

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 50 of the Official Code of Georgia Annotated, relating to state government,
2 so as to enact the "State and Local Public-Private Partnership Act of 2010"; to state
3 legislative findings and intent that certain state and local government programs and services
4 may be carried out and delivered with greater efficiency or at a reduced cost through
5 public-private partnerships; to provide for implementation through the existing Commission
6 for a New Georgia and the director of Implementation; to provide for powers and duties of
7 the director in encouraging and facilitating state and local partnership initiatives; to provide
8 for required elements of partnership initiatives; to provide for related matters; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

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

14 "CHAPTER 5C

15 50-5C-1.

16 This chapter shall be known and may be cited as the 'State and Local Public-Private
17 Partnership Act of 2010.'

18 5-5C-2.

19 The General Assembly finds that:

20 (1) Many, but not all, state and local government programs and services may be carried
21 out and delivered with greater efficiency or at a reduced cost through public-private
22 partnerships;

23 (2) Certain other state and local government programs and services are inherently
 24 governmental and not appropriately subject to privatization;

25 (3) There exists a need to provide within state government a central repository of
 26 knowledge and expertise with respect to public-private partnerships in order to encourage
 27 and facilitate state and local government efforts in this area where practicable and
 28 beneficial; and

29 (4) The existing Commission for a New Georgia and director of Implementation within
 30 the office of the Governor provide an appropriate framework for the development of such
 31 knowledge and expertise.

32 50-5C-3.

33 As used in this chapter, the term:

34 (1) 'Agency' means any department, board, bureau, commission, authority, or other
 35 agency of the state.

36 (2) 'Commission' means the Commission for a New Georgia, Inc., a not for profit
 37 domestic Georgia corporation.

38 (3) 'Director' means the director of Implementation within the office of the Governor.

39 (4) 'Government' may mean state government, a state agency, or a political subdivision
 40 of the state, as determined by the context.

41 (5) 'Partnership initiative' means the development of a public-private partnership for the
 42 carrying out or delivery of one or more state or local government programs or services.

43 50-5C-4.

44 The director, with the advice and guidance of the commission, shall have the following
 45 powers and duties under this chapter, in addition to any other powers and duties previously
 46 vested in the director by the Governor:

47 (1) To identify state programs and services which are candidates for partnership
 48 initiatives through the process described in Code Section 50-5C-5;

49 (2) To identify local programs and services which are candidates for partnership
 50 initiatives through the process described in Code Section 50-5C-6;

51 (3) Upon request, to review and comment on proposed partnership initiatives of state and
 52 local government;

53 (4) To provide advice and technical assistance with respect to the planning, awarding,
 54 and implementation of partnership initiatives of state and local government;

55 (5) To provide an annual report to the Governor, the Lieutenant Governor, and the
 56 Speaker of the House of Representatives with respect to the development and
 57 implementation of partnership initiatives by state and local government.

58 50-5C-5.

59 (a) Each state agency shall annually provide to the director a compilation of all programs
60 and services carried out and delivered by the agency, together with the agency's evaluation
61 of whether each program or service is a candidate for a partnership initiative or is an
62 inherently governmental activity which is not a candidate for a partnership initiative.

63 (b) For those agencies which are budget units or otherwise submit budget requests, the
64 compilation provided for in subsection (a) of this Code section shall be a part of the agency
65 budget request. For an agency which does not submit a budget request, the compilation
66 shall be provided to the director as a separate submission.

67 (c) Based on a review of agency compilations by the commission and the director, the
68 director shall as part of the annual report include a state-wide compilation of programs and
69 services which are in the director's opinion candidates for partnership initiatives, with a
70 ranking of suitability based on likely increased efficiency or cost savings or both.

71 (d) The agency compilations and the director's state-wide compilation shall also include
72 a listing of currently pending and previously implemented partnership initiatives and an
73 evaluation of their success.

74 50-5C-6.

75 (a) Each county, municipal corporation, and local school district in this state is encouraged
76 to annually provide to the director a compilation of all programs and services carried out
77 and delivered by such political subdivision, together with the governing body's evaluation
78 of whether each program or service is a candidate for a partnership initiative or is an
79 inherently governmental activity which is not a candidate for a partnership initiative.

80 (b) Based on a review of political subdivision compilations by the commission and the
81 director, the director shall as part of the annual report include a state-wide compilation of
82 programs and services which are in the director's opinion candidates for partnership
83 initiatives, with a ranking of suitability based on likely increased efficiency or cost savings
84 or both.

85 (c) The political subdivision compilations and the director's state-wide compilation shall
86 also include a listing of currently pending and previously implemented partnership
87 initiatives and an evaluation of their success.

88 (d) In order to be eligible for a grant of state funds under Code Section 50-5C-7, a political
89 subdivision shall have participated in the compilation process provided for in this Code
90 section for all years in which such process has been in effect or for the three most recent
91 years, whichever is less.

92 50-5C-7.

93 Funds may be appropriated to the Department of Community Affairs for grants to political
94 subdivisions to evaluate, implement, or evaluate and implement partnership initiatives.
95 The award of any such grant shall require the prior review and approval of the director.

96 50-5C-8.

97 State agency implementation of partnership initiatives which have been reviewed and
98 approved by the director shall be eligible for the system of financial incentives to
99 encourage agencies to identify and propose cost-saving initiatives provided for in Code
100 Section 45-12-95.

101 50-5C-9.

102 No existing law of this state shall be construed to prohibit the carrying out of a program or
103 the delivery of a service through a partnership initiative unless such law by its express
104 terms clearly and definitely requires a purely governmental activity.

105 50-5C-10.

106 In addition to any other terms or conditions which may be specified by the director, a
107 proposed partnership initiative shall include:

108 (1) A detailed description of the program or service for which the outsourcing is
109 proposed;

110 (2) A description and analysis of the current governmental performance of the program
111 or service;

112 (3) The goals desired to be achieved through the proposed outsourcing and the rationale
113 for such goals;

114 (4) A citation to the existing or proposed legal authority for the program or service;

115 (5) A description of available options for achieving the goals;

116 (6) An analysis of the advantages and disadvantages of each option, including, at a
117 minimum, potential performance improvements and risks;

118 (7) A description of the current market for the contractual services that are under
119 consideration for outsourcing;

120 (8) A cost-benefit analysis documenting the direct and indirect specific baseline costs,
121 savings, and qualitative and quantitative benefits involved in or resulting from the
122 implementation of the recommended option or options. Such analysis shall specify the
123 schedule that, at a minimum, must be adhered to in order to achieve the estimated
124 savings. All elements of cost shall be clearly identified in the cost-benefit analysis,

- 125 described in the proposed partnership initiative, and supported by applicable records and
126 reports;
- 127 (9) A description of differences among current government policies and processes and,
128 as appropriate, a discussion of options for or a plan to standardize, consolidate, or revise
129 current policies and processes, if any, to reduce the customization of any proposed
130 solution that would otherwise be required;
- 131 (10) A description of the specific performance standards that shall, at a minimum, be met
132 to ensure adequate performance;
- 133 (11) The projected time frame for key events from the beginning of the procurement
134 process through the expiration of a contract;
- 135 (12) A plan to ensure compliance with the public records law;
- 136 (13) A specific and feasible contingency plan addressing contractor nonperformance and
137 a description of the tasks involved in and costs required for its implementation;
- 138 (14) A transition plan for addressing changes in the number of government personnel,
139 affected business processes, employee transition issues, and communication with affected
140 stakeholders, such as agency clients and the public. The transition plan shall contain a
141 reemployment and retraining assistance plan for employees who are not retained by
142 government employer or employed by the contractor;
- 143 (15) A plan for ensuring access by persons with disabilities in compliance with
144 applicable state and federal law;
- 145 (16) A description of any legislative and budgetary actions necessary to accomplish the
146 proposed outsourcing;
- 147 (17) A scope-of-work provision that clearly specifies each service or deliverable to be
148 provided, including a description of each deliverable or activity that is quantifiable,
149 measurable, and verifiable;
- 150 (18) A service-level-agreement provision describing all services to be provided under the
151 terms of the agreement, the government's service requirements and performance
152 objectives, specific responsibilities of the government and the contractor, and the process
153 for amending any portion of the service-level agreement. Each service-level agreement
154 shall contain an exclusivity clause that allows the government to retain the right to
155 perform the program or service, directly or with another contractor, if service levels are
156 not being achieved;
- 157 (19) A provision that identifies all associated costs, specific payment terms, and payment
158 schedules, including provisions governing incentives and financial disincentives and
159 criteria governing payment;
- 160 (20) A provision that identifies a clear and specific transition plan that shall be
161 implemented in order to complete all required activities needed to transfer the program

162 or service from the government to the contractor and operate the program or service
163 successfully;

164 (21) A performance-standards provision that identifies all required performance
165 standards, which shall include, at a minimum:

166 (A) Detailed and measurable acceptance criteria for each deliverable and service to be
167 provided to the government under the terms of the contract which document the
168 required performance level;

169 (B) A method for monitoring and reporting progress in achieving specified
170 performance standards and levels; and

171 (C) The sanctions or disincentives that shall be imposed for nonperformance by the
172 contractor or the government;

173 (22) A provision that requires the contractor and its subcontractors to maintain adequate
174 accounting records that comply with all applicable federal and state laws and generally
175 accepted accounting principles;

176 (23) A provision that authorizes the government to have access to and to audit all records
177 related to the contract and subcontracts, or any responsibilities or functions under the
178 contract and subcontracts, for purposes of legislative oversight, and a requirement for
179 audits by a service organization in accordance with professional auditing standards, if
180 appropriate;

181 (24) A provision that requires the contractor to interview and consider for employment
182 with the contractor each displaced government employee who is interested in such
183 employment;

184 (25) A contingency-plan provision that describes the mechanism for continuing the
185 operation of the program or service, including transferring the program or service back
186 to the government or a successor contractor if the contractor fails to perform and comply
187 with the performance standards and levels of the contract and the contract is terminated;

188 (26) A provision that requires the contractor and its subcontractors to comply with public
189 records laws and specifically to:

190 (A) Keep and maintain the public records that ordinarily and necessarily would be
191 required by the government in order to perform the program or service;

192 (B) Provide the public with access to such public records on the same terms and
193 conditions that the government would provide the records;

194 (C) Ensure that records that are exempt or records that are confidential and exempt are
195 not disclosed except as authorized by law; and

196 (D) Meet all requirements for retaining records and transfer to the government, at no
197 cost, all public records in possession of the contractor upon termination of the contract
198 and destroy any duplicate public records that are exempt or confidential and exempt.

199 All records stored electronically shall be provided to the government in a format that
200 is compatible with the information technology systems of the government;
201 (27) A provision that addresses ownership of intellectual property; and
202 (28) If applicable, a provision that allows the government to purchase from the
203 contractor, at its depreciated value, assets used by the contractor in the performance of
204 the contract."

205 **SECTION 2.**
206 All laws and parts of laws in conflict with this Act are repealed.