

Senate Bill 447

By: Senators Bulloch of the 11th, Tolleson of the 20th, Rogers of the 21st, Williams of the 19th, Hill of the 4th and others

**AS PASSED**

**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, so as to provide certain contractual and purchasing preferences  
 3 for materials and in letting contracts to materialmen, contractors, builders, architects,  
 4 engineers, and laborers who reside within this state; to provide standards for construction  
 5 projects; to provide a definition; to clarify certain provisions and requirements relating to  
 6 public employers' verification of employee work eligibility; to amend Title 20 of the Official  
 7 Code of Georgia Annotated, relating to education, so as to provide certain contractual and  
 8 purchasing preferences for vendors who reside within this state; to provide for related  
 9 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for  
 10 other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **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 Code section to Part 1 of Article 1, relating to  
 15 bonds, to read as follows:

16 "13-10-3.

17 (a) For the purpose of determining residency under this Code section, a Georgia resident  
 18 business shall include any business that regularly maintains a place from which business  
 19 is physically conducted in Georgia for at least one year prior to any bid or proposal  
 20 submitted pursuant to this Code section or a new business that is domiciled in Georgia  
 21 which regularly maintains a place from which business is physically conducted in Georgia;  
 22 provided, however, that a place of business shall not include a post office box, site trailer,  
 23 or temporary structure.

24 (b) Whenever the state contracts for the doing of a public work, materialmen, contractors,  
 25 builders, architects, engineers, and laborers resident in the State of Georgia are to be  
 26 granted the same preference over materialmen, contractors, builders, architects, engineers,  
 27 and laborers resident in another state in the same manner, on the same basis, and to the

28 same extent that preference is granted in awarding bids for the same goods or services by  
 29 such other state to materialmen, contractors, builders, architects, engineers, and laborers  
 30 resident in such other state over materialmen, contractors, builders, architects, engineers,  
 31 and laborers resident in the State of Georgia. However, these requirements shall in no way  
 32 impair the ability of the state to compare the quality of materials proposed for purchase and  
 33 to compare the qualifications, character, responsibility, and fitness of materialmen,  
 34 contractors, builders, architects, engineers, and laborers proposed for employment in its  
 35 consideration of the purchase of materials or employment of persons. This subsection shall  
 36 not apply to transportation projects for which federal aid funds are available.

37 (c) All state agencies, authorities, departments, commissions, boards, and similar entities  
 38 shall adhere to the policies and procedures contained in the State Construction Manual for  
 39 project management and procurement of, and contracting for, design, construction, and  
 40 other project related professional services for all state owned buildings in Georgia funded  
 41 by state bonds or other state revenue. The State Construction Manual shall be jointly  
 42 edited and posted on a state website by the Georgia State Financing and Investment  
 43 Commission and the Board of Regents and shall be updated on a periodic basis to reflect  
 44 evolving owner needs and industry best practices after consultation with other state agency  
 45 and industry stakeholders."

## 46 **SECTION 2.**

47 Said chapter is further amended by revising Code Section 13-10-90, relating to definitions  
 48 relative to security and immigration compliance, by adding a new paragraph to read as  
 49 follows:

50 "(2.1) 'Physical performance of services' means the building, altering, repairing,  
 51 improving, or demolishing of any public structure or building or other public improvements  
 52 of any kind to public real property, including the construction, reconstruction, or  
 53 maintenance of all or part of a public road; or any other performance of labor for a public  
 54 employer under a contract or other bidding process."

## 55 **SECTION 2.A**

56 Said chapter is further amended by revising subsection (b) of Code Section 13-10-91, relating  
 57 to the verification of new employee eligibility, applicability, and rules and regulations, as  
 58 follows:

59 "(b)(1) No public employer shall enter into a contract pursuant to this chapter for the  
 60 physical performance of services within this state unless the contractor registers and  
 61 participates in the federal work authorization program to verify information of all newly  
 62 hired employees or subcontractors. Before a bid for any such service is considered by a

63 public employer, the bid shall include a signed, notarized affidavit from the contractor  
64 attesting to the following:

65 (A) The affiant has registered with and is authorized to use the federal work  
66 authorization program;

67 (B) The user identification number and date of authorization for the affiant; and

68 (C) The affiant is using and will continue to use the federal work authorization  
69 program throughout the contract period.

70 An affidavit required by this subsection shall be considered an open public record once  
71 a public employer has entered into a contract for physical performance of services;  
72 provided, however, that any information protected from public disclosure by federal law  
73 or by Article 4 of Chapter 18 of Title 50 shall be redacted. Affidavits shall be maintained  
74 by the public employer for five years from the date of receipt.

75 (2) No contractor or subcontractor who enters a contract pursuant to this chapter with a  
76 public employer or a contractor of a public employer shall enter into such a contract or  
77 subcontract in connection with the physical performance of services within this state  
78 unless the contractor or subcontractor registers and participates in the federal work  
79 authorization program to verify information of all newly hired employees. Any  
80 employee, contractor, or subcontractor of such contractor or subcontractor shall also be  
81 required to satisfy the requirements of this paragraph.

82 (3) Upon contracting with a new subcontractor, a contractor or subcontractor shall, as a  
83 condition of any contract or subcontract entered into pursuant to this chapter, provide a  
84 public employer with notice of the identity of any and all subsequent subcontractors hired  
85 or contracted by that contractor or subcontractor. Such notice shall be provided within  
86 five business days of entering into a contract or agreement for hire with any  
87 subcontractor. Such notice shall include an affidavit from each subsequent contractor  
88 attesting to the subcontractor's name, address, user identification number, and date of  
89 authorization to use the federal work authorization program.

90 (4) Contingent upon appropriation or approval of necessary funding and in order to  
91 verify compliance with the provisions of this subsection, each year the Commissioner  
92 shall conduct no fewer than 100 random audits of public employers and contractors. The  
93 results of the audits shall be published on the [www.open.georgia.gov](http://www.open.georgia.gov) website and on the  
94 Georgia Department of Labor's website no later than December 31 of each year. The  
95 Georgia Department of Labor shall seek funding from the United States Secretary of  
96 Labor to the extent such funding is available.

97 (5) Any person who knowingly and willfully makes a false, fictitious, or fraudulent  
98 statement in an affidavit submitted pursuant to this subsection shall be guilty of a  
99 violation of Code Section 16-10-20 and, upon conviction, shall be punished as provided

100 in such Code section. Contractors and subcontractors convicted for false statements  
 101 based on a violation of this subsection shall be prohibited from bidding on or entering  
 102 into any public contract for 12 months following such conviction."

103 **SECTION 3.**

104 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by  
 105 revising Code Section 20-2-500, relating to promulgation of rules and regulations by the  
 106 State Board of Education for contracts or purchases over \$100.00, as follows:

107 "20-2-500.

108 (a) The State Board of Education is authorized to promulgate rules and regulations to  
 109 regulate contracts or purchases which involve the aggregate sum of \$100.00 or more for  
 110 or on behalf of students of any public elementary or secondary school supported in whole  
 111 or in part from public funds.

112 (b)(1) Such rules shall provide that such contracts for or purchases of supplies, materials,  
 113 equipment, or agricultural products, including but not limited to school buses but not  
 114 including instructional materials or beverages for immediate consumption, for public  
 115 elementary and secondary schools supported in whole or in part from public funds shall  
 116 give preference as far as may be reasonable and practicable to such supplies, materials,  
 117 equipment, and agricultural products as may be manufactured or produced in this state.  
 118 Such preference shall not sacrifice quality.

119 (2) Such rules shall provide that, in determining whether such a preference is reasonable  
 120 in any case where the value of a contract for or purchase of such supplies, materials,  
 121 equipment, or agricultural products exceeds \$100,000.00, the local school district shall  
 122 consider, among other factors, information submitted by the bidder which may include  
 123 the bidder's estimate of the multiplier effect on gross state domestic product and the effect  
 124 on public revenues of the state and the effect on public revenues of political subdivisions  
 125 resulting from acceptance of a bid or offer to sell Georgia manufactured or produced  
 126 goods as opposed to out-of-state manufactured or produced goods. Any such estimates  
 127 shall be in writing. No local school district shall divide a contract or purchase which  
 128 exceeds \$100,000.00 for the purpose of avoiding the requirements of this paragraph.

129 (c) Vendors resident in the State of Georgia are to be granted the same preference over  
 130 vendors resident in another state in the same manner, on the same basis, and to the same  
 131 extent that preference is granted in awarding bids for the same goods or services by such  
 132 other state to vendors resident therein over vendors resident in the State of Georgia.

133 ~~(c)~~(d) Nothing in this Code section shall negate the requirements of Code  
 134 Section 50-5-73."

135 **SECTION 4.**

136 This Act shall become effective on July 1, 2010, and shall apply to all contracts which are  
137 first advertised or otherwise given public notice on or after that date.

138 **SECTION 5.**

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