Senate Bill 122

By: Senators Tolleson of the 20th, Williams of the 19th, Hooks of the 14th, Bulloch of the 11th, Golden of the 8th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to local government public works bidding, so as to provide for local government contracts related to planning, financing, constructing, acquiring, operating, or maintaining certain water reservoirs, facilities, and systems; to amend Part 2 of Article 1 of Chapter 23 of Title 50 of the Official Code of Georgia Annotated, relating to the Water Supply Division of the Georgia Environmental Finance Authority, so as to provide for participation by the division in certain local water reservoir, facilities, and systems projects; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to local government public works bidding, is amended by adding a new article as follows:

″ARTICLE 4

36-91-100.

As used in this article, the term:

(1) 'Affected local government' means any county, municipality, or consolidated government in which water storage facilities of a project are located or proposed to be located, which will receive for local use water or services from such project, or which, under a service delivery agreement entered into pursuant to Article 2 of Chapter 70 of Title 36, provides or is authorized to provide within an area water facilities or services similar to water facilities and services proposed to be provided by a project in such area.

(2) 'Lead local authority' means the sole local governing authority or local authority participating in a project or the local governing authority or local authority designated pursuant to subsection (b) of Code Section 36-91-102.

(3) 'Local authority' means any local water authority created by Act of the General Assembly, any authority created pursuant to the provisions of Chapter 62 of Title 36, and any authority created by a county, municipality, or consolidated government which provides water, sewer, or waste-water treatment services.

(4) 'Local governing authority' means any county, municipality, or consolidated government.

(5) 'Project' has the meaning provided by paragraph (10) of Code Section 12-5-471 and includes environmental facilities as defined in subparagraph (B) of paragraph (5) of Code Section 50-23-4.

36-91-101.

(a) Local governing authorities and local authorities shall be authorized to enter into contracts provided for by this article with private persons, firms, associations, or corporations providing for or delegating the responsibility for procuring all permits, licenses, and permissions from the United States of America or any agency or instrumentality thereof; the State of Georgia, its departments, agencies, or authorities; or any county or municipality of this state as necessary or required for the purpose of constructing projects within this state, and to plan, finance, construct, acquire, lease, operate, or maintain such projects or cause such projects to be planned, financed, constructed, acquired, leased, operated, or maintained. Such contracts may provide for the reimbursement to the private person, firm, association, or corporation of costs and expenses associated with the execution thereof through service payments, user fees, purchase payments, and such other consideration as the local governing authority or local authority may deem appropriate. Such contracts may provide for the assumption by such local governing authority or local authority of such projects, permits, licenses, and permissions at such times as appropriate for the construction of the project or as otherwise agreed upon.

(b) A local governing authority or local authority may take any action to obtain federal, state, or local assistance for a project that serves the public purpose of this article and may enter into any contracts required to receive such assistance. A local governing authority or local authority may determine that it serves the public purpose of this article for all or any portion of the costs of a project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal, state, or local government or any instrumentality thereof. A local governing authority or local authority may agree to make grants or loans to the operator of a project from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

(c) Nothing in this article shall be construed to delegate the power of eminent domain to any private entity with respect to any project commenced or proposed pursuant to this

article. Any local governing authority may exercise the power of eminent domain in the manner provided by law for the purpose of acquiring any property or interests therein to the extent that such action serves the public purpose of this article.

36-91-102.

(a) In addition to other methods of procurement authorized by law, local governing authorities and local authorities shall be authorized to utilize the procedures of this article to provide for the planning, finance, construction, acquisition, leasing, operation, and maintenance of projects. The provisions of this article shall be an alternative to such other methods to be exercised at the option of each local governing authority or local authority.

(b) After identifying or being informed of any project that may be suitable for utilization of the procedures of this article, one or more local governing authorities and local authorities may participate in consideration and implementation of a project. Where more than one local governing authority or local authority agrees to participate in consideration or implementation of a project, the participants shall designate one of their number to be the lead local authority for purposes of implementing the procedures of this article; provided, however, that not less than one representative of each such participating local governing authority or local authority, as agreed to by such local governing authorities or local authorities, shall have the right to participate in all aspects of such implementation.

(c)(1) The lead local authority shall evaluate a project to determine, in the judgment of the lead local authority, appropriate or desirable levels of state, local, and private participation in financing, constructing, and operating such project. In making such determinations, the lead local authority shall seek the advice and input of affected local governments and is encouraged to seek the advice and input of the Water Supply Division of the Georgia Environmental Finance Authority, affected local governing authorities, applicable planning organizations, and the private financial and construction sectors.

(2) The lead local authority shall be authorized to issue a written request for proposals indicating the scope of the project, the proposed financial participations in the project, and the factors that will be used in evaluating the proposals as well as the relative importance of the evaluation factors, and containing or incorporating by reference other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor. Public notice of such request for proposal shall be made at least 90 days prior to the date set for receipt of proposals by posting the legal notice on the websites of each participating local governing authority and local authority in substantially the same manner utilized by such authority to solicit requests for proposals, with a copy of such notice provided simultaneously to each affected local government.

(3) Upon receipt of a proposal or proposals responsive to the request for proposals, the lead local authority shall accept written public comment, solicited in the same manner as provided for notice of proposals, for a period of 30 days beginning at least ten days after the date set for receipt of proposals. In addition, the lead local authority shall hold at least one public hearing on such proposals within the jurisdiction of each participating local governing authority, participating local authority, or affected local government not later than the conclusion of the period for public comment.

(4)(A) The lead local authority, acting by and through a designated representative appointed for such purposes, and with the participation of any designated representatives of other participating local governing authorities or local authorities, shall engage in individual discussions with each respondent deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence and ability to meet the level of private financial participation called for by the local governing authority. Repetitive informal interviews shall be permissible. Any affected local governments shall receive ten days notice of any such individual discussions and interviews and may participate through an appointed representative. In the event that the Georgia Environmental Finance Authority or any other state authority or agency agrees to consider or participate in the project, a representative of such authority or agency appointed by such authority or agency may participate in such discussions and interviews.

(B) At the discussion stage, the representatives may discuss estimates of total project costs, including, but not limited to, life cycle costing and nonbinding estimates of price for services. Discussions conducted with respondents pursuant to this subparagraph shall not be public meetings subject to the provisions of Chapter 14 of Title 50. Proprietary information or trade secrets may be designated by a respondent as subject to one or more exemptions from public disclosure pursuant to the provisions of Code Section 50-18-72, but such designation shall not be binding on the participating local governing authorities, local authorities, and affected local governments unless consistent with applicable law.

(C)(i) At the conclusion of the discussion stage, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process, the designated representative, with the input of the representatives of any other participating entity and in an open and public meeting subject to the provisions of Chapter 14 of Title 50, shall select in the order of preference one or more respondents whose qualifications and proposed services are deemed most meritorious.

(ii) Negotiations shall then be conducted by the designated representative with the selected respondents. A representative of any participating local governing authority,

participating local authority, and participating state agency or authority shall have the right to notice of and participation in such negotiations. Negotiations conducted with selected respondents pursuant to this division shall not be public meetings subject to the provisions of Chapter 14 of Title 50.

(D) The designated representative shall select for approval by the lead local authority the respondent for project implementation based upon contract terms that are the most satisfactory and advantageous to the participating local governing authorities and local authorities based upon a thorough assessment of value and the ability of the final project's characteristics to meet the goals of the participating local governing authorities and local authorities, consistent with applicable state-wide and regional water plans and local comprehensive plans. Before making such selection, the designated representative shall consult in an open and public meeting subject to the provisions of Chapter 14 of Title 50 with the representatives of any participating local governing authority, participating local authority, participating state agency or authority, and affected local government. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request for proposal, the lead local authority may award contracts to more than one respondent. Should the lead local authority determine in writing that only one respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that respondent.

(E) Upon approval of the selection by the lead local authority, a contract or contracts not exceeding 50 years in duration may be entered into with the selected respondents on behalf of all participating entities, subject to approval by each such participating entity and by each affected local government.

(5) A dispute over the award of a contract under this article shall be resolved by the filing of a petition in the superior court of the county in which the lead local authority is located within 30 days of the awarding of such contract and shall be determined through the use of a special master appointed by the judge of the superior court of the county in which the lead local authority is located. The decision of the special master with regard to such dispute shall be appealable for a de novo review to the superior court of the county in which the lead local authority is located within 30 days following the decision of the special master. Neither the special master nor the superior court shall be authorized to enjoin or otherwise delay or suspend the execution of the contract and any work to be performed under such contract.

(6) Nothing in this Code section shall require the designated representatives, the lead local authority, or any local governing authority, local authority, or state agency or authority to continue negotiations or discussions arising out of any request for proposal.

(7) Every local governing authority and local authority shall be authorized to promulgate reasonable rules or regulations to assist in its evaluation of proposals and to implement the purposes of this article.

(d) No public officer, employee, or member of a local governing authority or local authority, with respect to contracts of such local governing authority or local authority, or the General Assembly shall serve as an agent, lobbyist, or board member for any private entity directly or indirectly under a contract or negotiating a contract provided for by this article for three years after leaving his or her position as a public officer, employee, or member of the local governing authority, local authority, or the General Assembly."

SECTION 2.

Part 2 of Article 1 of Chapter 23 of Title 50 of the Official Code of Georgia Annotated, relating to the Water Supply Division of the Georgia Environmental Finance Authority, is amended by adding a new Code Section as follows:

"50-23-28.2.

(a) Those definitions made applicable to Article 4 of Chapter 91 of Title 36 by Code Section 36-91-100 shall be applicable to this Code section.

(b) The division may evaluate any project to determine, in the judgment of the division, appropriate or desirable levels of state or private participation in such project. In identifying any such project and making such determination, the division shall seek the advice and input of the affected local governments and shall be authorized to seek and receive advice and input from local authorities and the private financial and construction sectors. The division may also propose projects to local governing authorities and local authorities as appropriate for the procedures of Article 4 of Chapter 91 of Title 36. The division shall be authorized to consult with local governing authorities and local authorities regarding its conclusions with respect to projects subject to this subsection.

(c) Local governing authorities and local authorities participating in the consideration of a project may, by mutual consent, request in writing that the division participate in the project in any capacity authorized by law, pursuant to the provisions of paragraph (7) of subsection (b) of Code Section 50-23-5 and Code Section 50-23-6. The participating local governments and local authorities may request in writing that the division serve as the lead local authority for such project, and if the division accedes to such request, the division shall assume all of the duties and responsibilities of the lead local authority pursuant to the provisions of Article 4 of Chapter 91 of Title 36, for itself and on behalf of such local governing authorities and local authorities, subject to the conditions and limitations of such article.

(d) In addition to the conditions and limitations of Article 4 of Chapter 91 of Title 36, the following shall be applicable to the division when acting pursuant to this Code section:

(1) Public notice of any request for proposals shall be made at least 90 days prior to the date set for receipt of proposals by posting a legal notice on the website of the Department of Administrative Services;

(2) The designated representative of the lead local authority, when the division is such lead local authority, shall be the director;

(3) No contract awarded under this subsection shall be operative until the governing authority of each participating local governing authority and local authority and each affected local government has approved the contract;

(4) For any project for which participation or a lead local authority role is determined by the division to be feasible and appropriate, the division may perform management, technical, consultative, training, educational, and other project development and promotion activities, subject to availability of funds from the Georgia Reservoir Fund established by Code Section 50-23-28, approval by the executive director of the authority, and the requirement that the fund be fully compensated by any private owner of the project for such expenditures; and

(5) Any project financed or constructed in whole or in part by the division shall be subject to environmental and development restrictions imposed on projects of the division by law.

(e) In discharging its duties and responsibilities under this Code section, the division:

(1) Shall to the maximum extent feasible expedite the issuance of the permits, licenses, and permissions from the United States of America or any agency or instrumentality thereof; the State of Georgia, its departments, agencies, or authorities; or any county, municipality, consolidated government, or local agency or authority of this state necessary and convenient for the purposes of this article;

(2) May enter into lease, use, or water supply agreements with the owner or operator of any project or water facility;

(3) May lease to an owner or operator of a project any state-owned facilities or property which the division is managing in connection with a project;

(4) May utilize the competitive bidding and competitive sealed proposal procedures adopted by the Department of Administrative Services under Code Section 50-5-67 and regulations promulgated pursuant to the authority thereof; and

(5) May enter into agreements with local governing authorities, local authorities, or an owner or operator or proposed operator of a project, setting fees to be paid to the division or the Department of Natural Resources for the purpose of enabling the division or the

Department of Natural Resources to expedite or enhance the state or federal regulatory process.

(f) The director shall be authorized to delegate such duties and responsibilities under this Code section as he or she deems appropriate from time to time; provided, however, that the final approval of state projects and contracts provided for in this article shall be by action of the director.

(g) Nothing in this Code section shall be construed to delegate the power of eminent domain to any private entity with respect to any project commenced or proposed pursuant to this Code section. The state and any local government may exercise the power of eminent domain in the manner provided by law for the purpose of acquiring any property or interests therein to the extent that such action serves the public purpose of this Code section.

(h) All affected local governments which approve a project shall have agreed, by reason of such approval, to amend and to have amended, consistent with such approval, any service delivery strategy agreement required by Article 2 of Chapter 70 of Title 36 to which they are a party.

(i)(1) With respect to contracts of such state agency or authority, no employee, officer, or member of any state agency or authority or board thereof shall serve as an employee, agent, lobbyist, or board member for any private entity directly or indirectly under contract with or negotiating a contract with any state agency or authority under this article for three years after leaving his or her position as such an employee, officer, or member.

(2) No employee, officer, or member of the General Assembly shall serve as an employee, agent, lobbyist, or board member for any private entity directly or indirectly under contract with or negotiating a contract with any state agency or authority under this article for three years after leaving his or her position as such an employee, officer, or member.

(3) With respect to contracts of such local governing authority or local authority, no employee, officer, or member of any local governing authority or local authority shall serve as an employee, agent, lobbyist, or board member for any private entity directly or indirectly under contract with or negotiating a contract with any state agency or authority under this article for three years after leaving his or her position as such an employee, officer, or member."

SECTION 3.

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

SECTION 4.

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