

Senate Bill 3

By: Senator Hill of the 32nd

A BILL TO BE ENTITLED
AN ACT

1 To enact the "Georgia Public Works and Contractor Protection Act"; to amend Article 3 of
2 Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to security and
3 immigration compliance, so as to redefine a certain term; to clarify certain provisions and
4 requirements relating to public employers' verification of employee work eligibility; to
5 require compliance by public entities and contractors and subcontractors; to provide for
6 certain criminal and civil sanctions and penalties; to provide for related matters; to provide
7 for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 This Act shall be known and may be cited as the "Georgia Public Works and Contractor
11 Protection Act."

12 SECTION 2.

13 Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to
14 security and immigration compliance, is amended by revising Code Section 13-10-90,
15 relating to definitions, as follows:

16 "13-10-90.

17 As used in this article, the term:

18 (1) 'Commissioner' means the Commissioner of ~~the Georgia Department of Labor.~~

19 (2) 'Federal work authorization program' means any of the electronic verification of work
20 authorization programs operated by the United States Department of Homeland Security
21 or any equivalent federal work authorization program operated by the United States
22 Department of Homeland Security to verify employment eligibility information of newly
23 hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA),
24 ~~D.L. Pub. L.~~ 99-603.

25 (2.1) 'Physical performance of services' means the building, altering, repairing,
 26 improving, or demolishing of any public structure or building or other public
 27 improvements of any kind to public real property, including the construction,
 28 reconstruction, or maintenance of all or part of a public road; or any other performance
 29 of labor for a public employer under a contract or other bidding process.

30 (3) 'Public employer' means every department, agency, or instrumentality of the state or
 31 a political subdivision of the state.

32 (4) 'Subcontractor' includes a subcontractor, contract employee, staffing agency, or any
 33 contractor regardless of its tier."

34 SECTION 3.

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

38 "(b)(1) No public employer shall enter into a contract pursuant to this chapter for the
 39 physical performance of services within this state unless the contractor registers and
 40 participates in the federal work authorization program to verify employment eligibility
 41 information of all newly hired employees or subcontractors. Before a bid for any such
 42 service is considered by a public employer, the bid shall include a signed, notarized
 43 affidavit from the contractor attesting to the following:

44 (A) The affiant has registered with, ~~and~~ is authorized to use, ~~and uses~~ the federal work
 45 authorization program and has been continuously using the federal work authorization
 46 program for the previous six months;

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

48 (C) The affiant is using and will continue to use the federal work authorization
 49 program throughout the contract period and will contract only with subcontractors who
 50 present an affidavit attesting to continuous use of the federal employment verification
 51 system for the previous six months with the date of authorization and the user number.

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

57 (1.1) Any person who knowingly and willfully makes a false, fictitious, or fraudulent
 58 statement in an affidavit submitted pursuant to this subsection shall be guilty of violating
 59 Code Section 16-10-20, relating to falsifying a government document, and, upon
 60 conviction, shall be punished as prescribed by that Code section.

61 (1.2) Except as otherwise provided in paragraph (1.1) of this subsection, any person who
62 with criminal negligence violates any provision of this subsection shall upon conviction
63 be guilty of a misdemeanor.

64 (1.3) Any subcontractor that subcontracts for goods and services with a subcontractor not
65 in privity with the contractor shall provide the required affidavit to the contractor and to
66 the public employer in the manner and time period required in this subsection.

67 (2) No contractor or subcontractor who enters a contract pursuant to this chapter with a
68 public employer or a contractor of a public employer shall enter into such a contract or
69 subcontract in connection with the physical performance of services or a contract for road
70 construction under Chapter 4 of Title 32 within this state unless the contractor or
71 subcontractor registers and participates in the federal work authorization program to
72 verify employment eligibility information of all newly hired employees. Any employee,
73 contractor, or subcontractor of such contractor or subcontractor shall also be required to
74 satisfy the requirements of this paragraph.

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

83 (4)(A) Each public employer shall submit a compliance report to the state auditor
84 annually certifying compliance with the provisions of this subsection. Such compliance
85 report shall be submitted not later than July 1 of each year and shall contain the public
86 employer's federal employment verification user number and date of authorization and
87 the legal name, address, and e-verify user number of or proof of participation in any
88 subsequent similar federal employment verification system by the contractor and each
89 subcontractor and the date of the contract between the contractor and public employer
90 and between the contractor and each subcontractor. Each report submitted to the state
91 auditor by a public employer shall have attached thereto the sworn affidavit required
92 by paragraph (1) of this subsection. The state auditor shall conduct annual compliance
93 audits on a minimum of at least one-half of the reporting agencies and publish the
94 results of such audits annually on or before September 30.

95 (B) Contingent upon appropriation or approval of necessary funding and in order to
96 verify compliance with the provisions of this subsection, each year the Commissioner
97 shall conduct no fewer than 100 random audits of public employers and contractors or

98 may conduct such an audit upon probable cause to suspect a violation of this
 99 subsection. The results of the audits shall be published on the www.open.georgia.gov
 100 website and on the Georgia Department of Labor's website no later than December 31
 101 of each year. The Commissioner shall upon finding probable cause to suspect any
 102 violation of this subsection report his or her findings to the appropriate law enforcement
 103 authorities. The Georgia Department of Labor shall seek funding from the United
 104 States Secretary of Labor to the extent such funding is available.

105 (4.1)(A) If the state auditor finds any public employer which is a political subdivision
 106 or instrumentality of the state to be in violation of this subsection, such public employer
 107 shall be excluded from the list of qualified local governments under Chapter 8 of
 108 Title 50 until such time as the public employer demonstrates to the commissioner of
 109 community affairs that the public employer has corrected all deficiencies and is in
 110 compliance with this subsection. A new compliance report submitted to the state
 111 auditor shall be deemed satisfactory and correcting the prior deficient compliance report
 112 so long as the new report fully complies with this subsection.

113 (B) If the state auditor finds any public employer which is a state department or agency
 114 to be in violation of the provisions of this subsection twice in a five-year period, the
 115 funds appropriated to such state department or agency for the fiscal year following the
 116 year in which the agency was found to be in violation for the second time shall be not
 117 greater than 90 percent of the amount so appropriated in the second year of such
 118 noncompliance. Any public employer found to be in violation shall be listed on
 119 www.open.georgia.gov or another official state website with an indication and
 120 explanation of each violation.

121 (5) Any person who knowingly and willfully makes a false, fictitious, or fraudulent
 122 statement in an affidavit submitted pursuant to this subsection shall be guilty of a
 123 violation of Code Section 16-10-20 and, upon conviction, shall be punished as provided
 124 in such Code section. Contractors and subcontractors convicted for false statements
 125 based on a violation of this subsection shall be prohibited from bidding on or entering
 126 into any public contract for 12 months following such conviction. No public employee
 127 shall be liable for negligently accepting a bid from or contracting with a contractor or
 128 subcontractor convicted under paragraph (1.1) or (1.2) of this subsection. Any contractor
 129 or subcontractor found to be in violation shall be listed on www.open.georgia.gov or
 130 another official state website with an indication and explanation of each violation."

131 **SECTION 4.**
 132 This Act shall become effective December 31, 2011.

133

SECTION 5.

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