

The Senate Committee on Economic Development and Tourism Committee offered 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. The appointments
- 80 shall be made as soon as feasible, but not later than August 1, 2015. The committee shall
- 81 meet once a month or as needed and shall issue model guidelines to local governments no
- 82 later than July 1, 2016. Such guidelines shall be updated every two years. The members
- 83 of the committee shall elect a chairperson and a vice chairperson who shall serve for
- 84 two-year terms in such office.
- 85 (d) Citizen members shall receive a daily expense allowance in the amount specified in
- 86 subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance
- 87 authorized for state employees.
- 88 (e) Staff support shall be provided by the Department of Administrative Services, the
- 89 Governor's office, and the Office of Planning and Budget.
- 90 36-91-112.
- 91 (a) Prior to executing any comprehensive agreement for the development or operation of
- 92 a qualifying project pursuant to an unsolicited proposal received by a local government
- 93 under this article, the local government shall adopt either:

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

96 (2) Its own guidelines as a policy, rule, regulation, or ordinance, which shall not be
 97 inconsistent with the model guidelines.

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

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

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

105 (A) A cost-benefit analysis;

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

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

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

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

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

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

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

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

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

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

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

127 36-91-113.

128 (a) If a local government adopts a rule, regulation, or ordinance affirming its participation
 129 in the process created in this article, a private entity may submit an unsolicited proposal for

130 a project to the local government for review and determination as a qualifying project in
131 accordance with the guidelines established by the local government. Any such unsolicited
132 proposal shall be accompanied by the following material and information:

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

136 (2) A feasibility statement that includes:

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

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

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

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

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

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

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

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

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

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

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

177 36-91-114.

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

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

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

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

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

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

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

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

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

200 (5) Benefits to the public;

201 (6) The private entity's compliance with a minority business enterprise participation plan;

202 (7) The private entity's plans to employ local contractors and residents; and

- 203 (8) Other criteria that the local government deems appropriate.
- 204 (d) After ranking the proposals, the local government shall begin negotiations with the first
 205 ranked private entity. If the local government and the first ranked private entity do not
 206 reach a comprehensive agreement or interim agreement, then the local government may
 207 conduct negotiations with the next ranked private entity. This process shall continue until
 208 the local government either voluntarily abandons the process or executes a comprehensive
 209 agreement or interim agreement with a private entity.
- 210 (e) At any time during the process outlined in this Code section but before the full
 211 execution of a comprehensive agreement, the local government may, without liability to
 212 any private entity or third party, cancel its request for proposals or reject all proposals
 213 received in response to its request for proposals, including the unsolicited proposal, for any
 214 reason whatsoever.
- 215 (f) Nothing in this article shall enlarge, diminish, or affect the authority, if any, otherwise
 216 possessed by the local government to take action that would impact the debt capacity of the
 217 State of Georgia or any local government. The credit of this state shall not be pledged or
 218 loaned to any private entity. The local government shall not loan money to the private
 219 entity in order to finance all or a portion of the qualifying project.

220 36-91-115.

- 221 (a) The comprehensive agreement entered into between the local government and the
 222 private entity selected in accordance with this article shall include:
- 223 (1) A thorough description of the duties of each party in the completion and operation
 224 of the qualifying project;
- 225 (2) Dates and schedules for the completion of the qualifying project;
- 226 (3) Any user fees, lease payments, or service payments as may be established by
 227 agreement of the parties, as well as any process for changing such fees or payments
 228 throughout the term of the agreement, and a copy of any service contract;
- 229 (4) Any reimbursements to be paid to the local government for services provided by the
 230 local government;
- 231 (5) A process for the review of plans and specifications for the qualifying project by the
 232 local government and approval by the local government if the plans and specifications
 233 conform to reasonable standards acceptable to the local government;
- 234 (6) A process for the periodic and final inspection of the qualifying project by the local
 235 government to ensure that the private entity's activities are in accordance with the
 236 provisions of the comprehensive agreement;
- 237 (7) Delivery of performance and payment bonds in the amounts required in Code
 238 Sections 36-91-70 and 36-91-90 and in a form acceptable to the local government for

239 those components of the qualifying project that involve construction, and surety bonds,
240 letters of credit, or other forms of security acceptable to the local government for other
241 phases and components of the development of the qualifying project;

242 (8) Submission of a policy or policies of public liability insurance, copies of which shall
243 be filed with the local government accompanied by proofs of coverage, or self-insurance,
244 each in form and amount satisfactory to the local government and reasonably sufficient
245 to ensure coverage of tort liability to the public and employees and to enable the
246 continued operation of the qualifying project;

247 (9) A process for monitoring the practices of the private entity by the local government
248 to ensure that the qualifying project is properly maintained;

249 (10) The filing of appropriate financial statements to the local government on a periodic
250 basis; and

251 (11) Provisions governing the rights and responsibilities of the local government and the
252 private entity in the event that the comprehensive agreement is terminated or there is a
253 material default by the private entity, including conditions governing assumption of the
254 duties and responsibilities of the private entity by the local government and the transfer
255 or purchase of property or other interests of the private entity by the local government,
256 including provisions compliant with state constitutional limitations on public debt by the
257 local government. Such policies and procedures shall be consistent with Code
258 Section 36-91-116.

259 (b) The comprehensive agreement may include such other terms and conditions that the
260 local government determines will serve the public purpose of this article and to which the
261 private entity and the local government mutually agree, including, without limitation,
262 provisions regarding unavoidable delays and provisions where the authority and duties of
263 the private entity under this article shall cease and the qualifying project is dedicated to the
264 local government for public use.

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

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

270 36-91-116.

271 (a) In the event of a material default by the private entity, the local government may
272 terminate, with cause, the comprehensive agreement and exercise any other rights and
273 remedies that may be available to it at law or in equity, including, but not limited to, claims

274 under the maintenance, performance, or payment bonds; other forms of security; or letters
 275 of credit required by Code Section 36-91-115.

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

280 (c) The power of eminent domain shall not be delegated to any private entity with respect
 281 to any project commenced or proposed pursuant to this article. Any local government
 282 having the power of condemnation under state law may exercise such power of
 283 condemnation to acquire the qualifying project in the event of a material default by the
 284 private entity. Any person who has provided financing for the qualifying project and the
 285 private entity, to the extent of its capital investment, may participate in the condemnation
 286 proceedings with the standing of a property owner.

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

290 36-91-117.

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

296 36-91-118.

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

302 36-91-119.

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

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

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

313 **SECTION 3.**

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

316 "CHAPTER 5C

317 50-5C-1.

318 As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

355 50-5C-2.

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

361 50-5C-3.

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

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

370 (2) A feasibility statement that includes:

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

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

375 (C) A list of public utility facilities, if any, that will be crossed by the project and a
376 statement of the plans of the private entity to accommodate such crossings;
377 (3) A schedule for the initiation and completion of the project to include the proposed
378 major responsibilities and timeline for activities to be performed by both the public and
379 private entity as well as a proposed schedule for obtaining the permits and approvals
380 required in subparagraph (B) of paragraph (2) of this subsection;
381 (4) A financial plan setting forth the private entity's general plans for financing the
382 project, including the sources of the private entity's funds and identification of any
383 dedicated revenue source or proposed debt or equity investment on behalf of the private
384 entity; a description of user fees, lease payments, and other service payments over the
385 term of the comprehensive agreement pursuant to Code Section 50-5C-5; and the
386 methodology and circumstances for changes to such user fees, lease payments, and other
387 service payments over time;
388 (5) A business case statement that shall include a basic description of any direct and
389 indirect benefits that the private entity can provide in delivering the project, including
390 relevant cost, quality, methodology, and process for identifying the project and time
391 frame data;
392 (6) The names and addresses of the persons who may be contacted for further
393 information concerning the unsolicited proposal; and
394 (7) Such additional material and information as the responsible public entity may
395 reasonably request.

396 (b) For any unsolicited proposal for the development of a project received by a responsible
397 public entity, the private entity shall reimburse the responsible public entity for the actual
398 costs incurred to process, review, and evaluate the unsolicited proposal, including, without
399 limitation, reasonable attorney's fees and fees for financial, technical, and other necessary
400 advisers or consultants.

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

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

410 (e) The responsible public entity may reject any proposal or unsolicited proposal at any
411 time and shall not be required to provide a reason for its denial. If the responsible public

412 entity rejects a proposal or unsolicited proposal submitted by a private entity, it shall have
413 no obligation to return the proposal, unsolicited proposal, or any related materials
414 following such rejection.

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

420 50-5C-4.

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

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

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

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

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

436 Factors that may be considered include:

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

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

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

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

443 (5) Benefits to the public;

444 (6) The private entity's compliance with a minority business enterprise participation plan;

445 (7) The private entity's plans to employ local contractors and residents; and

446 (8) Other criteria that the responsible public entity deems appropriate.

447 (d) After ranking the proposals, the responsible public entity shall begin negotiations with
448 the first ranked private entity. If the responsible public entity and the first ranked private
449 entity do not reach a comprehensive agreement or interim agreement, then the responsible
450 public entity may conduct negotiations with the next ranked private entity. This process
451 shall continue until the responsible public entity either voluntarily abandons the process or
452 executes a comprehensive agreement or interim agreement with a private entity.

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

458 (f) Nothing in this chapter shall enlarge, diminish, or affect the authority, if any, otherwise
459 possessed by the responsible public entity to take action that would impact the debt
460 capacity of the State of Georgia. The credit of this state shall not be pledged or loaned to
461 any private entity. The responsible public entity shall not loan money to the private entity
462 in order to finance all or a portion of the qualifying project. All power or authority granted
463 by this chapter to public entities shall be in addition to and supplemental to, and not in
464 substitution for, the powers conferred by any other general, special, or local law. The
465 limitations imposed by this chapter shall not affect the powers conferred by any other
466 general, special, or local law and shall apply only to the extent that a public entity elects
467 to proceed under this chapter.

468 50-5C-5.

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

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

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

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

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

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

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

517 50-5C-6.

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

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

527 (c) The power of eminent domain shall not be delegated to any private entity with respect
528 to any project commenced or proposed pursuant to this chapter. Any responsible public
529 entity having the power of condemnation under state law may exercise such power of
530 condemnation to acquire the qualifying project in the event of a material default by the
531 private entity. Any person who has provided financing for the qualifying project and the
532 private entity, to the extent of its capital investment, may participate in the condemnation
533 proceedings with the standing of a property owner.

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

538 50-5C-7.

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

544 50-5C-8.

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

550 50-5C-9.

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

555 50-5C-10.

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

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

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

566 **SECTION 4.**

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

569 **SECTION 5.**

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