

The House Committee on Transportation offers the following substitute to HB 1090:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to  
2 contracts for public works, and Article 4 of Chapter 2 of Title 32 of the Official Code of  
3 Georgia Annotated, relating to exercise of power to contract by the Department of  
4 Transportation generally, so as to provide that a contractor that is more than 25 percent  
5 behind in the performance of certain contracts due to the fault of such contractor shall not be  
6 eligible to bid on any additional state public works construction contracts or Department of  
7 Transportation construction or maintenance contracts until such time as the performance of  
8 such contracts is brought current or is completed; to provide for a determination of fault; to  
9 provide for related matters; to provide an effective date; to repeal conflicting laws; and for  
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to contracts for  
14 public works, is amended by adding a new Article 3 to read as follows:

15 style="text-align:center">"ARTICLE 3

16 13-10-100.

17 (a) A contractor that is found to be more than 25 percent behind in the performance of any  
18 combination of two or more of any of the following:

19 (1) State public works construction contracts; or

20 (2) Department of Transportation construction or maintenance contracts

21 based on a final determination that such delay was due to the fault of such contractor shall  
22 not be eligible to bid on any additional state public works construction contracts or  
23 Department of Transportation construction or maintenance contracts until such time as the  
24 performance of such contracts is brought current or is completed.

1 (b) The determination of whether such contractor is behind in its performance and the  
 2 cause of such delay shall be made in accordance with all applicable contract terms and  
 3 provisions, including the requirements for determination of the contract time of  
 4 performance, the contractor's right to request a time extension, resolution of any  
 5 controversy or dispute involving the time of performance, mediation, and all subsequent  
 6 procedures or processes available under or allowed by the contract, to finally resolve any  
 7 such controversy. Before such final determination is applied against a contractor, the  
 8 determination may be appealed de novo to the applicable court."

## 9 SECTION 2.

10 Article 4 of Chapter 2 of Title 32 of the Official Code of Georgia Annotated, relating to  
 11 exercise of power to contract by the Department of Transportation generally, is amended by  
 12 adding a new Code Section 32-2-66.1 to read as follows:

13 "32-2-66.1.

14 (a) A contractor that is found to be more than 25 percent behind in the performance of any  
 15 combination of two or more of any of the following:

- 16 (1) Department of Transportation construction or maintenance contracts; or
- 17 (2) State public works contracts

18 due to the fault of such contractor shall not be eligible to bid on any additional state public  
 19 works construction contracts or Department of Transportation construction or maintenance  
 20 contracts until such time as the performance of such contracts is brought current or is  
 21 completed.

22 (b) The determination of whether such contractor is behind in its performance and the  
 23 cause of such delay shall be made by the Department of Transportation and shall be in  
 24 accordance with all applicable contract terms and provisions, including the requirements  
 25 for determination of the contract time of performance, the contractor's right to request a  
 26 time extension, resolution of any controversy or dispute involving the time of performance,  
 27 mediation, and all subsequent procedures or processes available under or allowed by the  
 28 contract, to finally resolve any such controversy. Before such final determination is  
 29 applied against a contractor, the determination may be appealed de novo to the applicable  
 30 court."

## 31 SECTION 3.

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

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**SECTION 4.**

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