

Senate Bill 184

By: Senator Weber of the 40th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 10 of the Official Code of Georgia Annotated,
2 relating to relative rights of creditor and surety, so as to provide for certain requirements
3 regarding service of a notice of commencement to a contractor; to provide for the
4 computation of time under certain circumstances; to provide for a procedure for the
5 application of certain forms; to amend Part 4 of Article 1 of Chapter 10 of Title 13 of the
6 Official Code of Georgia Annotated, relating to payment bonds, so as to provide for certain
7 requirements regarding service to a contractor; to provide for a procedure for the application
8 of certain forms; to amend Part 4 of Article 3 of Chapter 91 of Title 36 of the Official Code
9 of Georgia Annotated, relating to payment bonds, so as to provide for certain requirements
10 regarding service to a contractor; to provide for a procedure for the application of certain
11 forms; to provide for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

14 Article 2 of Chapter 7 of Title 10 of the Official Code of Georgia Annotated, relating to
15 relative rights of creditor and surety, is amended by revising Code Section 10-7-31, relating
16 to rights of certain parties claiming protection under a payment bond or security deposit and
17 notice of commencement of work, as follows:

18 "10-7-31.

19 (a) Where a payment bond or security deposit is provided pursuant to a contract for the
20 construction of an improvement to property other than a public work, every person entitled
21 to claim the protection of the payment bond or security deposit who has not been paid in
22 full for labor or material furnished in the prosecution of the work referred to in such bond
23 or security deposit after the last of the labor was done or performed by him or her or the
24 material or equipment or machinery was furnished or supplied by him or her for which
25 such claim is made, or when he or she has completed his or her subcontract for which such
26 claim is made, shall have the right to bring an action on such payment bond or security

27 deposit in accordance with the terms thereof for the amount, or the balance thereof, unpaid
28 at the time of the commencement of such action and to prosecute such action to final
29 execution and judgment for the sum or sums due him or her; provided, however, that any
30 person having no contractual relationship express or implied with the contractor furnishing
31 such payment bond or security deposit on a project where the contractor has complied with
32 the ~~Notice of Commencement~~ notice of commencement requirements in accordance with
33 subsection (b) of this Code section shall not have the right to bring an action on such
34 payment bond or security deposit in accordance with the terms thereof unless such person
35 gave to the contractor within 30 days from the filing of the ~~Notice of Commencement~~
36 notice of commencement or 30 days following the first delivery of labor, material,
37 machinery, or equipment, whichever is later, a written notice to contractor. ~~Notice to~~
38 ~~Contractor setting forth~~. The notice to the contractor shall be served by registered or
39 certified mail or statutory overnight delivery, postage prepaid, duly addressed to the
40 contractor, at any place at which the contractor maintains an office or conducts his or her
41 business or at his or her residence, by depositing such notice in any post office or branch
42 post office or any letter box under the control of the United States Postal Service;
43 alternatively, notice may be served in any manner in which the sheriffs of this state are
44 authorized by law to serve summons or process. The notice to contractor shall set forth:

- 45 (1) The name, address, and telephone number of the person providing labor, material,
46 machinery, or equipment;
- 47 (2) The name and address of each person at whose instance the labor, material,
48 machinery, or equipment are being furnished;
- 49 (3) The name and location of the project set forth in the ~~Notice of Commencement~~ notice
50 of commencement; and
- 51 (4) A description of the labor, material, machinery, or equipment being provided and, if
52 known, the contract price or anticipated value of the labor, material, machinery, or
53 equipment to be provided or the amount claimed to be due, if any.

54 (b) Where a payment bond or security deposit is provided pursuant to a contract for the
55 construction of an improvement to property other than a public work, the contractor
56 furnishing the payment bond or security deposit shall post on the project site and file with
57 the clerk of the superior court of the county in which the project is located a ~~Notice of~~
58 ~~Commencement~~ notice of commencement no later than 15 days after the contractor
59 physically commences work on the project and give a copy of the ~~Notice of~~
60 ~~Commencement~~ notice of commencement to any subcontractor, materialman, or person
61 who makes a written request of the contractor. Failure to give a copy of the ~~Notice of~~
62 ~~Commencement~~ notice of commencement within ten calendar days of receipt of the written
63 request from the subcontractor, materialman, or person shall render the notice to contractor

64 requirement of subsection (a) of this Code section inapplicable to the subcontractor,
 65 materialman, or person making the request. ~~Notice of Commencement~~ Notice of
 66 commencement shall include:

- 67 (1) The name, address, and telephone number of the contractor;
 68 (2) The name and location of the project being constructed and the legal description of
 69 the property upon which the improvements are being made;
 70 (3) The name and address of the true owner of the property;
 71 (4) The name and address of the person other than the owner at whose instance the
 72 improvements are being made, if not the true owner of the property;
 73 (5) The name and the address of the surety for the performance and payment bonds, if
 74 any;
 75 (6) The name and address of the construction lender, if any; and
 76 (7) The name and address of the holder of the security deposit provided, if any.
- 77 (c) The failure to file a ~~Notice of Commencement~~ notice of commencement under
 78 subsection (b) of this Code section shall render the ~~Notice to Contractor~~ notice to
 79 contractor requirements of subsection (a) of this Code section inapplicable.
- 80 (d) The clerk of the superior court shall file the ~~Notice of Commencement~~ notice of
 81 commencement provided for in this Code section within the records of that office and
 82 maintain an index separate from other real estate records or an index with the preliminary
 83 notices of lien specified in subsection (a) of Code Section 44-14-361.3. Each such ~~Notice~~
 84 ~~of Commencement~~ notice of commencement shall be indexed under the name of the true
 85 owner and the contractor as contained in the ~~Notice of Commencement~~ notice of
 86 commencement."

87 **SECTION 2.**

88 Said article is further amended by adding a new Code section to read as follows:

89 "10-7-32.

90 For purposes of this article:

- 91 (1) The computation of time shall be determined pursuant to paragraph (3) of
 92 subsection (d) of Code Section 1-3-1.
- 93 (2) The provisions of Code Section 44-14-366 regarding interim waiver and release upon
 94 payment, waiver and release upon final payment, and the affidavit of nonpayment shall
 95 apply to payment bond rights and remedies under this article in the same manner and to
 96 the same extent as such provisions apply to lien rights and remedies under Code Section
 97 44-14-366."

98

SECTION 3.

99 Part 4 of Article 1 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated,
 100 relating to payment bonds, is amended by revising paragraph (1) of subsection (a) of Code
 101 Section 13-10-63, relating to pursuit of action by a person entitled to protection of a payment
 102 bond, as follows:

103 "(1) Any person having a direct contractual relationship with a subcontractor but no
 104 contractual relationship, express or implied, with the contractor furnishing such payment
 105 bond or security deposit on a public works construction project where the contractor has
 106 not complied with the notice of commencement requirements shall have the right of
 107 action upon the payment bond or security deposit upon giving written notice to the
 108 contractor within 90 days from the day on which such person did or performed the last
 109 of the labor or furnished the last of the material or machinery or equipment for which
 110 such claim is made, stating with substantial accuracy the amount claimed and the name
 111 of the party to whom the material was furnished or supplied or for whom the labor was
 112 performed or done. The notice to the contractor ~~may~~ shall be served by registered or
 113 certified mail or statutory overnight delivery, postage prepaid, duly addressed to the
 114 contractor, at any place at which the contractor maintains an office or conducts his or her
 115 business or at his or her residence, by depositing such notice in any post office or branch
 116 post office or any letter box under the control of the United States Postal Service;
 117 alternatively, notice may be served in any manner in which the sheriffs of this state are
 118 authorized by law to serve summons or process; and"

119

SECTION 4.

120 Said part is further amended by adding a new Code section to read as follows:

121 "13-10-66.

122 The provisions of Code Section 44-14-366 regarding interim waiver and release upon
 123 payment, waiver and release upon final payment, and the affidavit of nonpayment shall
 124 apply to payment bond rights and remedies under this part in the same manner and to the
 125 same extent as such provisions apply to lien rights and remedies under Code Section
 126 44-14-366."

127

SECTION 5.

128 Part 4 of Article 3 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated,
 129 relating to payment bonds, is amended by revising paragraph (1) of subsection (a) of Code
 130 Section 36-91-93, relating to rights of person protected by payment bond or security deposit,
 131 as follows:

132 "(1) Any person having a direct contractual relationship with a subcontractor but no
133 contractual relationship, express or implied, with the contractor furnishing such payment
134 bond or security deposit on a public works construction project where the contractor has
135 not complied with the notice of commencement requirements shall have the right of
136 action upon the payment bond or security deposit upon giving written notice to the
137 contractor within 90 days from the day on which such person did or performed the last
138 of the labor or furnished the last of the material or machinery or equipment for which
139 such claim is made, stating with substantial accuracy the amount claimed and the name
140 of the party to whom the material was furnished or supplied or for whom the labor was
141 performed or done. The notice to the contractor ~~may~~ shall be served by registered or
142 certified mail, postage prepaid, or statutory overnight delivery, duly addressed to the
143 contractor, at any place at which the contractor maintains an office or conducts his or her
144 business or at his or her residence, by depositing such notice in any post office or branch
145 post office or any letter box under the control of the United States Postal Service;
146 alternatively, notice may be served in any manner in which the sheriffs of this state are
147 authorized by law to serve summons or process; and"

148 **SECTION 6.**

149 Said part is further amended by adding a new Code section to read as follows:

150 "36-91-96.

151 The provisions of Code Section 44-14-366 regarding interim waiver and release upon
152 payment, waiver and release upon final payment, and the affidavit of nonpayment shall
153 apply to payment bond rights and remedies under this part in the same manner and to the
154 same extent as such provisions apply to lien rights and remedies under Code Section
155 44-14-366."

156 **SECTION 7.**

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