

Senate Bill 175

By: Senators Grant of the 25th and Mullis of the 53rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 45-9-1 of the Official Code of Georgia Annotated, relating to
2 general provisions relative to insuring and indemnification of state officers and employees,
3 so as to clarify the meaning of criminal action; to amend Part 12 of Article 4 of Chapter 3 of
4 Title 46 of the Official Code of Georgia Annotated, relating to dissolution of electric
5 membership corporations, so as to replace "Department of Administrative Services" with
6 "Office of Treasury and Fiscal Services" where such term appears in certain Code sections;
7 to amend Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia
8 Annotated, relating to general authority, duties, and procedures for state purchasing, so as
9 to modify certain duties and provisions relating to state purchasing; to provide for related
10 matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Code Section 45-9-1 of the Official Code of Georgia Annotated, relating to general
14 provisions relative to insuring and indemnification of state officers and employees, is
15 amended by revising subsection (a) as follows:

16 "(a) In addition to any other compensation which may be paid to an officer, official, or
17 employee of any agency, board, bureau, commission, department, or authority of the
18 executive, judicial, or legislative branch of government of this state, each such agency,
19 board, bureau, commission, department, or authority is authorized, in its discretion, to
20 purchase policies of liability insurance or contracts of indemnity or to formulate sound
21 programs of self-insurance utilizing funds available to such agency, board, bureau,
22 commission, department, or authority, insuring or indemnifying such officers, officials, or
23 employees to the extent that they are not immune from liability against personal liability
24 for damages arising out of the performance of their duties or in any way connected
25 therewith. Such policies of liability insurance, contracts of indemnity, or programs of
26 self-insurance may also provide for reimbursement to an officer, official, or employee of

1 any agency, board, bureau, commission, department, or authority of the state for reasonable
 2 legal fees and other expenses incurred in the successful defense of ~~a criminal action arising~~
 3 any criminal proceeding, including, but not limited to, any criminal cause of action, suit,
 4 investigation, subpoena, warrant, request for documentation or property, or threat of such
 5 action whether formal or informal where such action arises out of the performance of his
 6 or her official duties. In addition, in the case of an officer, official, or employee who is
 7 required to maintain a professional license, such reimbursement may also be provided for
 8 legal fees and other expenses so incurred in the successful defense of a charge arising out
 9 of the performance of his or her official duties in proceedings before a professional
 10 licensing board, disciplinary board or commission, or other similar body. Legal fees and
 11 other expenses shall be subject to adjustment by and the approval of the Attorney General."

12 SECTION 2.

13 Part 12 of Article 4 of Chapter 3 of Title 46 of the Official Code of Georgia Annotated,
 14 relating to dissolution of electric membership corporations, is amended by replacing
 15 "Department of Administrative Services" with "Office of Treasury and Fiscal Services"
 16 wherever the former word occurs in:

- 17 (1) Code Section 46-3-427, relating to the execution and contents of the articles of
 18 dissolution;
 19 (2) Code Section 46-3-436, relating to the entry of a decree of involuntary dissolution;
 20 and
 21 (3) Code Section 46-3-438, relating to a deposit with the Department of Administrative
 22 Services of an amount due to unknown, disabled, or unlocatable creditors or members.

23 SECTION 3.

24 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,
 25 relating to general authority, duties, and procedures for state purchasing, is amended by
 26 revising subsection (b) of Code Section 50-5-67, relating to competitive bidding procedure,
 27 as follows:

28 "(b)(1) Except as otherwise provided for in this part, all contracts for the purchases of
 29 supplies, materials, equipment, or services other than professional and personal
 30 employment services made under this part shall, wherever possible, be based upon
 31 competitive bids and shall be awarded to the lowest responsible bidder, taking into
 32 consideration the quality of the articles to be supplied and conformity with the ~~standard~~
 33 specifications which have been established and prescribed, the purposes for which the
 34 articles are required, the discount allowed for prompt payment, the transportation charges,
 35 and the date or dates of delivery specified in the bid and any other cost affecting the total

1 cost of ownership during the life cycle of the supplies, materials, ~~or~~ equipment, or
 2 services as specified in the solicitation document. Competitive bids on such contracts
 3 shall be received in accordance with rules and regulations to be adopted by the
 4 commissioner of administrative services, which rules and regulations shall prescribe,
 5 among other things, the manner, time, and places for proper advertisement for the bids,
 6 indicating the time and place when the bids will be received; the article for which the bid
 7 shall be submitted and the ~~standard~~ specification prescribed for the article; the amount
 8 or number of the articles desired and for which the bids are to be made; and the amount,
 9 if any, of bonds or certified checks to accompany the bids. Any and all bids so received
 10 may be rejected.

11 (2) As provided in the request for bids pursuant to the competitive sealed bidding process
 12 and Department of Administrative Services regulations, discussions may be conducted
 13 with qualified bidders who submit bids determined to be reasonably susceptible to being
 14 selected for award, for the purpose of clarification to assure full understanding of and
 15 responsiveness to the solicitation requirements. Bidders shall be accorded fair and equal
 16 treatment with respect to any opportunity for discussion and clarification of bids. After
 17 such clarifications, revisions may be permitted to the bids prior to award for the purpose
 18 of obtaining best and final offers. The Department of Administrative Services is
 19 authorized to solicit multiple revisions to bids for the purpose of obtaining the most
 20 advantageous bid to this state. In conducting discussions or soliciting any revisions, there
 21 shall be no disclosure of any information contained in the bids submitted by competing
 22 offerors. However, this prohibition on disclosure of information shall not prohibit the
 23 Department of Administrative Services from disclosing to competing bidders any
 24 preliminary rankings of competing bidders' bids during the course of any negotiations or
 25 revisions of bids other than with respect to the procurement of construction contracts.
 26 The award shall be made to the lowest responsive and responsible bidder whose bid is
 27 determined in writing to be the most advantageous to this state, taking into consideration
 28 the quality of the articles to be supplied and conformity with the standard specifications
 29 which have been established and prescribed, the discount allowed for prompt payment,
 30 the transportation charges, the date or dates of delivery specified in the bid, and any other
 31 cost affecting the total cost of ownership during the life cycle of the supplies, materials,
 32 or equipment as specified in the solicitation document. No other factors or criteria shall
 33 be used in the evaluation. The contract file shall contain the basis on which the award is
 34 made."

35 SECTION 4.

36 Said Code section is further amended by revising subsection (d) as follows:

1 “(d)(1) Except as otherwise provided for in this part, the Department of Administrative
2 Services shall publish, prior to award or letting of the contracts, notice of its intent to
3 award a contract to the successful bidder or offeror on public display in a conspicuous
4 place in the department’s office, on the Georgia Procurement Registry, or both so that it
5 may be easily seen by the public. The public notice on public display shall also state the
6 price or the amount for which the contract may be awarded, the commodities or services
7 to be covered by the contract which may be awarded, and the names of all persons whose
8 bids, offers, or proposals were rejected by the department, together with a statement
9 giving the reasons for the rejection.

10 (2) Every bid or proposal conforming to the terms of the advertisement provided for in
11 this Code section, together with the name of the bidder, shall be recorded, and all such
12 records with the name of the successful bidder or offeror indicated thereon shall, within
13 one day after ~~award or letting of the contract~~ the issuance of the department’s public
14 notice of intent to award to the successful bidder or offeror, be subject to public
15 inspection upon request.

16 (3) The Department of Administrative Services shall also, within one day after the award
17 or letting of the contract, publish the name of the successful bidder or offeror on public
18 display in a conspicuous place in the department’s office or on the Georgia Procurement
19 Registry so that it may be easily seen by the public. The public notice on public display
20 shall also show the price or the amount for which the contract was let and the
21 commodities covered by the contract. The Department of Administrative Services shall
22 also, within one day after the award or letting of the contract, publish on public display
23 the names of all persons whose bids, offers, or proposals were rejected by it, together
24 with a statement giving the reasons for such rejection.

25 ~~(4) Bids, offers, or proposals shall be opened in public by the~~ The Department of
26 Administrative Services, ~~which~~ shall canvass the bids, offers, or proposals and award the
27 contract according to the terms of this part. The Department of Administrative Services
28 shall prepare a register of bids, offers, or proposals which will become available for
29 public inspection upon request within one day after the issuance of the department’s
30 public notice of intent to award to the successful bidder or offeror. The bids, offers, or
31 proposals shall not be subject to public disclosure until after the issuance of the public
32 notice of intent to award a contract to the successful bidder or offeror except that audited
33 financial statements not otherwise publicly available but required to be submitted in the
34 bid, offer, or proposal shall not be subject to public disclosure.

35 (5) Records related to the competitive bidding and proposal process which, if disclosed
36 prior to the issuance of the public notice of intent to award would undermine the public
37 purpose of obtaining the best value for this state, shall not be subject to public disclosure

1 until after the department's issuance of its public notice of intent to award a contract to
 2 the successful bidder or offeror. Such records include but are not limited to cost
 3 estimates, bids, proposals, evaluation criteria, vendor evaluations, negotiation documents,
 4 offers and counter-offers, and records revealing preparation for the procurement.

5 (6) A proper bond for the faithful performance of any contract shall be required of the
 6 successful bidder or offeror in the discretion of the Department of Administrative
 7 Services. After the contracts have been awarded, the Department of Administrative
 8 Services shall certify to the offices, agencies, departments, boards, bureaus, commissions,
 9 institutions, or other entities of the state the sources of the supplies and the contract price
 10 of the various supplies, materials, services, and equipment so contracted for.

11 SECTION 5.

12 Said Code section is further amended by revising subsection (f) as follows:

13 "(f) Notwithstanding any other provision of this article, the commissioner of administrative
 14 services is authorized to promulgate rules and regulations to govern auctions conducted by
 15 state agencies in which vendors' prices are made public during the bidding process to
 16 enable the state agency or agencies to seek a lower price. This auction bidding process will
 17 continue until the lowest price is obtained within the auction's time limit. As provided in
 18 the written terms of the auction and Department of Administrative Services regulations,
 19 discussions may be conducted with qualified bidders who submit bids determined to be
 20 reasonably susceptible to being selected for award, for the purpose of clarification to assure
 21 full understanding of and responsiveness to the solicitation requirements. Bidders shall be
 22 accorded fair and equal treatment with respect to any opportunity for discussion and
 23 clarification of bids. After such clarifications, revisions may be permitted to the bids prior
 24 to award for the purpose of obtaining best and final offers. The Department of
 25 Administrative Services is authorized to solicit multiple revisions to bids for the purpose
 26 of obtaining the most advantageous bid to this state. In conducting discussions or soliciting
 27 any revisions, there shall be no disclosure of any information contained in bids submitted
 28 by competing offerors. However, this prohibition on disclosure of information shall not
 29 prohibit the Department of Administrative Services from disclosing to competing bidders
 30 pricing or any preliminary rankings of competing bidders' bids during the course of any
 31 negotiations or revisions of bids. This auction bidding process shall not be used to procure
 32 construction services or for any contract for goods or services valued at less than
 33 \$100,000.00. "

- 1 **SECTION 6.**
- 2 All laws and parts of laws in conflict with this Act are repealed.