Senate Bill 59
By: Senators Hill of the 6th, Mullis of the 53rd, Gooch of the 51st and Beach of the 21st

A BILL TO BE ENTITLED
AN ACT

To amend Title 36 of the Official Code of Georgia Annotated, relating to local government, and Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to provide for a "Partnership for Public Facilities and Infrastructure Act"; to provide for definitions; to provide guidelines for projects; to create the Partnership for Public Facilities and Infrastructure Act Guidelines Committee and to provide for its membership, terms, allowances, duties, and support; to provide for the manner by which projects may be initiated; to provide for the approval process for projects; to provide for evaluation criteria and review; to provide for agreements; to provide for default and remedies; to provide for financing and grants; to provide for service contracts; to provide for the dedication of certain property interests; to provide for sovereign immunity; to provide for police powers; to provide for application of open meetings and open records laws; to provide a short title; 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.
This Act shall be known and may be cited as the "Partnership for Public Facilities and Infrastructure Act."

SECTION 2.
Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by adding a new chapter to read as follows:

'CHAPTER 77

36-77-1.
As used in this chapter, the term:
(1) 'Affected local jurisdiction' means any county, municipality, or school district in which all or a portion of a qualifying project is located.

(2) 'Comprehensive agreement' means the written agreement between the private entity and the responsible public entity required by Code Section 36-77-6.

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

(4) 'Local authority' means any local authority created pursuant to a local or general Act of the General Assembly, including a joint public instrumentality.

(5) 'Local government' means any county, municipality, consolidated government, or school district.

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

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

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

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

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

   (C) Cable and video services pursuant to Chapter 76 of this title; or

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

(9) 'Responsible public entity' means a public entity that has the power to contract with a private entity to develop the applicable qualifying project. For any qualifying project identified by a local government or local authority, the sole responsible public entity shall be the governing authority of the local government.

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

(11) 'Unsolicited proposal' means a written proposal for a qualifying project that is received by a public entity or a responsible public entity and is not in response to any request for proposal for a qualifying project issued by a responsible public entity.
(a) The Partnership for Public Facilities and Infrastructure Act Guidelines Committee is established to prepare model guidelines for public entities in the implementation of this chapter.

(b) The committee shall be composed of ten persons. Except for the local government officials or staff appointed to the committee, each committee member shall have subject matter expertise in architecture, construction management, engineering, finance, or real estate development. These appointments shall be made as follows:

1. The following members shall be appointed by the Governor:
   (A) One member or employee of a county governing authority;
   (B) One member or employee of a municipal governing authority;
   (C) One member or employee of a local board of education; and
   (D) One licensed member of the State Bar of Georgia with expertise in public works construction.

2. The following members shall be appointed by the Speaker of the House of Representatives:
   (A) One member of the business community with expertise in construction management employed by a firm with less than $25 million in annual revenue;
   (B) One member of the business community who is a licensed architect; and
   (C) One member of the business community with expertise in real estate development.

3. The following members shall be appointed by the Lieutenant Governor:
   (A) One member of the business community with expertise in construction management employed by a firm with more than $25 million in annual revenue;
   (B) One member of the business community who is a professional with expertise in engineering; and
   (C) One member of the business community with expertise in finance.

(c) The terms of these committee appointments shall be for two years. The appointments shall be made as soon as feasible, but not later than August 1, 2015. The committee shall meet once a month or as needed and shall issue model guidelines to public entities no later than July 1, 2016. Such guidelines shall be updated every two years. The members of the committee shall elect a chairperson and a vice chairperson who shall serve for two-year terms in such office.

(d) Citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance authorized for state employees.
(e) Staff support shall be provided by the Department of Administrative Services, the
Governor's office, and the Office of Planning and Budget.

36-77-3.

(a) Prior to executing any comprehensive agreement for the development or operation of
a qualifying project pursuant to an unsolicited proposal received by a responsible public
entity under this chapter, the responsible public entity shall adopt either:

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

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

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

(1) The period of time each calendar year when the responsible public entity will
consider receiving, processing, reviewing, or evaluating unsolicited proposals for
qualifying projects, and such limited time period shall be established within the sole
discretion of the responsible public entity;

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

(A) A cost-benefit analysis;

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

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

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

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

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

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

(3) Criteria for determining any fees authorized in Code Section 36-77-4 that the public
entity elects to charge the private entity for the processing, review, and evaluation of an
unsolicited proposal;

(4) A requirement for the issuance of a request for proposals upon a decision by the
responsible public entity to proceed with a qualifying project pursuant to an unsolicited
proposal;

(5) Procedures for posting and publishing notice of the opportunity to offer competing
proposals:
(6) Procedures for the processing, review, and consideration of competing proposals, and the period for the processing, review, and consideration of competing proposals shall not be less than 90 days; and

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

36-77-4.

(a) If an affected local jurisdiction adopts a rule, regulation, or ordinance affirming its application, a private entity may submit an unsolicited proposal for a project to the responsible public entity for review and determination as a qualifying project in accordance with the guidelines established by the responsible public entity. Any such unsolicited proposal shall be accompanied by the following material and information:

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

2. A feasibility statement that includes:
   a. The method by which the private entity proposes to secure any necessary property interests required for the project;
   b. A list of all permits and approvals required for the project from local, state, or federal agencies; and
   c. A list of public utility facilities, if any, that will be crossed by the project and a statement of the plans of the private entity to accommodate such crossings;

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

4. A financial plan setting forth the private entity’s general plans for financing the project, including the sources of the private entity’s funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity; a description of user fees, lease payments, and other service payments over the term of the comprehensive agreement pursuant to Code Section 36-77-6; and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time;

5. A business case statement that shall include a basic description of any direct and indirect benefits that the private entity can provide in delivering the project, including relevant cost, quality, methodology, and process for identifying the project and time frame data;
(6) The names and addresses of the persons who may be contacted for further information concerning the unsolicited proposal; and

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

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

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

(d) Each affected local jurisdiction that is not a responsible public entity for the respective project may, within 45 days after receiving such notice, submit any comments regarding the unsolicited proposal it may have in writing to the responsible public entity and indicate whether the project is compatible with local plans and budgets. Such comments shall be given consideration by the responsible public entity prior to executing a comprehensive agreement with a private entity pursuant to Code Section 33-77-6. A project shall be consistent with zoning and land use regulations of the responsible public entity and each affected local jurisdiction.

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

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

33-77-5.

(a) The responsible public entity may approve the project in an unsolicited proposal submitted by a private entity pursuant to Code Section 36-77-4 as a qualifying project. Determination by the responsible public entity of a qualifying project shall not bind the responsible public entity or the private entity to proceed with the qualifying project.
(b) Upon the responsible public entity's determination of a qualifying project as provided in subsection (a) of this Code section, the responsible public entity shall:

1. Seek competing proposals for the qualifying project by issuing a request for proposals for not less than 90 days; and
2. Review all proposals submitted in response to the request for proposals based on the criteria established in the request for proposals.

(c) The responsible public entity may select the private entity submitting the unsolicited proposal or one of the proposals submitted in response to the request for proposals, or it may, prior to entering into a comprehensive agreement in accordance with Code Section 36-77-6, employ a process of competitive negotiation with some or all private entity proposers. The responsible public entity shall not be required to select the proposal with the lowest price offer, but it may consider price as one of various factors in evaluating the proposals received in response to the request for proposals for a qualifying project. Factors that may be considered include:

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

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

(e) Nothing in this chapter or in a comprehensive agreement entered into pursuant to Code Section 36-77-6 shall enlarge, diminish, or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the State of Georgia or any local government. The credit of the state shall not be pledged or loaned to any private entity. The responsible public entity shall not loan money to the private entity in order to finance all or a portion of the project.
The comprehensive agreement entered into between the responsible public entity and the private entity selected in accordance with this chapter shall include:

1. A thorough description of the duties of each party in the completion and operation of the qualifying project;
2. Dates and schedules for the completion of the qualifying project;
3. Any user fees, lease payments, or service payments as may be established by agreement of the parties, as well as any process for changing such fees or payments throughout the term of the agreement, and a copy of any service contract;
4. Any reimbursements to be paid to the responsible public entity for services provided by the responsible public entity;
5. A process for the review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to reasonable standards acceptable to the responsible public entity;
6. A process for the periodic and final inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are in accordance with the provisions of the comprehensive agreement;
7. Delivery of maintenance, performance, and payment bonds; letters of credit; or other forms of security acceptable to the responsible public entity in connection with the development or operation of the qualifying project, in the forms and amounts required in Article 3 of Chapter 91 of this title for those components of the qualifying project that involve construction;
8. Submission of a policy or policies of public liability insurance, copies of which shall be filed with the responsible public entity accompanied by proofs of coverage, or self-insurance, each in form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;
9. A process for monitoring the practices of the private entity by the responsible public entity to ensure that the qualifying project is properly maintained;
10. The filing of appropriate financial statements to the responsible public entity on a periodic basis; and
11. Provisions governing the rights and responsibilities of the responsible public entity and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity, including conditions governing assumption of the duties and responsibilities of the private entity by the responsible public entity and the transfer or purchase of property or other interests of the private entity by the responsible public entity, including provisions compliant with state
constitutional limitations on public debt by local government. Such policies and procedures shall be consistent with Code Section 36-77-7.

(b) The comprehensive agreement may include such other terms and conditions that the responsible public entity determines will serve the public purpose of this chapter and to which the private entity and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays and provisions where the authority and duties of the private entity under this chapter shall cease, and the qualifying project is dedicated to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

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

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

36-77-7.

(a) In the event of a material default by the private entity, the responsible public entity may terminate, with cause, the comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity, including, but not limited to, claims under the maintenance, performance, or payment bonds; other forms of security; or letters of credit required by Code Section 36-77-6.

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

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

(d) In the event the responsible public entity elects to take over a qualifying project pursuant to subsection (b) of this Code section, the responsible public entity may develop the qualifying project, impose user fees, and impose and collect lease payments for the use thereof.
Section 3.

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

36-77-8.
All power or authority granted by this chapter to public entities shall be in addition and supplemental to, and not in substitution for, the powers conferred by any other general, special, or local law. The limitations imposed by this chapter shall not affect the powers conferred by any other general, special, or local law and shall apply only to the extent that a public entity elects to proceed under this chapter.

36-77-9.
Nothing in this chapter shall be construed as or deemed a waiver of the sovereign or official immunity of any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of, all or any part of the qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project.

36-77-10.
Any law enforcement officers of the public entity and of each affected local jurisdiction shall have the same powers and jurisdiction within the portion of such qualifying project as they have in their respective areas of jurisdiction, and such law enforcement officers shall have access to the qualifying project at any time for the purpose of exercising such powers and jurisdiction.

36-77-11.
(a) Responsible public entities that proceed with procurement pursuant to competitive sealed bidding as defined in Code Section 36-91-2, or any other purchasing options available under current law, shall not be required to comply with this chapter.
(b) Nothing in this chapter shall apply to or affect the State Transportation Board, the Department of Transportation, or the State Road and Tollway Authority, or any project thereof.
(c) Nothing in this chapter shall abrogate the obligations of a responsible public entity or private entity to comply with the public meetings requirement in accordance with Chapter 14 of Title 50 or to disclose public information in accordance with Article 4 of Chapter 18 of Title 50.

SECTION 3.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by adding a new chapter to read as follows:
CHAPTER 5C

50-5C-1. As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

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(10) ‘State government entity’ means an office, agency, authority, department, commission, board, division, or instrumentality created under the laws of the State of Georgia or an institution of the Board of Regents of the University System of Georgia.

(11) ‘Unsolicited proposal’ means a written proposal for a qualifying project that is received by a responsible public entity and is not in response to any request for proposal issued by a responsible public entity.

50-5C-2.

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

50-5C-3.

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

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

(2) A feasibility statement that includes:

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

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

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

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

(4) A financial plan setting forth the private entity's general plans for financing the project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private
entity; a description of user fees, lease payments, and other service payments over the
term of the comprehensive agreement pursuant to Code Section 50-5C-5; and the
methodology and circumstances for changes to such user fees, lease payments, and other
service payments over time;
(5) A business case statement that shall include a basic description of any direct and
indirect benefits that the private entity can provide in delivering the project, including
relevant cost, quality, methodology, and process for identifying the project and time
frame data;
(6) The names and addresses of the persons who may be contacted for further
information concerning the unsolicited proposal; and
(7) Such additional material and information as the responsible public entity may
reasonably request.
(b) For any unsolicited proposal for the development of a project received by a responsible
public entity, the private entity shall reimburse the responsible public entity for the actual
costs incurred to process, review, and evaluate the unsolicited proposal, including, without
limitation, reasonable attorney's fees and fees for financial, technical, and other necessary
advisers or consultants.
(c) Any private entity submitting an unsolicited proposal under subsection (a) of this Code
section to a responsible public entity shall also notify each affected local jurisdiction by
furnishing a copy of its unsolicited proposal to each affected local jurisdiction.
(d) Each affected local jurisdiction that is not a responsible public entity for the respective
project may, within 45 days after receiving such notice, submit any comments regarding
the unsolicited proposal it may have in writing to the responsible public entity and indicate
whether the project is compatible with local plans and budgets. A project shall be
consistent with zoning and land use regulations of the responsible public entity and each
affected local jurisdiction.
(e) The responsible public entity may reject any proposal or unsolicited proposal at any
time and shall not be required to provide a reason for its denial. If the responsible public
entity rejects a proposal or unsolicited proposal submitted by a private entity, it shall have
no obligation to return the proposal, unsolicited proposal, or any related materials
following such rejection.
(f) A private entity assumes all risks in submission of a proposal or unsolicited proposal
in accordance with subsections (a) and (b) of this Code section, and a responsible public
entity shall not incur any obligation to reimburse a private entity for any costs, damages,
or loss of intellectual property incurred by a private entity in the creation, development, or
submission of a proposal or unsolicited proposal for a qualifying project.
50-5C-4.

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

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

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

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

(c) The responsible public entity may select the private entity submitting the unsolicited proposal or one of the proposals submitted in response to the request for proposals, or it may, prior to entering into a comprehensive agreement in accordance with Code Section 50-5C-5, employ a process of competitive negotiation with some or all private entity proposers. The responsible public entity shall not be required to select the proposal with the lowest price offer, but it may consider price as one of various factors in evaluating the proposals received in response to the request for proposals for a qualifying project. Factors that may be considered include:

(1) The proposed cost of the qualifying project;

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

(3) The proposed design of the qualifying project;

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

(5) Benefits to the public;

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

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

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

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

(e) Nothing in this chapter or in a comprehensive agreement entered into pursuant to Code Section 50-5C-5 shall enlarge, diminish, or affect the authority, if any, otherwise possessed
by the responsible public entity to take action that would impact the debt capacity of the
State of Georgia. The credit of the state shall not be pledged or loaned to any private
tentity. The responsible public entity shall not loan money to the private entity in order to
finance all or a portion of the project.

50-5C-5.
(a) The comprehensive agreement entered into between the responsible public entity and
the private entity selected in accordance with this chapter shall include:
(1) A thorough description of the duties of each party in the completion and operation
of the qualifying project;
(2) Dates and schedules for the completion of the qualifying project;
(3) Any user fees, lease payments, or service payments as may be established by
agreement of the parties, as well as any process for changing such fees or payments
throughout the term of the agreement, and a copy of any service contract;
(4) Any reimbursements to be paid to the responsible public entity for services provided
by the responsible public entity;
(5) A process for the review of plans and specifications for the qualifying project by the
responsible public entity and approval by the responsible public entity if the plans and
specifications conform to reasonable standards acceptable to the responsible public entity;
(6) A process for the periodic and final inspection of the qualifying project by the
responsible public entity to ensure that the private entity's activities are in accordance
with the provisions of the comprehensive agreement;
(7) Delivery of maintenance, performance, and payment bonds; letters of credit; or other
forms of security acceptable to the responsible public entity in connection with the
development or operation of the qualifying project, in the forms and amounts required in
Code Sections 13-10-40, 13-10-41, and 13-10-60;
(8) Submission of a policy or policies of public liability insurance, copies of which shall
be filed with the responsible public entity accompanied by proofs of coverage, or
self-insurance, each in form and amount satisfactory to the responsible public entity and
reasonably sufficient to ensure coverage of tort liability to the public and employees and
to enable the continued operation of the qualifying project;
(9) A process for monitoring the practices of the private entity by the responsible public
tentity to ensure that the qualifying project is properly maintained;
(10) The filing of appropriate financial statements to the responsible public entity on a
periodic basis; and
(11) Provisions governing the rights and responsibilities of the responsible public entity
and the private entity in the event the comprehensive agreement is terminated or there is
a material default by the private entity, including conditions governing assumption of the
duties and responsibilities of the private entity by the responsible public entity and the
transfer or purchase of property or other interests of the private entity by the responsible
public entity, including provisions compliant with state constitutional limitations on
public debt.
(b) The comprehensive agreement may include such other terms and conditions that the
responsible public entity determines will serve the public purpose of this chapter and to
which the private entity and the responsible public entity mutually agree, including,
without limitation, provisions regarding unavoidable delays and provisions where the
authority and duties of the private entity under this chapter shall cease, and the qualifying
project is dedicated to the responsible public entity.
(c) Any changes in the terms of the comprehensive agreement, as may be agreed upon by
the parties from time to time, shall be added to the comprehensive agreement by written
amendment.
(d) The comprehensive agreement may provide for the development of phases or segments
of the qualifying project.

50-5C-6.
(a) In the event of a material default by the private entity, the responsible public entity may
terminate, with cause, the comprehensive agreement and exercise any other rights and
remedies that may be available to it at law or in equity, including, but not limited to, claims
under the maintenance, performance, or payment bonds; other forms of security; or letters
of credit required by Code Section 50-5C-5 in accordance with Code Sections 13-10-40
through 13-10-65.
(b) The responsible public entity may elect to assume the responsibilities and duties of the
private entity of the qualifying project, and in such case, it shall succeed to all of the right,
title, and interest in such qualifying project.
(c) The power of eminent domain shall not be delegated to any private entity with respect
to any project commenced or proposed pursuant to this chapter. Any responsible public
entity having the power of condemnation under state law may exercise such power of
condemnation to acquire the qualifying project in the event of a material default by the
private entity. Any person who has provided financing for the qualifying project and the
private entity, to the extent of its capital investment, may participate in the condemnation
proceedings with the standing of a property owner.
(d) In the event the responsible public entity elects to take over a qualifying project
pursuant to subsection (b) of this Code section, the responsible public entity may develop
the qualifying project, impose user fees, and impose and collect lease payments for the use thereof.

50-5C-7.

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

50-5C-8.

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

50-5C-9.

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

50-5C-10.

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

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

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

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

SECTION 5.

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