

House Bill 995 (COMMITTEE SUBSTITUTE)

By: Representatives Newton of the 123<sup>rd</sup>, Rynders of the 152<sup>nd</sup>, Brockway of the 102<sup>nd</sup>, and Holcomb of the 81<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 80 of Title 36 of the Official Code of Georgia Annotated,  
2 relating to general provisions applicable to counties, municipal corporations, and other  
3 governmental entities, so as to provide for certain agreements from consultants who enter  
4 into contracts or arrangements with counties, municipalities, and other governmental entities  
5 to prepare or develop specifications or requirements for bids, requests for proposals,  
6 procurement orders, or purchasing orders; to provide for related matters; to repeal conflicting  
7 laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

10 Article 1 of Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to  
11 general provisions applicable to counties, municipal corporations, and other governmental  
12 entities, is amended by adding a new Code section to read as follows:

13 "36-80-26.

14 Consultants who enter into contracts or arrangements with counties, municipalities, and  
15 other governmental entities to prepare or develop specifications or requirements for bids,  
16 requests for proposals, procurement orders, or purchasing orders for such county,  
17 municipality, or other governmental entity shall, at the time of entering into such contract  
18 or arrangement, execute an agreement which provides that:

19 (1) The consultant shall avoid any appearance of impropriety and shall follow all policies  
20 and procedures of the county, municipality, or other governmental entity with whom the  
21 consultant is entering into contract or arrangement;

22 (2) The consultant shall immediately disclose to such county, municipality, or other  
23 governmental entity any material transaction or relationship, including, but not limited  
24 to, that of the consultant, the consultant's employees, or the consultant's agents or  
25 subsidiaries, that reasonably could be expected to give rise to a conflict of interest,  
26 including, but not limited to, past, present, or prospective engagements, involvement in

H. B. 995 (SUB)

27 litigation or other dispute, client relationships, or other business or financial interest, and  
28 shall immediately disclose any material transaction or relationship subsequently  
29 discovered during the pendency of the contract or arrangement;

30 (3) The consultant shall use best efforts to avoid a conflict of interest and that any funds  
31 paid to the consultant prior to discovery of a conflict of interest that is unable to be  
32 mitigated to the reasonable satisfaction of such county, municipality, or other  
33 governmental entity shall be returned to such county, municipality, or other governmental  
34 entity;

35 (4) The consultant shall not submit a bid or proposal in response to any solicitation in  
36 which the consultant has developed or drafted specifications or requirements thereof and  
37 shall not otherwise perform work on any contract or subcontract directly resulting from  
38 that particular solicitation document, unless such county, municipality, or other  
39 governmental entity expressly waives such restriction in writing and the consultant agrees  
40 that a designated representative of such county, municipality, or other governmental  
41 entity may interview the consultant's employees who will be participating in the  
42 solicitation development or evaluation or negotiation process in order to ensure that no  
43 impermissible conflicts of interest exist;

44 (5) Throughout the evaluation or negotiation process, the consultant shall maintain the  
45 confidentiality of the process and of the information contained in suppliers' responses.  
46 The consultant shall not transmit, communicate, or otherwise convey preliminary  
47 conclusions or results concerning suppliers' responses or the likely outcome of the  
48 evaluation or negotiation process and the consultant shall agree to keep confidential all  
49 internal workings of the evaluation or negotiation process until the results of such process  
50 have been officially announced by such county, municipality, or other governmental  
51 entity;

52 (6) In the course of participating in the procurement process, the consultant may have  
53 access to protected information which means all proprietary or confidential information  
54 provided by the county, municipality, or other governmental entity or the supplier,  
55 including (A) information relating to such county, municipality, or other governmental  
56 entity and its business, products, or employees that becomes available to the consultant  
57 due to the consultant's access to such county's, municipality's, or other governmental  
58 entity's property, products, or employees; (B) information that was or is created,  
59 conceived, developed, reduced to practice, or discovered by the consultant, whether alone  
60 or jointly with others, using any protected information or any property or materials  
61 supplied to the consultant by such county, municipality, or other governmental entity or  
62 the supplier; and (C) information that was or is created, conceived, developed, reduced  
63 to practice, or discovered by the consultant, whether alone or jointly with others, during

64 the period of the consultant's assignment with such county, municipality, or other  
65 governmental entity. For purposes of illustration, such protected information shall  
66 include without limitation: inventions, discoveries, developments, improvements, trade  
67 secrets, know-how, ideas, techniques, technology, designs, processes, formulae, data and  
68 software programs or subroutines, source or object code, algorithms; plans for research  
69 and development, new products, marketing and selling; budgeting and financial  
70 information; production and sales information, including prices, costs, and quantities, and  
71 information about suppliers and customers; information about business relationships; and  
72 information about skills and compensation of state employees, consultants, or other state  
73 personnel. The consultant shall agree to hold such protected information in strictest  
74 confidence and shall ensure that its employees who have access to such protected  
75 information have signed a nonuse and nondisclosure agreement similar in content to the  
76 provisions hereof, prior to any disclosure of such protected information to such  
77 employees; not to disclose protected information to any third party without the written  
78 consent of such county's, municipality's, or other governmental entity's representatives  
79 authorized to grant such consent except as required by law; to take all reasonable steps  
80 to safeguard such protected information, taking at least those measures it takes to protect  
81 its own most highly confidential information; and to not use protected information for  
82 any purpose other than for purposes of completing the consultant's duties as part of the  
83 procurement process. The consultant shall not take, copy, or retain any such protected  
84 information in any written, electronic, or physical form whatsoever without the written  
85 permission of such county, municipality, or other governmental entity and shall return all  
86 such protected information to such county, municipality, or other governmental entity  
87 upon conclusion of negotiations of the procurement or upon request of such county,  
88 municipality, or other governmental entity. In the event that such county, municipality,  
89 or other governmental entity determines that the consultant's participation warrants the  
90 execution of a separate nondisclosure agreement, the consultant will enter into such  
91 agreement and shall ensure that its employees enter into such agreement;  
92 (7) In addition to maintaining the confidentiality of the evaluation or negotiation process,  
93 upon issuance of the solicitation by such county, municipality, or other governmental  
94 entity, the consultant is strictly prohibited from having any contact with suppliers  
95 participating in the solicitation process except through such county, municipality, or other  
96 governmental entity. Contact includes, but is not limited to, any interaction with such  
97 suppliers such as telephonic communications, e-mails, faxes, letters, or personal meetings  
98 such as lunch, entertainment, or otherwise. Any questions from suppliers or anyone else  
99 shall be referred to such county, municipality, or other governmental entity conducting  
100 such solicitation. If the consultant anticipates having contact with a potential supplier

101 during the procurement process after issuance of the solicitation, this potential conflict  
 102 shall be immediately disclosed to such county, municipality, or other governmental entity  
 103 for appropriate action in accordance with the conflicts of interest provisions of the  
 104 agreement. If the consultant is contacted for any reason by a supplier potentially  
 105 interested in the solicitation, including, but not limited to, potential future employment  
 106 or other personal or financial interest in the supplier, the consultant shall promptly report  
 107 the information to such county, municipality, or other governmental entity. Such county,  
 108 municipality, or other governmental entity may consider removing individuals who have  
 109 received such contact from any further participation in the solicitation or evaluation  
 110 process;

111 (8) In the course of participating in the evaluation or negotiation process, the consultant  
 112 acknowledges that the consultant may develop working documents, including, but not  
 113 limited to, those which capture thoughts, questions, or discussions of the suppliers'  
 114 responses. The consultant shall agree that all working documents are records of and the  
 115 property of such county, municipality, or other governmental entity and shall be  
 116 submitted to such county, municipality, or other governmental entity at the end of the  
 117 evaluation or negotiation process. Such working documents are subject to public  
 118 inspection as provided in Article 4 of Chapter 18 of Title 50;

119 (9) The obligations of the parties with respect to paragraphs (1), (2), and (3) shall survive  
 120 until a contract award has been made or until the procurement has been abandoned by  
 121 such county, municipality, or other governmental entity. The obligations of the parties  
 122 with respect to paragraph (4) shall survive expiration or termination of the agreement.  
 123 The obligations of the parties with respect to paragraphs (5) and (6) shall survive until  
 124 such time as all confidential information which was disclosed becomes publicly known  
 125 and made generally available through no action or inaction of the receiving party. The  
 126 obligations of the parties with respect to paragraph (7) shall survive until final contract  
 127 award. The obligations of the parties with respect to paragraph (8) shall survive until the  
 128 time that those records are no longer required to be maintained pursuant to such county's,  
 129 municipality's, or other governmental entity's records retention policies and procedures;  
 130 and

131 (10) Any violation or threatened violation of the agreement may cause irreparable injury  
 132 to the county, municipality, or other governmental entity, entitling such county,  
 133 municipality, or other governmental entity to seek injunctive relief in addition to all other  
 134 legal remedies."

135 **SECTION 2.**

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