

House Bill 1177 (AS PASSED HOUSE AND SENATE)

By: Representatives Smith of the 129th, Graves of the 12th, Smith of the 13th, Channell of the 116th, Wix of the 33rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 32-2-60 of the Official Code of Georgia Annotated, relating to
2 Department of Transportation construction contracts, so as to provide for bonding amounts
3 for certain projects; to provide for related matters; to provide an effective date; to repeal
4 conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

7 Code Section 32-2-60 of the Official Code of Georgia Annotated, relating to Department of
8 Transportation construction contracts, is amended by inserting after subsection (d) thereof
9 a new subsection (e) to read as follows:

10 "(e) When the estimated amount of any department construction contract exceeds \$300
11 million, performance and payment bonds shall be required in the amount of at least the
12 total amount payable by the terms of the contract unless the department, after public notice,
13 makes a written determination supported by specific findings that single bonds in such
14 amount are not reasonably available, and the board approves such determination in a public
15 meeting. In such event, the estimated value of the construction portion of the contract,
16 excluding right of way acquisition and engineering, shall be guaranteed by a combination
17 of security including, but not limited to the following:

- 18 (1) Payment, performance, surety, cosurety, or excess layer surety bonds;
19 (2) Letters of credit;
20 (3) Guaranties of the contractor or its parent companies;
21 (4) Obligations of the United States and of its agencies and instrumentalities; or
22 (5) Cash collateral.
23 (6) Provided however that the aggregate total guarantee of the project may not use a
24 corporate guarantee of more than 35%.

25 The combination of such guarantees shall be determined at the discretion of the
26 department, subject to the approval of the board; provided, however, that such aggregate

1 guarantees shall include not less than \$300 million of performance and payment bonds and
2 shall equal not less than 100 percent of the contractor's obligation under the construction
3 portion of the contract. Payment guarantees approved pursuant to this subsection shall be
4 deemed to satisfy the requirements of Code Section 13-10-61. Contractors requesting
5 payment under construction contracts guaranteed pursuant to this subsection shall provide
6 the following certification under oath with each such request: 'All payments due to
7 subcontractors and suppliers from previous payment received under the contract have been
8 made, and timely payments will be made from the proceeds of the payment covered by this
9 certification.'

10 **SECTION 2.**

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

13 **SECTION 3.**

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