

Senate Bill 27

By: Senators Hill of the 32nd, Loudermilk of the 52nd and Rogers of the 21st

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 that only corporations approved
7 under the IMAGE program of the United States Immigration and Customs Enforcement shall
8 be allowed to bid on any public works contracts in this state; to provide for related matters;
9 to provide for an effective date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

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

14 **SECTION 2.**

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

18 "13-10-90.

19 As used in this article, the term:

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

21 (2) 'Federal work authorization program' means any of the electronic verification of work
22 authorization programs operated by the United States Department of Homeland Security
23 or any equivalent federal work authorization program operated by the United States
24 Department of Homeland Security to verify employment eligibility information of newly

25 hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA),
 26 ~~D.L. Pub. L.~~ 99-603.

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

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

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

36 SECTION 3.

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

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

46 (A) The affiant has registered with, ~~and~~ is authorized to use, and uses the federal work
 47 authorization program and:

48 (i) Beginning on July 1, 2011, has been continuously using the federal work
 49 authorization program for the previous six months;

50 (ii) Beginning on January 1, 2012, has been continuously using the federal work
 51 authorization program for the previous 12 months;

52 (iii) Beginning on July 1, 2012, has been continuously using the federal work
 53 authorization program for the previous 18 months; and

54 (iv) Beginning on January 1, 2013, has been continuously using the federal work
 55 authorization program for the previous 24 months.

56 Newly incorporated contractors shall show authority to use the federal work
 57 authorization program dated not more than 15 days from the date of incorporation or
 58 the issuance of a business license or occupational tax certificate, whichever is earlier;

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

60 (C) The affiant is using and will continue to use the federal work authorization
 61 program throughout the contract period and will contract only with subcontractors who
 62 present an affidavit with the date of authorization and the user number attesting to
 63 continuous use of the federal employment verification system:

- 64 (i) Beginning on July 1, 2011, for the previous six months;
 65 (ii) Beginning on January 1, 2012, for the previous 12 months;
 66 (iii) Beginning on July 1, 2012, for the previous 18 months; and
 67 (iv) Beginning on January 1, 2013, for the previous 24 months.

68 Newly incorporated contractors shall show authority to use the federal work
 69 authorization program dated not more than 15 days from the date of incorporation or
 70 the issuance of a business license or occupational tax certificate, whichever is earlier
 71 for the previous six months.

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

77 (1.1) Any person who knowingly and willfully makes a false, fictitious, or fraudulent
 78 statement in an affidavit submitted pursuant to this subsection shall be guilty of violating
 79 Code Section 16-10-20, relating to falsifying a government document, and, upon
 80 conviction, shall be punished as prescribed by that Code section.

81 (1.2) Except as otherwise provided in paragraph (1.1) of this subsection, any person who
 82 with criminal negligence violates any provision of this subsection shall upon conviction
 83 be guilty of a misdemeanor.

84 (1.3) Any subcontractor that subcontracts for goods and services with a subcontractor not
 85 in privity with the contractor shall provide the required affidavit to the contractor and to
 86 the public employer in the manner and time period required in this subsection.

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

95 (3) Upon contracting with a new subcontractor, a contractor or subcontractor shall, as a
 96 condition of any contract or subcontract entered into pursuant to this chapter, provide a

97 public employer with notice of the identity of any and all subsequent subcontractors hired
98 or contracted by that contractor or subcontractor. Such notice shall be provided within
99 five business days of entering into a contract or agreement for hire with any
100 subcontractor. Such notice shall include an affidavit from each subsequent contractor
101 attesting to the subcontractor's name, address, user identification number, and date of
102 authorization to use the federal work authorization program.

103 (4)(A) Each public employer shall submit a compliance report to the state auditor
104 annually certifying compliance with the provisions of this subsection. Such compliance
105 report shall be submitted not later than July 1 of each year and shall contain the public
106 employer's federal employment verification user number and date of authorization and
107 the legal name, address, and e-verify user number of or proof of participation in any
108 subsequent similar federal employment verification system by the contractor and each
109 subcontractor and the date of the contract between the contractor and public employer
110 and between the contractor and each subcontractor. Each report submitted to the state
111 auditor by a public employer shall have attached thereto the sworn affidavit required
112 by paragraph (1) of this subsection. The state auditor shall conduct annual compliance
113 audits on a minimum of at least one-half of the reporting agencies and publish the
114 results of such audits annually on or before September 30.

115 (B) Contingent upon appropriation or approval of necessary funding and in order to
116 verify compliance with the provisions of this subsection, each year the Commissioner
117 shall conduct no fewer than 100 random audits of public employers and contractors or
118 may conduct such an audit upon probable cause to suspect a violation of this
119 subsection. The results of the audits shall be published on the www.open.georgia.gov
120 website and on the Georgia Department of Labor's website no later than December 31
121 of each year. The Georgia Department of Labor shall seek funding from the United
122 States Secretary of Labor to the extent such funding is available.

123 (4.1)(A) If the state auditor finds any public employer which is a political subdivision
124 or instrumentality of the state to be in violation of this subsection, such public employer
125 shall be excluded from the list of qualified local governments under Chapter 8 of
126 Title 50 until such time as the public employer demonstrates to the commissioner of
127 community affairs that the public employer has corrected all deficiencies and is in
128 compliance with this subsection. A new compliance report submitted to the state
129 auditor shall be deemed satisfactory and correcting the prior deficient compliance report
130 so long as the new report fully complies with this subsection.

131 (B) If the state auditor finds any public employer which is a state department or agency
132 to be in violation of the provisions of this subsection twice in a five-year period, the
133 funds appropriated to such state department or agency for the fiscal year following the

134 year in which the agency was found to be in violation for the second time shall be not
135 greater than 90 percent of the amount so appropriated in the second year of such
136 noncompliance. Any public employer found to be in violation shall be listed on
137 www.open.georgia.gov or another official state website with an indication and
138 explanation of each violation.

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

149 **SECTION 4.**

150 Said article is further amended by adding a new subsection to Code Section 13-10-91,
151 relating to the verification of new employee eligibility, applicability, and rules and
152 regulations, to read as follows:

153 "(g) On and after January 1, 2013, only corporations approved under the IMAGE
154 program of the United States Immigration and Customs Enforcement shall be allowed to
155 bid on any public works contracts in this state."

156 **SECTION 5.**

157 This Act shall become effective December 31, 2011.

158 **SECTION 6.**

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