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

580

SECTION 5.

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