

Partnership for Public Facilities and Infrastructure

Act of 2015

Model Guidelines

July 2016

Partnership for Public Facilities and Infrastructure Act of 2015

Model Guidelines

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APPENDIX A – Partnership for Public Facilities and Infrastructure Act

Introduction

A. Overview

The Public-Private Facilities and Infrastructure Act of 2015 (O.C.G.A. §36-91-110 *et seq.*) (the “PPFIA”) provides a process for local governments to partner with private entities for the development of a wide range of projects for public use if the public entities determine there is a need for such projects and that private involvement may provide the projects to the public in a timely and/or cost-effective fashion.

The PPFIA defines a “local government” as any county, municipality, consolidated government, or board of education. In order for a project to come under the PPFIA, it must meet the definition of a “qualifying project.” A “qualifying project” is defined broadly under the PPFIA. Specifically, the PPFIA defines a “qualifying project” as any project selected in response to a request for a local government or submitted by a private entity as an unsolicited proposal in accordance with the PPFIA and subsequently reviewed and approved by a local government, within its sole discretion, as meeting a public purpose or public need; provided, however, qualifying projects do not include projects involving generation of electric energy for sale, communications services, cable and video services and water reservoir projects.

The PPFIA establishes requirements that the local government must adhere to when reviewing and approving unsolicited proposals for qualifying projects. In addition, the PPFIA specifies the criteria that must be used to select a proposal and the contents of the comprehensive agreement detailing the relationship between the local government and the private entity for a particular project.

All power or authority granted by the PPFIA to local governments 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 the PPFIA 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 pursuant to the PPFIA. Local governments that proceed with the procurement pursuant to the competitive sealed bidding as defined in O.C.G.A. §36-91-2, or any other purchasing options available under current law, shall not be required to comply with the PPFIA.

The PPFIA established The Partnership for Public Facilities and Infrastructure Act Guidelines Committee (the “PPFIA Guidelines Committee”), consisting of members from state and local government, private entities, and other interested parties, to prepare model guidelines for local governments in the implementation of the PPFIA. The PPFIA Guidelines Committee developed the Model Guidelines provided in Section II hereof, which were issued July 1, 2016.

B. Guidelines for the Review and Approval of Unsolicited Proposals for Qualifying Projects

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, the local government is required to adopt and make publicly available guidelines that are sufficient to

enable the local government to comply with the requirements of the PPFIA. The local government shall adopt either (a) the model guidelines provided herein or (b) its own guidelines as a policy, rule, regulation or ordinance, which shall include, at a minimum, certain provisions as provided below. The guidelines should be reasonable and structured to encourage competition. In addition, to facilitate communication, the local government should designate an individual to serve as the point of contact for receiving proposals submitted under the PPFIA and responding to inquiries regarding the PPFIA or the guidelines.

If the model guidelines are not used, local governments are required to include the following provisions in their guidelines:

- (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 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.

Because the PPFIA is intended to encourage innovative partnerships between local governments and private entities, local governments are encouraged to maintain an open dialogue with private entities to discuss the need for infrastructure improvements.

Best Practice Commentary

General comments on PPFIA Guidelines

It is important for the local government to make sure that its guidelines are consistent with the requirements of the PPFIA statute. The local government should perform annual compliance reviews of its PPFIA guidelines and periodically engage in a more comprehensive review of the guidelines and its overall PPFIA process.

In addition, whenever the local government revises its guidelines, there should be clear indication throughout the document when the revision occurred. This will assist the reader in determining which version is being used.

The PPFIA Guidelines Committee has established a website to provide to serve as a resource to local governments, private entities and others interested in the PPFIA. The website includes previous reports of the PPFIA Guidelines Committee, a PPFIA Checklist and other documents, and hot links to other relevant websites. The website address is: <http://opb.georgia.gov/documents/public-private-partnerships-guidelines-committee>.

C. Statement of Purpose

The model guidelines provided in Section II have been developed to assist local governments in adopting guidelines to guide the implementation of the PPFIA. The local government is not required to adopt the model guidelines, but if the local government chooses to adopt its own guidelines, such guidelines must contain, at a minimum, the provisions provided in paragraph B above. Each local government has the flexibility to add or delete provisions included in the model guidelines and to include provisions not contained in the model guidelines so long as the resulting guidelines are consistent with and comply with the PPFIA.

The complete text of the PPFIA has been included in Appendix A hereto. Although guidance with regard to the application of the PPFIA is provided herein, it will be incumbent upon all entities, both public and private, to comply with the provisions of the PPFIA.

In the event that the PPFIA is amended in a manner that either conflicts with the guidelines developed by the local government or concerns material matters not addressed by such guidelines, the local government should appropriately amend its own guidelines. If the guidelines are not amended prior to the effective date of the new law, the guidelines nonetheless shall be interpreted in a manner to conform to the new law.

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I. Statutory Overview

A. Unsolicited Proposal Submission

If a local government has affirmed its participation in the review and approval of unsolicited proposal process created by the PPFIA, a private entity may submit an unsolicited proposal for a project to the local government for review and determination as a qualifying project. An unsolicited proposal submitted by a private entity shall be accompanied, at a minimum, 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.

The unsolicited proposal may include financing options, including the imposition of user fees, lease payments or other service payments. Such financing options may include the issuance of debt instruments, equity or other securities or obligations. Depending on the local government's authority and the circumstances of each transaction, financing options might also include the use of special purpose entities, sale and lease back transactions, enhanced use leasing, development agreements, conduit financing and other methods allowed by law. Notwithstanding the foregoing, the local government shall not loan money to a private entity in order to finance all or a portion of the qualifying project. Also, 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.

Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the local government. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the local government of the financial feasibility of the proposed project. The cost analysis of a proposal should not be linked solely to the financing plan, as the local government may determine to finance the project through other available means.

Best Practice Commentary

The government employees authorized to receive unsolicited proposals should be included in the local government's PPFIA guidelines to ensure that all unsolicited proposals are reviewed as provided in such guidelines.

B. Unsolicited Proposal Review Fee

The local government may charge reasonable fees to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal submitted under the PPFIA, including, without limitation, attorney's fees and fees for financial, technical, and other necessary advisers or consultants.

The proposal fee may cover all or part of the initial review process. For example, the local government may require a proposal fee in an amount sufficient to cover all anticipated costs associated with evaluating the proposal, or the local government may require a smaller initial processing fee with an additional proposal fee to be charged should the project proceed beyond the initial review.

The local government may establish a fee schedule for the cost of the proposal review. The local government shall set forth the methodology used to calculate proposal fees in the procedures it has established for the implementation of the PPFIA. If the cost of reviewing

the proposal exceeds the initially established proposal fee, the local government may assess the proposer the additional costs deemed necessary to evaluate the proposal.

For rejected proposals, the local government may establish a schedule for refunding any portion of fees paid in excess of its direct costs associated with evaluating the proposal. If the cost of reviewing the proposal is less than the initially established proposal fee, the local government may refund to the proposer the excess fee.

A private entity assumes all risk in submission of a proposal or unsolicited proposal, 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.

Best Practice Commentary

Determining appropriate proposal review fees.

The proposal review fee charged by a local government should be reasonable; the fee should not exceed the actual cost incurred by the local government to conduct the necessary review of the project. The local government should periodically perform a general cost analysis to assist in determining actual costs to ensure that the costs are as accurately as possible. While it is true that the specific costs to review individual PPFIA proposals may vary, using a set fee or a sliding scale of fees based on the projected size of the project should nonetheless be based on actual costs.

In addition, any proposal review fee or charge, as well as the general breakdown of how the fee is calculated if a sliding scale is used, should be clearly documented so that the private entity may be fully aware of such costs. Where possible, proposal review charges or rates should be included in the local government's PPFIA guidelines to ensure that a private entity contemplating an unsolicited proposal is aware of the fees associated with the review.

C. Approval Process

Upon receipt of an unsolicited proposal, the local government shall determine if the proposed project is a qualifying project, as defined in the PPFIA. 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. 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.

If the local government decides [to not reject] the unsolicited proposal, the local government shall (1) seek competing proposals for the qualifying project by issuing a request for proposal for not less than 90 days and (2) review all proposals submitted in response to the request for proposals.

Prior to sending out a request for proposal, the local government should establish clearly delineated criteria for selecting among competing proposals, which criteria should be included in the request for proposals. In addition, to facilitate the flow of critical information, the local government may establish criteria by which the proposers may provide clarification to submitted proposals.

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.

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.

At any time during the process outlined herein 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.

D. Interim and Comprehensive Agreements.

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the local government. Prior to entering a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. The local government may designate a working group to be responsible for negotiating any interim or comprehensive agreement. Any interim or comprehensive agreement shall define the rights and obligations of the local government and the selected proposer with regard to the project.

(1) Interim Agreement Terms.

The scope of an interim agreement may include but is not limited to:

- (a) Project planning and development;
- (b) Design and engineering;
- (c) Environmental analysis and mitigation;
- (d) Survey;
- (e) Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
- (f) Establishing a process and timing of the negotiation of the comprehensive agreement; and
- (g) Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate prior to the execution of a comprehensive agreement.

Best Practice Commentary

An Interim Agreement will usually be less detailed than a Comprehensive Agreement and will leave open items for further negotiations to be included in the Comprehensive Agreement. An Interim Agreement may be used in situations where information is needed to further develop the concept of the project and perhaps even the feasibility of going forward with the qualifying project. Thus, an Interim Agreement might be appropriate in order to have the selected private entity do certain architectural and engineering (A/E) drawings and feasibility studies so that the locality can determine how the final qualifying project might be developed or even if the project should proceed before entering into a more detailed and final Comprehensive Agreement.

An Interim Agreement may also be used to allow the private entity to start work on the A/E design and drawings while the remainder of the Comprehensive Agreement is completed. Therefore, an Interim Agreement should establish a process and timing for Agreement if matters do not work out during continued negotiations. This type of clause in the Interim Agreement would allow for termination of the agreement and provide for payment of the agreed-upon compensation to the private entity for the scheduled work that the private entity completed pursuant to the Interim Agreement.

(2) Comprehensive Agreement Terms.

The scope of the comprehensive agreement shall include but not be limited to:

- (a) A thorough description of the duties of each party in the completion and operation of the qualifying project;

- (b) Dates and schedules for the completion of the qualifying project;
- (c) 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;
- (d) Any reimbursements to be paid to the local government for services provided by the local government;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) A process for monitoring the practices of the private entity by the local government to ensure that the qualifying project is properly maintained;
- (j) The filing of appropriate financial statements to the local government on a periodic basis; and
- (k) 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 O.C.G.A. § 36-91-116.

The comprehensive agreement may include such other terms and conditions that the local government determines will serve the public purpose of the PPFIA 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.

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.

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

Best Practice Commentary

Local governments may establish criteria to trigger establishment of an advisory committee consisting of representatives of the local government and the appropriating body to review the terms of the proposed interim or comprehensive agreement. The criteria should include, but not be limited to, the scope, total cost and duration of the proposed project, and whether the project involves or impacts multiple public entities. Timelines for the work of the committee should be developed and made available to proposers.

If the local government for appropriating or authorizing funding to pay for a qualifying project is different from the local government reviewing or approving the project, then the local government reviewing or approving the project should establish a mechanism for that appropriating body to review any proposed interim or comprehensive agreement prior to execution. When a school board is the local government, review by the local governing body shall satisfy this requirement.

E. Open Meetings Act and Open Records Act

Nothing in the PPFIA abrogates the obligations of a local government to comply with the Open Meetings Act (O.C.G.A. §50-14-1 *et seq.*) and the Open Records Act (O.C.G.A. §50-18-70 *et seq.*).

Proposal documents submitted by private entities are generally subject to the Open Records Act and public meetings (a gathering of a quorum of the members of the governing body of a governmental entity or a committee of a governmental entity) to discuss and/or approve such proposals are generally subject to the Open Meetings Act.

Best Practice Commentary

The local government should consult with its legal counsel to confirm compliance with the Open Records Act and the Open Meetings Act.

F. Applicability of Other Laws

Nothing in the PPFIA shall affect the duty of the local government to comply with all other applicable law not in conflict with the PPFIA.

II. Model Guidelines

The Public-Private Facilities and Infrastructure Act of 2015 (the “PPFIA”) (O.C.G.A. §36-91-110 *et seq.*) provides a process for local governments to partner with private entities for the development of a wide range of projects for public use if the public entities determine there is a need for such projects and that private involvement may provide such projects to the public in a timely or cost-effective fashion.

In order for a project to come under the PPFIA, it must meet the definition of a “qualifying project.” A “qualifying project” is defined broadly under the PPFIA. Specifically, the PPFIA defines a “qualifying project” as any project selected in response to a request for a local government or submitted by a private entity as an unsolicited proposal in accordance with the PPFIA and subsequently reviewed and approved by a local government, within its sole discretion, as meeting a public purpose or public need; provided, however, qualifying projects do not include projects involving generation of electric energy for sale, communications services, cable and video services and water reservoir projects.

The following guidelines have been adopted by the governing body of [NAME OF GOVERNMENTAL ENTITY] (the “Local Government”) to govern the process for receiving, reviewing and approving unsolicited proposals for qualifying projects.

In the event of any conflict between these guidelines and the PPFIA, the terms of the PPFIA shall control.

A. Time Period for Receiving Unsolicited Proposals and Format for Submissions.

(1) Time Period. Unsolicited proposals for qualifying projects may be received by the Local Government [INSERT TIME PERIOD FOR EACH CALENDAR YEAR AS DETERMINED BY LOCAL GOVERNMENT]. Such unsolicited proposals shall be in writing and shall be delivered to [DESIGNATED STAFF MEMBER] at [ADDRESS]. Should a proposer have any questions, please contact [NAME], at [PHONE NUMBER], or by e-mail at [E-MAIL ADDRESS.]

(2) Format for Submissions. Unsolicited proposals shall contain, at a minimum, the following information: (a) a project description, (b) a project feasibility statement, (c) a proposed project schedule, (d) a project financing plan, (e) 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, (f) a description of any anticipated public support or opposition, (g) qualifications and experience (h) names and addresses of persons who may be contact and (g) any additional information as the local government may reasonably request to comply with the requirements of the PPFIA. Proposals should be prepared simply and economically, providing a concise description of the proposer’s capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the local government. Such proposals may also include any additional pertinent information as determined by the proposer.

Only proposals complying with the requirements of these guidelines and the PPFIA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format should be considered by the Local Government for further review. If any information necessary to make a meaningful evaluation is missing, the local government may request such information from the proposer. Unsolicited proposals are subject to the Open Records Act.

The format and information to be included in any unsolicited proposal are as follows:

(a) Project Description

Required to be included under PPFIA:

- (i) Provide a description of the project, including the location of the project, the conceptual design of such facility, or facilities, and a conceptual plan for the provision of services or technological infrastructure.

Required to be included under Local Government policy:¹

- (ii) Identify and fully describe the scope of work to be performed by the proposer with enough detail to allow an analysis by the local government.
- (iii) Identify and fully describe any work to be performed by the local government.
- (iv) Identify any anticipated adverse social, economic, and environmental impacts of the project.
- (v) Identify the projected positive social, economic, and environmental impacts of the project.
- (vi) State assumptions related to ownership, legal liability, law enforcement, and operation of the project and the existence of any restrictions on the local government's use of the project.

(b) Project Feasibility Statement

Required to be included under PPFIA:

- (i) A feasibility statement that includes:

¹ The items listed under the subheading "Required to be included under Local Government policy" are not required by the PPFIA to be included in a Local Government's Guidelines and may be modified or deleted by the Local Government prior to approval.

- (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;

Required to be included under Local Government policy:

- (ii) Provide a list of any contingencies that must occur for the project to be successful.
- (iii) Provide a list of any other assumptions relied on for the project to be successful.
- (iv) Provide information relative to ongoing maintenance and operational costs after the project is completed.

(c) Project Schedule

Required to be included under PPFIA:

- (i) A schedule for initiation, construction, 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.
- (ii) A schedule for obtaining all federal, state, and local permits and approvals required for the project.

Required to be included under Local Government policy:

- (iii) Identify the proposed schedule for strategies or actions to mitigate known impacts of the project.
- (iv) Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.

(d) Project Financing Plan

Required to be included under PPFIA:

- (i) 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; and description of user fees, lease payments and other service payments over the term of the proposed comprehensive agreement (as defined in the PPFIA); and a methodology and circumstances for changes to such user fees, lease payments and other service payments over time.

Required to be included under Local Government policy:

- (ii) Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- (iii) Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required containing enough detail to allow an analysis by the local government of the financial feasibility of the proposed project. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports. Identify 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.
- (iv) Provide a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
- (v) Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the local government's credit or revenue.
- (vi) Identify the amounts and the terms and conditions for any revenue sources.
- (vii) Describe a proposed allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.

- (viii) Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

The unsolicited proposal may include financing options, including the imposition of user fees, lease payments or other service payments. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations. Depending on the local government's authority and the circumstances of each transaction, financing options might also include the use of special purpose entities, sale and lease back transactions, enhanced use leasing, development agreements, conduit financing and other methods allowed by law. Notwithstanding the foregoing, the local government shall not loan money to a private entity in order to finance all or a portion of the qualifying project.

(e) Business Case Statement

Required to be included under PPFIA:

- (i) A business case statement that shall include a basic description of any direct or 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.

Required to be included under Local Government policy:

- (ii) Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project.
- (iii) Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
- (iv) Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- (v) Specify the strategies or actions to mitigate known impacts of the project.
- (vi) Describe the anticipated significant benefits to the community, region or state, including anticipated benefits to the economic condition of the local government and whether the project is critical to attracting or maintaining competitive industries and businesses to the local government or the surrounding region.
- (vii) Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or

- other government spending plan.
- (viii) Provide relevant proposer cost, quality, methodology, and process for identifying the project and time frame data.

(f) Contacts

Required to be included under PPFIA:

- (i) The names and addresses of the persons who may be contacted for further information concerning the unsolicited proposal.

Required to be included under Local Government policy:

- (ii) Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
- (iii) Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.
- (iv) Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
- (v) Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater for project proposals over \$20 MM.
- (vi) Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to any state of Georgia conflict of interest laws.

B. Procedures for the Financial Review and Analysis of an Unsolicited Proposal.

- (1) Upon receipt of an unsolicited proposal, the Local Government shall:
 - (a) Send the proposer an acknowledgement of receipt of the unsolicited proposal and provide that the Local Government will conduct a review of that proposal and either (a) reject the unsolicited proposal or (b) accept the

unsolicited proposal and seek competing bids for the proposed project as required pursuant to the Guidelines and the PPFIA;

- (b) Establish a new committee or select an existing committee (the “Evaluation Committee”) to review the unsolicited proposal. If a new committee is established, it should be composed of no less than three individuals with diverse skill sets to adequately review the proposal;
- (c) Decide whether it will engage independent advisors, as provided in paragraph C below, to assist (and not be a member of) the Evaluation Committee in its review of the unsolicited proposal, which may include an attorney, financial advisor, architectural and/or engineering consultant or other advisers or consultants; and
- (d) Provide the proposer with the proposed Local Government fee to cover the costs of processing, reviewing and evaluating the unsolicited proposal, as calculated in paragraph D below.

(2) The Evaluation Committee, together with any independent advisors, shall perform the following financial review and analysis of the unsolicited proposal:

- (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.

After reviewing the proposal, the Evaluation Committee shall make a recommendation to the governing body of the Local Government to reject or accept the unsolicited proposal.

NOTE: Discussions between local governments and the proposer about the need for infrastructure improvements shall not limit the ability of a local government to later determine to use standard procurement procedures to meet its infrastructure needs. The local government retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement.

C. Criteria for Identifying and Appointing Independent Advisors.

Unsolicited proposals which have technical, complex or specialized information may require additional support from one or more third-party independent advisors to assist in their evaluation and review. Independent advisors may include attorneys, financial advisors, engineering consultants or other advisers or consultants as determined by the Local Government, in its sole discretion, to be reasonably required to review any unsolicited proposal. Independent advisors shall have no affiliation with the private entity submitting an unsolicited proposal.

D. Criteria for Determining Fees.

A private entity assumes all risk in submission of an unsolicited proposal, 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.

The Local Government shall charge and retain an initial proposal processing fee equal to \$100 to be paid by the proposer prior to the review of an unsolicited proposal.

In addition, the Local Government may charge and retain a reasonable fee to cover the costs of reviewing and evaluating an unsolicited proposal. If it is determined by the Local Government that one or more independent advisors shall be engaged to assist the Evaluation Committee in its review of the unsolicited proposal, as provided in paragraph C above, the fees of all such independent advisors shall be paid by the proposer. The estimated fees of the Local Government and such independent advisors shall be provided to the proposer for approval prior to the engagement of such advisors to review the proposal or the review and evaluation of an unsolicited proposal.

E. Procedures for Determining Release of Information in Unsolicited Proposal.

The Local Government, in its sole discretion, may use any portion of an unsolicited proposal in preparing a request for proposal as described in paragraph F below.

F. Request for Proposals.

Within 60 days of receipt of a recommendation from the Evaluation Committee as provided in paragraph B above, the governing board of the Local Government shall decide whether to approve or reject such unsolicited proposal. If the local government approves the unsolicited proposal, it shall seek competing proposals for the qualifying project, at the cost of the Local Government, by issuing a request for proposal for not less than 90 days.

The request for proposal shall include the criteria for selecting among competing proposals as provided in paragraph H below.

During evaluation, the Local Government may seek written clarification from any proposer regarding the contents of the proposer's response. A request for written clarification may be made when a proposer's response contains conflicting information or is so ambiguous that it is possible for a reasonable person to attribute different meanings to the ambiguous portion of the proposer's response. A request for written clarification may not be used to negotiate (i.e., request the supplier to revise or improve the proposer's response). Written clarifications received from the supplier will become part of that proposer's response.

G. Procedures for Posting and Publishing Notice of the Opportunity to Offer Competing Proposals.

Notices for requests for proposals for qualifying projects shall be posted by the Local Government in a consistent manner with other notices posted for public works bidding as provided by O.C.G.A. § 36-91-1 *et seq.*

Notices for requests for proposals that are advertised in the legal organ shall be advertised a minimum of two times, with the first advertisement occurring at least ninety days prior to the deadline for receipt of competing proposals. The second advertisement shall follow no earlier than six weeks from the first advertisement.

Notices for requests for proposals that are advertised solely on the Internet shall be posted continuously at least ninety days prior to the deadline for receipt of competing proposals. Inadvertent or unintentional loss of Internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed.

H. Procedures for Processing, Review and Consideration of Competing Proposals.

After the deadline for the receipt of competing proposals, the Local Government shall reconvene the evaluation committee to review, evaluate and score the responses.

The criteria to be used in the evaluation of competing proposals for a qualifying project shall be determined by the evaluation committee of the Local Government prior to submitting a request for proposal for such qualifying project. The evaluation committee of the Local Government shall establish a scoring matrix for review of responses to a request for proposal. The scoring matrix can be weighted in any fair manner to adequately assess the critical elements of a proposal, with the most likely highest weighted categories being (a) project financing and (b) qualifications and experience.

There are several factors that the Local Government may use when evaluating and selecting an unsolicited proposal, including, but not limited to, the following:

(1) **Qualifications and Experience**

Factors to be considered to determine whether the proposer possesses the requisite qualifications and experience include:

- (a) Experience with similar projects;
- (b) Demonstration of ability to perform work;
- (c) Leadership structure;
- (d) Project manager's experience;
- (e) Management approach;
- (f) Financial condition; and
- (g) Project ownership.

(2) Project Characteristics

Factors to be considered in determining the project characteristics include:

- (a) Project definition;
- (b) Proposed project schedule;
- (c) Operation of the project;
- (d) Technology; technical feasibility;
- (e) Conformity to laws, regulations, and standards;
- (f) Environmental impacts;
- (g) Condemnation impacts;
- (h) State and local permits; and
- (i) Maintenance of the project.

(3) Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include:

- (a) Cost and cost benefit to the local government;
- (b) Financing and the impact on the debt burden of the local government or appropriating body;
- (c) Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
- (d) Opportunity costs assessment;
- (e) Estimated cost;
- (f) Life-cycle cost analysis;
- (g) The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and
- (h) Such other items as the local government deems appropriate.

In the event that any project is financed through the issuance of obligations that are deemed to be tax-supported debt of the local government, or if financing such a project may impact the local government's debt rating or financial position, the local government may select its own finance team, source, and financing vehicle.

(4) Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans include:

- (a) Community benefits;
- (b) Community support or opposition, or both;
- (c) Public involvement strategy;

- (d) Compatibility with existing and planned facilities; and
- (e) Compatibility with local, regional, and state economic development efforts.

(5) Other Factors

Other factors that may be considered by the Local Government in the evaluation and selection of competing proposals include:

- (a) The proposed cost of the qualifying project;
- (b) The general reputation, industry experience, and financial capacity of the private entity;
- (c) The proposed design of the qualifying project;
- (d) The eligibility of the project for accelerated documentation, review, and selection;
- (e) Local citizen and government comments;
- (f) Benefits to the public, including financial and nonfinancial;
- (g) The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
- (h) The private entity's plans to employ local contractors and residents;
- (i) The recommendation of a committee of representatives of members of the local government and the appropriating body which may be established to provide advisory oversight for the project; and
- (j) Other criteria that the local government deems appropriate.

III. Terms and Definitions

“Comprehensive agreement” means the written agreement between the private entity and the local government required pursuant to the PPFIA.

“Develop” or **“development”** means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain or expand.

“Interim agreement” means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

“Local Government” means any county, municipality, consolidated government, or board of education.

“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.

“Qualifying Project” means any project selected in response to a request for a local government or submitted by a private entity as an unsolicited proposal in accordance with the PPFIA and subsequently reviewed and approved by a local government, within its sole discretion, as meeting a public purpose or public need. A “qualifying project” shall not include and shall have no application to any project involving:

- (1) The generation of electric energy for sale pursuant to Chapter 3 of Title 46 of the Official Code of Georgia Annotated;
- (2) Communications services pursuant to Articles 4 and 7 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated;
- (3) Cable and video services pursuant to Chapter 76 of title 36 of the Official Code of Georgia Annotated; or
- (4) Water reservoir projects as defined in paragraph (10) of O.C.G.A. §12-5-471, which shall be governed by Article 4 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated.

“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.

“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.

“State” means the State of Georgia.

APPENDIX A

PARTNERSHIP FOR PUBLIC FACILITIES AND INFRASTRUCTURE ACT

Senate Bill 59

By: Senators Hill of the 6th, Mullis of the 53rd, Gooch of the 51st, Beach of the 21st and Hill of the 32nd

AS PASSED

**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. At least three of
- 80 these appointees shall reside outside of the metropolitan Atlanta area. The appointments
- 81 shall be made as soon as feasible, but not later than August 1, 2015. The committee shall
- 82 meet once a month or as needed and shall issue model guidelines to local governments no
- 83 later than July 1, 2016. Such guidelines shall be updated every two years. The members
- 84 of the committee shall elect a chairperson and a vice chairperson who shall serve for
- 85 two-year terms in such office.
- 86 (d) Citizen members shall receive a daily expense allowance in the amount specified in
- 87 subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance
- 88 authorized for state employees.
- 89 (e) Staff support shall be provided by the Department of Administrative Services, the
- 90 Governor's office, and the Office of Planning and Budget.

91 36-91-112.

92 (a) Prior to executing any comprehensive agreement for the development or operation of
 93 a qualifying project pursuant to an unsolicited proposal received by a local government
 94 under this article, the local government shall adopt either:

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

97 (2) Its own guidelines as a policy, rule, regulation, or ordinance, which shall contain each
 98 of the factors identified in subsection (b) of this Code section.

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

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

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

106 (A) A cost-benefit analysis;

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

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

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

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

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

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

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

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

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

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

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

128 (8) Procedures for identifying and appointing an independent owner adviser to the local
129 government with expertise in architecture, engineering, or construction management to
130 assist in the evaluation of an unsolicited proposal and to serve as owner adviser to the local
131 government if the local government chooses to pursue any ensuing solicited bid process.
132 The local government shall not be obligated to engage such services.

133 36-91-113.

134 (a) If a local government adopts a rule, regulation, or ordinance affirming its participation
135 in the process created in this article, a private entity may submit an unsolicited proposal for
136 a project to the local government for review and determination as a qualifying project in
137 accordance with the guidelines established by the local government. Any such unsolicited
138 proposal shall be accompanied by the following material and information:

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

142 (2) A feasibility statement that includes:

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

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

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

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

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

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

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

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

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

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

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

183 36-91-114.

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

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

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

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

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

- 200 (1) The proposed cost of the qualifying project;
 201 (2) The general reputation, industry experience, and financial capacity of the private
 202 entity;
 203 (3) The proposed design of the qualifying project;
 204 (4) The eligibility of the facility for accelerated selection, review, and documentation
 205 timelines under the local government's guidelines;
 206 (5) Benefits to the public;
 207 (6) The private entity's compliance with a minority business enterprise participation plan;
 208 (7) The private entity's plans to employ local contractors and residents; and
 209 (8) Other criteria that the local government deems appropriate.
- 210 (d) After ranking the proposals, the local government shall begin negotiations with the first
 211 ranked private entity. If the local government and the first ranked private entity do not
 212 reach a comprehensive agreement or interim agreement, then the local government may
 213 conduct negotiations with the next ranked private entity. This process shall continue until
 214 the local government either voluntarily abandons the process or executes a comprehensive
 215 agreement or interim agreement with a private entity.
- 216 (e) At any time during the process outlined in this Code section but before the full
 217 execution of a comprehensive agreement, the local government may, without liability to
 218 any private entity or third party, cancel its request for proposals or reject all proposals
 219 received in response to its request for proposals, including the unsolicited proposal, for any
 220 reason whatsoever.
- 221 (f) Nothing in this article shall enlarge, diminish, or affect the authority, if any, otherwise
 222 possessed by the local government to take action that would impact the debt capacity of the
 223 State of Georgia or any local government. The credit of this state shall not be pledged or
 224 loaned to any private entity. The local government shall not loan money to the private
 225 entity in order to finance all or a portion of the qualifying project. A multiyear lease entered
 226 into by a local government which is not terminable at the end of each fiscal year during the
 227 term of the lease shall be considered a debt of the local government which enters into such
 228 lease, and such lease shall apply against the debt limitations of the local government.
- 229 36-91-115.
- 230 (a) The comprehensive agreement entered into between the local government and the
 231 private entity selected in accordance with this article shall include:
- 232 (1) A thorough description of the duties of each party in the completion and operation
 233 of the qualifying project;
 234 (2) Dates and schedules for the completion of the qualifying project;

- 235 (3) Any user fees, lease payments, or service payments as may be established by
236 agreement of the parties, as well as any process for changing such fees or payments
237 throughout the term of the agreement, and a copy of any service contract;
- 238 (4) Any reimbursements to be paid to the local government for services provided by the
239 local government;
- 240 (5) A process for the review of plans and specifications for the qualifying project by the
241 local government and approval by the local government if the plans and specifications
242 conform to reasonable standards acceptable to the local government;
- 243 (6) A process for the periodic and final inspection of the qualifying project by the local
244 government to ensure that the private entity's activities are in accordance with the
245 provisions of the comprehensive agreement;
- 246 (7) Delivery of performance and payment bonds in the amounts required in Code
247 Sections 36-91-70 and 36-91-90 and in a form acceptable to the local government for
248 those components of the qualifying project that involve construction, and surety bonds,
249 letters of credit, or other forms of security acceptable to the local government for other
250 phases and components of the development of the qualifying project;
- 251 (8) Submission of a policy or policies of public liability insurance, copies of which shall
252 be filed with the local government accompanied by proofs of coverage, or self-insurance,
253 each in form and amount satisfactory to the local government and reasonably sufficient
254 to ensure coverage of tort liability to the public and employees and to enable the
255 continued operation of the qualifying project;
- 256 (9) A process for monitoring the practices of the private entity by the local government
257 to ensure that the qualifying project is properly maintained;
- 258 (10) The filing of appropriate financial statements to the local government on a periodic
259 basis; and
- 260 (11) Provisions governing the rights and responsibilities of the local government and the
261 private entity in the event that the comprehensive agreement is terminated or there is a
262 material default by the private entity, including conditions governing assumption of the
263 duties and responsibilities of the private entity by the local government and the transfer
264 or purchase of property or other interests of the private entity by the local government,
265 including provisions compliant with state constitutional limitations on public debt by the
266 local government. Such policies and procedures shall be consistent with Code
267 Section 36-91-116.
- 268 (b) The comprehensive agreement may include such other terms and conditions that the
269 local government determines will serve the public purpose of this article and to which the
270 private entity and the local government mutually agree, including, without limitation,
271 provisions regarding unavoidable delays and provisions where the authority and duties of

272 the private entity under this article shall cease and the qualifying project is dedicated to the
273 local government for public use.

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

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

279 36-91-116.

280 (a) In the event of a material default by the private entity, the local government may
281 terminate, with cause, the comprehensive agreement and exercise any other rights and
282 remedies that may be available to it at law or in equity, including, but not limited to, claims
283 under the maintenance, performance, or payment bonds; other forms of security; or letters
284 of credit required by Code Section 36-91-115.

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

289 (c) The power of eminent domain shall not be delegated to any private entity with respect
290 to any project commenced or proposed pursuant to this article. Any local government
291 having the power of condemnation under state law may exercise such power of
292 condemnation to acquire the qualifying project in the event of a material default by the
293 private entity. Any person who has perfected a security interest in the qualifying project
294 may participate in the condemnation proceedings with the standing of a property owner.

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

298 36-91-117.

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

304 36-91-118.
 305 Nothing in this article shall be construed as or deemed a waiver of the sovereign or official
 306 immunity of any local government or any officer or employee thereof with respect to the
 307 participation in, or approval of, all or any part of the qualifying project or its operation,
 308 including, but not limited to, interconnection of the qualifying project with any other
 309 infrastructure or project.

310 36-91-119.
 311 (a) Local governments that proceed with procurement pursuant to competitive sealed
 312 bidding as defined in Code Section 36-91-2, or any other purchasing options available
 313 under current law, shall not be required to comply with this article.
 314 (b) Nothing in this article shall apply to or affect the State Transportation Board, the
 315 Department of Transportation, or the State Road and Tollway Authority, or any project
 316 thereof.
 317 (c) Nothing in this article shall abrogate the obligations of a local government or private
 318 entity to comply with the public meetings requirement in accordance with Chapter 14 of
 319 Title 50 or to disclose public information in accordance with Article 4 of Chapter 18 of
 320 Title 50."

321 **SECTION 3.**
 322 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
 323 by adding a new chapter to read as follows:

324 "CHAPTER 5C

325 50-5C-1.
 326 As used in this chapter, the term:
 327 (1) 'Affected local jurisdiction' means any county, municipality, or school district in
 328 which all or a portion of a qualifying project is located.
 329 (2) 'Comprehensive agreement' means the written agreement between the private entity
 330 and the responsible public entity required by Code Section 50-5C-5.
 331 (3) 'Develop' or 'development' means to plan, design, develop, finance, lease, acquire,
 332 install, construct, operate, maintain, or expand.
 333 (4) 'Person' means an individual, corporation, partnership, trust, association, or other
 334 legal entity.

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

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

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

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

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

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

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

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

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

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

363 50-5C-2.

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

369 50-5C-3.

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

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

378 (2) A feasibility statement that includes:

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

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

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

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

389 (4) A financial plan setting forth the private entity's general plans for financing the
390 project, including the sources of the private entity's funds and identification of any
391 dedicated revenue source or proposed debt or equity investment on behalf of the private
392 entity; a description of user fees, lease payments, and other service payments over the
393 term of the comprehensive agreement pursuant to Code Section 50-5C-5; and the
394 methodology and circumstances for changes to such user fees, lease payments, and other
395 service payments over time;

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

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

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

404 (b) For any unsolicited proposal for the development of a project received by a responsible
405 public entity, the private entity shall reimburse the responsible public entity for the actual

406 costs incurred to process, review, and evaluate the unsolicited proposal, including, without
 407 limitation, reasonable attorney's fees and fees for financial, technical, and other necessary
 408 advisers or consultants.

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

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

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

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

428 50-5C-4.

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

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

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

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

439 (c) When the time for receiving proposals expires, the responsible public entity shall first
 440 rank the proposals in accordance with the factors set forth in the request for proposal or
 441 invitation for bids. The responsible public entity shall not be required to select the proposal

442 with the lowest price offer, but it may consider price as one of various factors in evaluating
443 the proposals received in response to the request for proposals for a qualifying project.
444 Factors that may be considered include:

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

455 (d) After ranking the proposals, the responsible public entity shall begin negotiations with
456 the first ranked private entity. If the responsible public entity and the first ranked private
457 entity do not reach a comprehensive agreement or interim agreement, then the responsible
458 public entity may conduct negotiations with the next ranked private entity. This process
459 shall continue until the responsible public entity either voluntarily abandons the process or
460 executes a comprehensive agreement or interim agreement with a private entity.

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

466 (f) Nothing in this chapter shall enlarge, diminish, or affect the authority, if any, otherwise
467 possessed by the responsible public entity to take action that would impact the debt
468 capacity of the State of Georgia. The credit of this state shall not be pledged or loaned to
469 any private entity. The responsible public entity shall not loan money to the private entity
470 in order to finance all or a portion of the qualifying project. All power or authority granted
471 by this chapter to public entities shall be in addition to and supplemental to, and not in
472 substitution for, the powers conferred by any other general, special, or local law. The
473 limitations imposed by this chapter shall not affect the powers conferred by any other
474 general, special, or local law and shall apply only to the extent that a public entity elects
475 to proceed under this chapter. A multiyear lease entered into by the state as lessee under
476 this Code section which is not terminable at the end of each fiscal year during the term of
477 the lease shall be subject to and comply with the provisions of Code Section 50-16-41,

478 specifically including compliance with any multiyear contract value authority adopted by
479 the Georgia State Financing and Investment Commission for each fiscal year.

480 50-5C-5.

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

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

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

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

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

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

494 (6) A process for the periodic and final inspection of the qualifying project by the
495 responsible public entity to ensure that the private entity's activities are in accordance
496 with the provisions of the comprehensive agreement;

497 (7) Delivery of performance and payment bonds in the amounts required in Code
498 Sections 13-10-40, 13-10-41, and 13-10-60 and in a form acceptable to the responsible
499 public entity for those components of the qualifying project that involve construction, and
500 bonds, letters of credit, or other forms of security acceptable to the responsible public
501 entity for other phases and components of the development of the qualifying project;

502 (8) Submission of a policy or policies of public liability insurance, copies of which shall
503 be filed with the responsible public entity accompanied by proofs of coverage, or
504 self-insurance, each in form and amount satisfactory to the responsible public entity and
505 reasonably sufficient to ensure coverage of tort liability to the public and employees and
506 to enable the continued operation of the qualifying project;

507 (9) A process for monitoring the practices of the private entity by the responsible public
508 entity to ensure that the qualifying project is properly maintained;

509 (10) The filing of appropriate financial statements to the responsible public entity on a
510 periodic basis; and

511 (11) Provisions governing the rights and responsibilities of the responsible public entity
512 and the private entity in the event the comprehensive agreement is terminated or there is
513 a material default by the private entity, including conditions governing assumption of the

514 duties and responsibilities of the private entity by the responsible public entity and the
515 transfer or purchase of property or other interests of the private entity by the responsible
516 public entity, including provisions compliant with state constitutional limitations on
517 public debt.

518 (b) The comprehensive agreement may include such other terms and conditions that the
519 responsible public entity determines will serve the public purpose of this chapter and to
520 which the private entity and the responsible public entity mutually agree, including,
521 without limitation, provisions regarding unavoidable delays and provisions where the
522 authority and duties of the private entity under this chapter shall cease, and the qualifying
523 project is dedicated to the responsible public entity.

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

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

529 50-5C-6.

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

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

539 (c) The power of eminent domain shall not be delegated to any private entity with respect
540 to any project commenced or proposed pursuant to this chapter. Any responsible public
541 entity having the power of condemnation under state law may exercise such power of
542 condemnation to acquire the qualifying project in the event of a material default by the
543 private entity. Any person who has perfected a security interest in the qualifying project
544 may participate in the condemnation proceedings with the standing of a property owner.

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

549 50-5C-7.

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

555 50-5C-8.

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

561 50-5C-9.

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

566 50-5C-10.

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

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

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

577 **SECTION 4.**

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

580

SECTION 5.

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