

Senate Bill 194

By: Senators Chance of the 16th, Rogers of the 21st, Seabaugh of the 28th and Staton of the 18th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia
2 Annotated, relating to state purchasing in general, so as to revise provisions relating to
3 benefits based funding projects in which payments to vendors depend upon the realization
4 of specified savings or revenue gains; to change provisions relating to such projects, their
5 required and permissible terms, and their funding; to provide for an advisory role by the
6 Georgia Environmental Facilities Authority; to change the membership of an oversight
7 committee; to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,
11 relating to state purchasing in general, is amended by revising Code Section 50-5-77, relating
12 to benefits based funding projects, as follows:

13 "50-5-77.

14 (a) As used in this Code section, the term:

15 (1) 'Agency' means every state department, agency, board, bureau, and commission
16 including without limitation the Board of Regents of the University System of Georgia.

17 (2) 'Benefits based funding project' means any governmental improvement project in
18 which payments to vendors depend upon the realization of specified savings or revenue
19 gains attributable solely to the improvements, provided that each benefits based funding
20 project is structured as follows:

21 (A) The vendor ~~promises, or accepts the condition,~~ guarantees that the improvements
22 will generate actual and quantifiable savings or enhanced revenues;

23 (B) The agency develops a measurement tool for calculating the savings or enhanced
24 revenues realized from the project; and

25 (C) The funding for the project shall be attributable solely to its successful
26 implementation for the period specified in the contract, or, where applicable, from sums

27 remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue
 28 gains.

29 (3) 'External oversight committee' means a committee composed of the executive
 30 director of the Georgia Technology Authority, the commissioner of administrative
 31 services, the director of the Office of Planning and Budget, the state auditor, the state
 32 accounting officer, the Governor's designee, the chairperson of the House Committee on
 33 Appropriations, and the chairperson of the Senate ~~Finance~~ Committee on Appropriations.

34 (4) 'Measurement tool' means the formula used to measure the actual savings or
 35 enhanced revenues and includes a means for distinguishing enhanced revenue or savings
 36 from normal activities, including the possibility of no savings or revenue growth or an
 37 increased expenditure or decline in revenue. Baseline parameters must be defined based
 38 on historical costs or revenues for a minimum of one year. The measurement tool shall
 39 use the baseline parameters to forecast savings or enhanced revenues and to determine
 40 the overall benefits and fiscal feasibility of the proposed project.

41 (5) 'Special dedicated fund' means any fund established pursuant to this Code section
 42 from which the vendor or vendors are compensated as part of a benefits based funding
 43 project. The moneys in the special dedicated fund shall be deemed contractually
 44 obligated and shall not lapse at the end of each fiscal year.

45 (b) An agency shall be authorized to enter into multiyear lease, purchase, or lease purchase
 46 contracts of all kinds for the acquisition of goods, materials, real or personal property,
 47 improvements to real property, services, construction services, renovation services, and
 48 supplies as benefits based funding projects; provided, however, that a condition precedent
 49 to the award of the contract is a competitive solicitation in compliance with any applicable
 50 purchasing laws now or hereafter enacted, including without limitation the provisions of
 51 this chapter and Chapter 25 of this title; and provided, further, that the contract shall
 52 contain provisions for the following:

53 (1) The contract shall terminate absolutely and without further obligation on the part of
 54 the agency at the close of the fiscal year in which it was executed and at the close of each
 55 succeeding fiscal year for which it may be renewed;

56 ~~(2) The contract shall terminate absolutely and without further obligation on the part of~~
 57 ~~the agency at such time as the agency determines that actual savings or incremental~~
 58 ~~revenue gains are not being generated to satisfy the obligations under the contract;~~

59 ~~(3)(2)~~ (2) The contract may be renewed only by a positive action taken by the agency;

60 (3) In addition to any other remedies available to the agency, the contract shall provide
 61 that at such time as the agency determines that actual savings or incremental revenue
 62 gains are not being generated to satisfy the obligations under the contract, the vendor
 63 shall be required to remedy the deficit in actual savings or incremental revenue gains by

64 remitting to the state an amount equal to the deficit. The vendor shall also be required
 65 to provide at contract execution and upon execution of any contract renewals an energy
 66 savings guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee
 67 from a corporation with an investment grade credit rating, or other surety instrument
 68 acceptable to the agency equal to the value of the project's annual savings or revenue
 69 gains;

70 (4) The contract shall state the total obligation of the agency for repayment for the fiscal
 71 year of execution and shall state the total obligation for repayment which will be incurred
 72 in each fiscal year renewal term, if renewed; and

73 (5) The term of the contract, including any renewal periods, may not ~~exceed~~ extend past
 74 the date that is ten years from the date of the completion of the project that is the subject
 75 of the contract., and

76 ~~(6) The agency's financial obligations under the contract are limited to and cannot exceed~~
 77 ~~the savings or incremental revenue gains, as calculated using the measurement tool,~~
 78 ~~actually generated by the benefits based funding project, even if no savings or enhanced~~
 79 ~~revenues are realized from the project.~~

80 (c) Any contract developed under this Code section containing the provisions enumerated
 81 in subsection (b) of this Code section shall be deemed to obligate the agency only for those
 82 sums payable during the fiscal year of execution or, in the event of a renewal by the
 83 agency, for those sums payable in the individual fiscal year renewal term and only to the
 84 extent that savings or enhanced revenues are attributable to the benefits based funding
 85 project calculated using the measurement tool and, where applicable, sums remitted by the
 86 vendor or surety to remedy a deficit in guaranteed savings or revenue gains.

87 (d) No contract developed and executed pursuant to this Code section shall be deemed to
 88 create a debt of the state for the payment of any sum beyond the fiscal year of execution
 89 or, in the event of a renewal, beyond the fiscal year of such renewal.

90 (e) Any such contract may provide for the payment by the agency of interest or the
 91 allocation of a portion of the contract payment to interest, provided that the contract is in
 92 compliance with this Code section.

93 (f) During the term of the contract, including any renewal periods, the agency shall, using
 94 the measurement tool, periodically calculate the total amount of the savings or enhanced
 95 revenues attributable to the implementation of the benefits based funding project. To the
 96 extent that savings or enhanced revenues are realized, the agency shall transfer from its
 97 budget into the special dedicated fund an amount up to but not to exceed the amount owed
 98 on the contract for the then current fiscal year term's obligation to provide for payments,
 99 or, where applicable, sums remitted by the vendor or surety to remedy a deficit in

100 guaranteed savings or revenue gains may be transferred to the special dedicated fund by
101 the agency.

102 (g) During the term of the contract, including any renewal periods, the agency shall, using
103 the measurement tool, calculate the total amount of the savings or enhanced revenues
104 attributable to the implementation of the benefits based funding project during the then
105 current fiscal year at least 30 days prior to the end of the then current fiscal year. If the
106 agency renews the contract and to the extent that savings or enhanced revenues are realized
107 in excess of the amount due on the contract in the then current fiscal year term, the agency
108 shall transfer prior to the end of the then current fiscal year from its budget into the special
109 dedicated fund an amount up to but not to exceed the next fiscal year's obligation to
110 provide for future payments.

111 (h) Promptly upon nonrenewal, termination, or expiration of the contract, any moneys
112 remaining in the special dedicated fund shall be deposited in the general fund of the state.

113 (i) Each agency is authorized to accept title to property subject to the benefits based
114 funding contract and is authorized to transfer title back to the vendor in the event the
115 contract is not fully consummated.

116 (j) Payments to which a vendor is entitled under the contract may not be assigned without
117 the approval of the agency. In its discretion, the agency may agree that the vendor may
118 assign the payments to which it is entitled under the benefits based funding contract to a
119 third party, provided that the agency will be made party to the assignment agreement and
120 that any such assignment agreement will not alter the obligations of the agency under the
121 contract, specifically including, but not limited to, the provisions required by subsection (b)
122 of this Code section; and provided that the vendor, at the time of the request that the agency
123 agree to an assignment of benefits, must provide to the agency an energy savings guarantee
124 bond, a bank letter of credit, escrowed funds, a corporate guarantee from a corporation with
125 an investment grade credit rating, or other surety instrument acceptable to the agency equal
126 to the guaranteed savings for the total project duration including any anticipated renewal
127 periods and the energy savings guarantee bond, bank letter of credit, escrowed funds,
128 corporate guarantee from a corporation with an investment grade credit rating, or other
129 surety instrument acceptable to the agency must remain in force for the entire project
130 duration including any renewal periods. As savings are realized and verified by the
131 measurement tool during the term of the contract including renewal periods, the value of
132 the energy savings guarantee bond, bank letter of credit, escrowed funds, corporate
133 guarantee from a corporation with an investment grade credit rating, or other surety
134 instrument acceptable to the agency may decrease proportionately.

135 ~~(j)~~(k) The external oversight committee shall have the responsibility to ~~review and advise~~
136 direct the Georgia Environmental Facilities Authority to perform reviews and to
137 recommend approval of all benefits based funding projects advising:

138 (1) The overall feasibility of the benefits based funding project;

139 (2) The measurement tool;

140 (3) The projected savings or enhanced revenues; and

141 (4) The dollars to be set aside for vendor payments.

142 (l) At the recommendation of the Georgia Environmental Facilities Authority, each ~~(k)~~
143 ~~Each~~ benefits based funding project and the proposed contract shall be approved by the
144 external oversight committee prior to execution of the contract and ~~prior to any renewal~~
145 ~~thereof shall be subject to further review by the authority or the external oversight~~
146 committee at any time.

147 ~~(h)~~(m) Each agency shall prepare an annual report to be sent to the external oversight
148 committee, the Governor, and the General Assembly on all contracts entered into pursuant
149 to this Code section, describing the benefits based funding project, its progress, its savings
150 or enhanced revenues, and such other information as may be relevant."

151 **SECTION 2.**

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