

Senate Bill 184

By: Senator Weber of the 40th

**AS PASSED SENATE**

**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 Article 1 of Chapter 10 of Title 13 of the Official  
6 Code of Georgia Annotated, relating to general provisions relative to contracts for public  
7 works, so as to provide for certain requirements regarding service to a contractor; to provide  
8 for a procedure for the application of certain forms; to amend Part 4 of Article 3 of Chapter  
9 91 of Title 36 of the Official Code of Georgia Annotated, relating to payment bonds, so as  
10 to provide for certain requirements regarding service to a contractor; to provide for a  
11 procedure for the application of certain forms; to provide for related matters; to repeal  
12 conflicting laws; and for other purposes.

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

14 **SECTION 1.**

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

19 "10-7-31.

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

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

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

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

64 materialman, or person making the request. ~~Notice of Commencement~~ Notice of  
65 commencement shall include:

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

86 **SECTION 2.**

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

88 "10-7-32.

89 For purposes of this article:

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

97 **SECTION 3.**

98 Article 1 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to  
 99 general provisions regarding contracts for public works, is amended by adding a new Code  
 100 section to read as follows:

101 "13-10-3.

102 For purposes of this article, the computation of time shall be determined pursuant to  
 103 paragraph (3) of subsection (d) of Code Section 1-3-1."

104 **SECTION 4**

105 Said article is further amended in Part 4, relating to payment bonds, by revising paragraphs  
 106 (1) and (2) of subsection (a) of Code Section 13-10-63, relating to pursuit of action by a  
 107 person entitled to protection of a payment bond, as follows:

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

124 (2) Any person having a direct contractual relationship with a subcontractor but no  
 125 contractual relationship, express or implied, with the contractor furnishing such payment  
 126 bond or security deposit on a public works construction project where the contractor has  
 127 complied with the notice of commencement requirements in accordance with  
 128 subsection (a) of Code Section 13-10-62 shall have the right of action on the payment  
 129 bond or security deposit, provided that such person shall, within 30 days from the filing  
 130 of the notice of commencement or 30 days following the first delivery of labor, material,  
 131 machinery, or equipment, whichever is later, give to the contractor a written notice ~~setting~~  
 132 forth. The notice to the contractor shall be sent by registered or certified mail or

133 statutory overnight delivery, to the contractor, at any place at which the contractor  
 134 maintains an office or conducts his or her business or at his or her residence;  
 135 alternatively, notice may be served in any manner in which the sheriffs of this state are  
 136 authorized by law to serve summons or process. The notice to the contractor shall set  
 137 forth:

138 (A) The name, address, and telephone number of the person providing labor, material,  
 139 machinery, or equipment;

140 (B) The name and address of each person at whose instance the labor, material,  
 141 machinery, or equipment is being furnished;

142 (C) The name and the location of the public works construction site; and

143 (D) A description of the labor, material, machinery, or equipment being provided and,  
 144 if known, the contract price or anticipated value of the labor, material, machinery, or  
 145 equipment to be provided or the amount claimed to be due, if any."

#### 146 **SECTION 4.**

147 Said article is further amended in Part 4, relating to payment bonds, by adding a new Code  
 148 section to read as follows:

149 "13-10-66.

150 The provisions of Code Section 44-14-366 regarding interim waiver and release upon  
 151 payment, waiver and release upon final payment, and the affidavit of nonpayment shall  
 152 apply to payment bond rights and remedies under this part in the same manner and to the  
 153 same extent as such provisions apply to lien rights and remedies under Code Section  
 154 44-14-366; provided, however, that no additional rights to a lien on public property shall  
 155 be granted pursuant to this part."

#### 156 **SECTION 5.**

157 Part 4 of Article 3 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated,  
 158 relating to payment bonds, is amended by revising paragraphs (1) and (2) of subsection (a)  
 159 of Code Section 36-91-93, relating to rights of person protected by payment bond or security  
 160 deposit, as follows:

161 "(1) Any person having a direct contractual relationship with a subcontractor but no  
 162 contractual relationship, express or implied, with the contractor furnishing such payment  
 163 bond or security deposit on a public works construction project where the contractor has  
 164 not complied with the notice of commencement requirements shall have the right of  
 165 action upon the payment bond or security deposit upon giving written notice to the  
 166 contractor within 90 days from the day on which such person did or performed the last  
 167 of the labor or furnished the last of the material or machinery or equipment for which

168 such claim is made, stating with substantial accuracy the amount claimed and the name  
 169 of the party to whom the material was furnished or supplied or for whom the labor was  
 170 performed or done. The notice to the contractor ~~may~~ shall be served by registered or  
 171 certified mail, ~~postage prepaid~~, or statutory overnight delivery, ~~duly addressed~~ to the  
 172 contractor, at any place at which the contractor maintains an office or conducts his or her  
 173 business or at his or her residence, by depositing such notice in any post office or branch  
 174 post office or any letter box under the control of the United States Postal Service;  
 175 alternatively, notice may be served in any manner in which the sheriffs of this state are  
 176 authorized by law to serve summons or process; and

177 (2) Any person having a direct contractual relationship with a subcontractor but no  
 178 contractual relationship, express or implied, with the contractor furnishing such payment  
 179 bond or security deposit on a public works construction project where the contractor has  
 180 complied with the notice of commencement requirements in accordance with  
 181 subsection (a) of Code Section 36-91-92 shall have the right of action on the payment  
 182 bond or security deposit, provided that such person shall, within 30 days from the filing  
 183 of the notice of commencement or 30 days following the first delivery of labor, material,  
 184 machinery, or equipment, whichever is later, give to the contractor a written notice ~~setting~~  
 185 ~~forth~~: The notice to the contractor shall be sent by registered or certified mail or statutory  
 186 overnight delivery, to the contractor, at any place at which the contractor maintains an  
 187 office or conducts his or her business or at his or her residence; alternatively, notice may  
 188 be served in any manner in which the sheriffs of this state are authorized by law to serve  
 189 summons or process. The notice to the contractor shall set forth:

190 (A) The name, address, and telephone number of the person providing labor, material,  
 191 machinery, or equipment;

192 (B) The name and address of each person at whose instance the labor, material,  
 193 machinery, or equipment is being furnished;

194 (C) The name and the location of the public works construction site; and

195 (D) A description of the labor, material, machinery, or equipment being provided and,  
 196 if known, the contract price or anticipated value of the labor, material, machinery, or  
 197 equipment to be provided or the amount claimed to be due, if any."

## 198 SECTION 6.

199 Said part is further amended by adding two new Code sections to read as follows:

200 "36-91-96.

201 The provisions of Code Section 44-14-366 regarding interim waiver and release upon  
 202 payment, waiver and release upon final payment, and the affidavit of nonpayment shall  
 203 apply to payment bond rights and remedies under this part in the same manner and to the

204 same extent as such provisions apply to lien rights and remedies under Code Section  
205 44-14-366; provided, however, that no additional rights to a lien on public property shall  
206 be granted pursuant to this part.

207 36-91-97.

208 For purposes of this article, the computation of time shall be determined pursuant to  
209 paragraph (3) of subsection (d) of Code Section 1-3-1."

210

#### **SECTION 7.**

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