

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 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 article to Chapter 91, relating to public works bidding, to read as follows:

"ARTICLE 5

36-91-110.

As used in this article, the term:

- (1) 'Comprehensive agreement' means the written agreement between the private entity and the local government required by Code Section 36-91-115.
- (2) 'Develop' or 'development' means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain, or expand.
- (3) 'Local authority' means any local authority created pursuant to a local or general Act of the General Assembly, including a joint public instrumentality.

(4) 'Local government' means any county, municipality, consolidated government, or board of education.

(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) 'Qualifying project' means any project selected in response to a request from a local government or submitted by a private entity as an unsolicited proposal in accordance with this article and subsequently reviewed and approved by a local government, 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 this chapter.

(7) '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.

(8) 'Unsolicited proposal' means a written proposal for a qualifying project that is received by a local government and is not in response to any request for proposal for a qualifying project issued by a local government.

36-91-111.

(a) The Partnership for Public Facilities and Infrastructure Act Guidelines Committee is established to prepare model guidelines for local governments in the implementation of this article.

(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 representing local government in public works construction.

(2) The following members shall be appointed by the Speaker of the House of Representatives, provided that one of these appointees shall have expertise in working with local government:

(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; and

(3) The following members shall be appointed by the Lieutenant Governor, provided that one of these appointees shall have expertise in working with local government:

(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 licensed professional engineer; and

(C) One member of the business community with expertise in finance.

(c) The terms of these committee appointments shall be for two years. At least three of these appointees shall reside outside of the metropolitan Atlanta area. 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 local governments 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.

36-91-112.

(a) Prior to executing any comprehensive agreement for the development or operation of a qualifying project pursuant to an unsolicited proposal received by a local government under this article, the local government 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 contain each of the factors identified in subsection (b) of this Code section.

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

- (1) The period of time each calendar year when the local government 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 local government;
- (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 36-91-113 that the local government 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 local government 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;
- (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; and
- (8) Procedures for identifying and appointing an independent owner adviser to the local government with expertise in architecture, engineering, or construction management to assist in the evaluation of an unsolicited proposal and to serve as owner adviser to the local government if the local government chooses to pursue any ensuing solicited bid process. The local government shall not be obligated to engage such services.

36-91-113.

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

a project to the local government for review and determination as a qualifying project in accordance with the guidelines established by the local government. 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 local government 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 36-91-115; 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 local government may reasonably request.
- (b) For any unsolicited proposal of the development of a project received by a local government, the local government 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) The local government may reject any proposal or unsolicited proposal at any time and shall not be required to provide a reason for its denial. If the local government 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.

(d) 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 local government 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.

36-91-114.

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

(b) Upon the local government's determination of a qualifying project as provided in subsection (a) of this Code section, the local government 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) When the time for receiving proposals expires, the local government shall first rank the proposals in accordance with the factors set forth in the request for proposal or invitation for bids. The local government 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 local government'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 local government deems appropriate.
- (d) After ranking the proposals, the local government shall begin negotiations with the first ranked private entity. If the local government and the first ranked private entity do not reach a comprehensive agreement or interim agreement, then the local government may conduct negotiations with the next ranked private entity. This process shall continue until the local government either voluntarily abandons the process or executes a comprehensive agreement or interim agreement with a private entity.
- (e) At any time during the process outlined in this Code section but before the full execution of a comprehensive agreement, the local government 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.
- (f) Nothing in this article shall enlarge, diminish, or affect the authority, if any, otherwise possessed by the local government to take action that would impact the debt capacity of the State of Georgia or any local government. The credit of this state shall not be pledged or loaned to any private entity. The local government shall not loan money to the private entity in order to finance all or a portion of the qualifying project. A multiyear lease entered into by a local government which is not terminable at the end of each fiscal year during the term of the lease shall be considered a debt of the local government which enters into such lease, and such lease shall apply against the debt limitations of the local government.

36-91-115.

- (a) The comprehensive agreement entered into between the local government and the private entity selected in accordance with this article 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 local government for services provided by the local government;
 - (5) A process for the review of plans and specifications for the qualifying project by the local government and approval by the local government if the plans and specifications conform to reasonable standards acceptable to the local government;

- (6) A process for the periodic and final inspection of the qualifying project by the local government to ensure that the private entity's activities are in accordance with the provisions of the comprehensive agreement;
 - (7) Delivery of performance and payment bonds in the amounts required in Code Sections 36-91-70 and 36-91-90 and in a form acceptable to the local government for those components of the qualifying project that involve construction, and surety bonds, letters of credit, or other forms of security acceptable to the local government for other phases and components of the development of the qualifying project;
 - (8) Submission of a policy or policies of public liability insurance, copies of which shall be filed with the local government accompanied by proofs of coverage, or self-insurance, each in form and amount satisfactory to the local government 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 local government to ensure that the qualifying project is properly maintained;
 - (10) The filing of appropriate financial statements to the local government on a periodic basis; and
 - (11) Provisions governing the rights and responsibilities of the local government 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 local government and the transfer or purchase of property or other interests of the private entity by the local government, including provisions compliant with state constitutional limitations on public debt by the local government. Such policies and procedures shall be consistent with Code Section 36-91-116.
- (b) The comprehensive agreement may include such other terms and conditions that the local government determines will serve the public purpose of this article and to which the private entity and the local government mutually agree, including, without limitation, provisions regarding unavoidable delays and provisions where the authority and duties of the private entity under this article shall cease and the qualifying project is dedicated to the local government 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.

36-91-116.

(a) In the event of a material default by the private entity, the local government 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 36-91-115.

(b) The local government 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 subject to statutory limitations on the availability of future appropriated or otherwise unobligated funds.

(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 article. Any local government 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 perfected a security interest in the qualifying project may participate in the condemnation proceedings with the standing of a property owner.

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

36-91-117.

All power or authority granted by this article 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 article shall not affect the powers conferred by any other general, special, or local law and shall apply only to the extent that a local government elects to proceed under this article.

36-91-118.

Nothing in this article shall be construed as or deemed a waiver of the sovereign or official immunity of any local government 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.

36-91-119.

(a) Local governments 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 article.

(b) Nothing in this article 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 article shall abrogate the obligations of a local government 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.

(10) '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 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) When the time for receiving proposals expires, the responsible public entity shall first rank the proposals in accordance with the factors set forth in the request for proposal or invitation for bids. 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) After ranking the proposals, the responsible public entity shall begin negotiations with the first ranked private entity. If the responsible public entity and the first ranked private entity do not reach a comprehensive agreement or interim agreement, then the responsible public entity may conduct negotiations with the next ranked private entity. This process shall continue until the responsible public entity either voluntarily abandons the process or executes a comprehensive agreement or interim agreement with a private entity.
- (e) 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.
- (f) Nothing in this chapter 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 this 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 qualifying project. All power or authority granted by this chapter to public entities shall be in addition to 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. A multiyear lease entered into by the state as lessee under this Code section which is not terminable at the end of each fiscal year during the term of the lease shall be subject to and comply with the provisions of Code Section 50-16-41, specifically including compliance with any multiyear contract value authority adopted by the Georgia State Financing and Investment Commission for each fiscal year.

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 performance and payment bonds in the amounts required in Code Sections 13-10-40, 13-10-41, and 13-10-60 and in a form acceptable to the responsible public entity for those components of the qualifying project that involve construction, and bonds, letters of credit, or other forms of security acceptable to the responsible public entity for other phases and components of the development of the qualifying project;
 - (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 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 perfected a security interest in the qualifying project 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.