

Senate Bill 77

By: Senators Harbison of the 15th, McKoon of the 29th, Tate of the 38th, Seabaugh of the 28th and Balfour of the 9th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,
2 relating to state purchasing, so as to provide for a specified preference for qualified business
3 enterprises owned and controlled by disabled veterans or disabled law enforcement officers
4 in awarding certain types of state contracts; to define certain terms; to provide for
5 determination of such preference; to provide for terms and conditions; to provide for
6 qualification and certification of such business enterprises; to provide for certain offenses and
7 punishments; to provide for rules and regulations; to repeal conflicting laws; and for other
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to state
12 purchasing, is amended by adding a new part to read as follows:

13 style="text-align:center">"Part 6

14 50-5-138.1.

15 As used in this part, the term:

16 (1) 'Department' means the Department of Administrative Services.

17 (2) 'Disabled veteran or disabled law enforcement officer' means:

18 (A) A disabled veteran who is a permanent Georgia resident with a service-connected
19 disability of 10 percent or greater as determined by the United States Department of
20 Veterans Affairs or who has been terminated from military service by reason of
21 disability by the United States Department of Defense; or

22 (B) A disabled former law enforcement officer who is a permanent Georgia resident
23 with a law enforcement duty-connected disability of 10 percent or greater or who has

24 been terminated from duty as a law enforcement officer by reason of disability by a
 25 local, state, or federal law enforcement agency.

26 (3) 'Law enforcement duty-connected disability' means a disability incurred or
 27 aggravated in the line of duty as a law enforcement officer of a local, state, or federal law
 28 enforcement agency.

29 (4) 'Law enforcement officer' means a law enforcement officer who was employed as
 30 such by a local, state, or federal law enforcement agency.

31 (5) 'Qualified business enterprise' means an independently owned and operated business
 32 that:

33 (A) Is at least 51 percent owned by one or more disabled veterans or disabled law
 34 enforcement officers;

35 (B) The management and daily business operations of which are controlled by one or
 36 more disabled veterans or disabled law enforcement officers or, for a disabled veteran
 37 or disabled law enforcement officer with a permanent and total disability, by the spouse
 38 or permanent caregiver of the disabled veteran or disabled law enforcement officer;

39 (C) Is organized to engage in commercial transactions;

40 (D) Is domiciled in this state;

41 (E) Employs 200 or fewer permanent full-time employees; and

42 (F) Together with its affiliates has a net worth of \$5 million or less or, if a sole
 43 proprietorship, has a net worth of \$5 million or less including both personal and
 44 business investments.

45 (6) 'Service-connected disability' means a disability incurred or aggravated in the line of
 46 duty in the active military, naval, or air service.

47 (7) 'Veteran' means a person who served in the active military, naval, or air service of the
 48 United States and who was discharged or released from his or her service under
 49 conditions other than dishonorable.

50 50-5-138.2.

51 (a) The department shall give a preference to any qualified bidder that is a qualified
 52 business enterprise in awarding contracts for the provision of the following types of goods
 53 and services:

54 (1) Operation of commissaries for state operated correction facilities;

55 (2) Inmate telephone companies; and

56 (3) State correctional officer uniforms and accessories.

57 Such preference shall be given in accordance with subsection (b) of this Code section.

58 (b) For the purpose of evaluating and determining qualified business enterprise responsive
 59 bids, 25 percent of the lowest responsive bid (the bid that would otherwise receive the

60 contract award if the preference were not being considered) shall be deducted from all
 61 qualified business enterprise bids. If a responsive qualified business enterprise bid, less the
 62 25 percent preference, is less than the lowest responsive bid, then the qualified business
 63 enterprise bidder shall be declared the official lowest responsive bidder. The original
 64 qualified business enterprise bid amount shall be the basis of the contract award.

65 (c) If during the term of the contract the contractor no longer qualifies for the preference
 66 under this Code section, or if the contract is assigned to a business entity that does not
 67 qualify for such preference, the contractor shall be required to discount its contract price
 68 by the amount of the preference it received.

69 (d) The request to have the preference applied to a bid and the documentation required
 70 under subsection (e) of this Code section showing eligibility for certification as a qualified
 71 business enterprise shall be submitted as part of the bid; otherwise, the preference shall not
 72 be applied.

73 (e) To be certified as a qualified business enterprise, the business shall:

74 (1) Be a qualified business enterprise;

75 (2) Submit an affidavit of an owner or officer of the enterprise stating that the enterprise
 76 is a qualified business enterprise;

77 (3) Submit such other proof as required by the department to adequately support the
 78 claim of qualification as a qualified business enterprise, including but not limited to
 79 official government agency documentation of the disability and discharge status of the
 80 disabled veteran or law enforcement officer and proof of requisite ownership and control
 81 of the enterprise;

82 (4) Submit any other information required by the department as reasonable and necessary
 83 proof or assurance of the applicant's claim of qualification as a qualified business
 84 enterprise for purposes of this part; and

85 (5) Be qualified to bid pursuant to the provisions of the department and other state
 86 agencies.

87 50-5-138.3.

88 (a) It shall be unlawful for a person to:

89 (1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain
 90 or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or
 91 retain certification as a qualified business enterprise for the purposes of this part;

92 (2) Knowingly and willfully make a false statement with the intent to defraud, whether
 93 by affidavit, report, or other representation, to a state official or employee for the purpose
 94 of influencing the certification or denial of any certification of any entity as a qualified
 95 business enterprise;

96 (3) Knowingly and willfully obstruct, impede, or attempt to obstruct or impede any state
97 official or employee who is investigating the qualifications of a business entity which has
98 requested certification as a qualified business enterprise;

99 (4) Knowingly and willfully with intent to defraud, fraudulently obtain, attempt to
100 obtain, or aid another person in fraudulently obtaining or attempting to obtain public
101 moneys to which the person is not entitled under this part; or

102 (5) Knowingly and willfully assign any contract awarded pursuant to this part to any
103 other business enterprise without prior written approval of the department.

104 (b) Any person convicted of violating any provision of this Code section shall be guilty
105 of a felony, punishable by imprisonment for not more than five years, a fine of not more
106 than \$10,000.00, or both such imprisonment and fine.

107 (c) If a contractor, subcontractor, supplier, subsidiary, principal, or affiliate thereof has
108 been found to have violated this Code section and that violation occurred within three years
109 of another violation of this Code section, the department shall prohibit that contractor,
110 subcontractor, supplier, subsidiary, or affiliate thereof from entering into a state project or
111 state contract; from further bidding to a state entity; from being a subcontractor to a
112 contractor for a state entity; and from being a supplier to a state entity.

113 50-5-138.4.

114 The department shall adopt such rules and regulations as are reasonable and necessary to
115 implement this part."

116 **SECTION 2.**

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