

House Bill 550 (AS PASSED HOUSE AND SENATE)

By: Representatives O`Neal of the 117th and Richardson of the 26th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia
2 Annotated, relating to general authority, duties, and procedure regarding state purchasing,
3 so as to provide for multiyear lease, purchase, or lease purchase contracts with respect to
4 benefits based funding projects; to provide for definitions; to provide for procedures,
5 conditions, and limitations; to provide for related matters; to provide an effective date; to
6 repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,
10 relating to general authority, duties, and procedure regarding state purchasing, is amended
11 by striking the reserved designation of Code Section 50-5-77 and inserting in its place a new
12 Code Section 50-5-77 to read as follows:

13 "50-5-77.

14 (a) As used in this Code section, the term:

15 (1) 'Agency' means every state department, agency, board, bureau, and commission
16 including without limitation the Board of Regents of the University System of Georgia.

17 (2) 'Benefits based funding project' means any governmental improvement project in
18 which payments to vendors depend upon the realization of specified savings or revenue
19 gains attributable solely to the improvements, provided that each benefits based funding
20 project is structured as follows:

21 (A) The vendor promises, or accepts the condition, that the improvements will generate
22 actual and quantifiable savings or enhanced revenues;

23 (B) The agency develops a measurement tool for calculating the savings or enhanced
24 revenues realized from the project; and

25 (C) The funding for the project shall be attributable solely to its successful
26 implementation for the period specified in the contract.

(3) 'External oversight committee' means a committee composed of the executive director of the Georgia Technology Authority, the commissioner of administrative services, the director of the Office of Planning and Budget, the state auditor, the Governor's designee, the chairperson of the House Committee on Appropriations, and the chairperson of the Senate Finance Committee.

(4) 'Measurement tool' means the formula used to measure the actual savings or enhanced revenues and includes a means for distinguishing enhanced revenue or savings from normal activities, including the possibility of no savings or revenue growth or an increased expenditure or decline in revenue. Baseline parameters must be defined based on historical costs or revenues for a minimum of one year. The measurement tool shall use the baseline parameters to forecast savings or enhanced revenues and to determine the overall benefits and fiscal feasibility of the proposed project.

(5) 'Special dedicated fund' means any fund established pursuant to this Code section from which the vendor or vendors are compensated as part of a benefits based funding project. The moneys in the special dedicated fund shall be deemed contractually obligated and shall not lapse at the end of each fiscal year.

(b) An agency shall be authorized to enter into multiyear lease, purchase, or lease purchase contracts of all kinds for the acquisition of goods, materials, real or personal property, services, and supplies as benefits based funding projects; provided, however, that a condition precedent to the award of the contract is a competitive solicitation in compliance with any applicable purchasing laws now or hereafter enacted, including without limitation the provisions of this chapter and Chapter 25 of this title; and provided, further, that the contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the agency at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed;

(2) The contract shall terminate absolutely and without further obligation on the part of the agency at such time as the agency determines that actual savings or incremental revenue gains are not being generated to satisfy the obligations under the contract;

(3) The contract may be renewed only by a positive action taken by the agency;

(4) The contract shall state the total obligation of the agency for repayment for the fiscal year of execution and shall state the total obligation for repayment which will be incurred in each fiscal year renewal term, if renewed;

(5) The term of the contract, including any renewal periods, may not exceed ten years; and

(6) The agency's financial obligations under the contract are limited to and cannot exceed the savings or incremental revenue gains, as calculated using the measurement

1 tool, actually generated by the benefits based funding project, even if no savings or
2 enhanced revenues are realized from the project.

3 (c) Any contract developed under this Code section containing the provisions enumerated
4 in subsection (b) of this Code section shall be deemed to obligate the agency only for those
5 sums payable during the fiscal year of execution or, in the event of a renewal by the
6 agency, for those sums payable in the individual fiscal year renewal term and only to the
7 extent that savings or enhanced revenues are attributable to the benefits based funding
8 project calculated using the measurement tool.

9 (d) No contract developed and executed pursuant to this Code section shall be deemed to
10 create a debt of the state for the payment of any sum beyond the fiscal year of execution
11 or, in the event of a renewal, beyond the fiscal year of such renewal.

12 (e) Any such contract may provide for the payment by the agency of interest or the
13 allocation of a portion of the contract payment to interest, provided that the contract is in
14 compliance with this Code section.

15 (f) During the term of the contract, including any renewal periods, the agency shall, using
16 the measurement tool, periodically calculate the total amount of the savings or enhanced
17 revenues attributable to the implementation of the benefits based funding project. To the
18 extent that savings or enhanced revenues are realized, the agency shall transfer from its
19 budget into the special dedicated fund an amount up to but not to exceed the amount owed
20 on the contract for the then current fiscal year term's obligation to provide for payments.

21 (g) During the term of the contract, including any renewal periods, the agency shall, using
22 the measurement tool, calculate the total amount of the savings or enhanced revenues
23 attributable to the implementation of the benefits based funding project during the then
24 current fiscal year at least 30 days prior to the end of the then current fiscal year. If the
25 agency renews the contract and to the extent that savings or enhanced revenues are realized
26 in excess of the amount due on the contract in the then current fiscal year term, the agency
27 shall transfer prior to the end of the then current fiscal year from its budget into the special
28 dedicated fund an amount up to but not to exceed the next fiscal year's obligation to
29 provide for future payments.

30 (h) Promptly upon nonrenewal, termination, or expiration of the contract, any moneys
31 remaining in the special dedicated fund shall be deposited in the general fund of the state.

32 (i) Each agency is authorized to accept title to property subject to the benefits based
33 funding contract and is authorized to transfer title back to the vendor in the event the
34 contract is not fully consummated.

35 (j) The external oversight committee shall have the responsibility to review and advise:

36 (1) The overall feasibility of the benefits based funding project;

37 (2) The measurement tool;

1 (3) The projected savings or enhanced revenues; and

2 (4) The dollars to be set aside for vendor payments.

3 (k) Each benefits based funding project and the proposed contract shall be approved by the
4 external oversight committee prior to execution of the contract and prior to any renewal
5 thereof.

6 (l) Each agency shall prepare an annual report to be sent to the external oversight
7 committee, the Governor, and the General Assembly on all contracts entered into pursuant
8 to this Code section, describing the benefits based funding project, its progress, its savings
9 or enhanced revenues, and such other information as may be relevant."

10 **SECTION 2.**

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

13 **SECTION 3.**

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