

## HOUSE SUBSTITUTE TO SENATE BILL 179

## A BILL TO BE ENTITLED

## AN ACT

1 To amend Chapter 10 of Title 13, Chapter 91 of Title 36, and Part 1 of Article 3 of Chapter  
 2 5 of Title 50 of the Official Code of Georgia Annotated, relating to contracts for public  
 3 works, public works bidding, and general authority, duties, and procedure relative to state  
 4 purchasing, respectively, so as to provide that, if a sealed competitive proposal is requested  
 5 and price or project cost is not a selection or evaluation factor, no bid bond shall be required;  
 6 to provide for an exception; to provide for certain contracting and bidding requirements for  
 7 governmental entities and the Department of Administrative Services relative to public works  
 8 construction contracts; to correct statutory references; to authorize incentives in contracts for  
 9 early project completion by contractors; to provide for related matters; to provide an effective  
 10 date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to contracts for  
 14 public works, is amended by revising Code Section 13-10-3, relating to determining Georgia  
 15 residency for business, preferences, and adherence to policies and procedures of State  
 16 Construction Manual, as follows:

17 "13-10-3.

18 (a) For the purpose of determining residency under this Code section, a Georgia resident  
 19 business shall include any business that regularly maintains a place from which business  
 20 is physically conducted in Georgia for at least one year prior to any bid or proposal  
 21 submitted pursuant to this Code section or a new business that is domiciled in Georgia  
 22 which regularly maintains a place from which business is physically conducted in Georgia;  
 23 provided, however, that a place of business shall not include a post office box, site trailer,  
 24 or temporary structure.

25 (b) Whenever the state contracts for the doing of a public work, materialmen, contractors,  
 26 builders, architects, engineers, and laborers resident in the State of Georgia are to be

27 granted the same preference over materialmen, contractors, builders, architects, engineers,  
 28 and laborers resident in another state in the same manner, on the same basis, and to the  
 29 same extent that preference is granted in awarding bids for the same goods or services by  
 30 such other state to materialmen, contractors, builders, architects, engineers, and laborers  
 31 resident in such other state over materialmen, contractors, builders, architects, engineers,  
 32 and laborers resident in the State of Georgia. However, these requirements shall in no way  
 33 impair the ability of the state to compare the quality of materials proposed for purchase and  
 34 to compare the qualifications, character, responsibility, and fitness of materialmen,  
 35 contractors, builders, architects, engineers, and laborers proposed for employment in its  
 36 consideration of the purchase of materials or employment of persons. This subsection shall  
 37 not apply to transportation projects for which federal aid funds are available.

38 (c) All state agencies, authorities, departments, commissions, boards, and similar entities  
 39 shall adhere to the policies and procedures contained in the State Construction Manual for  
 40 project management and procurement of, and contracting for, design, construction, and  
 41 other project related professional services for all state owned buildings in Georgia funded  
 42 by state bonds or other state revenue. The State Construction Manual shall be jointly  
 43 edited and posted on a state website by the Georgia State Financing and Investment  
 44 Commission and the Board of Regents of the University System of Georgia and shall be  
 45 updated on a periodic basis to reflect evolving owner needs and industry best practices after  
 46 consultation with other state agency and industry stakeholders.

47 (d)(1) To the extent permitted by law, no state agency, authority, department,  
 48 commission, board, or similar entity that contracts for public works construction shall,  
 49 in its bid documents, specifications, project agreements, or other controlling documents  
 50 for a public works construction contract:

51 (A) Require or prohibit bidders, offerors, contractors, subcontractors, or material  
 52 suppliers to enter into or adhere to prehire agreements, project labor agreements,  
 53 collective bargaining agreements, or any other agreement with one or more labor  
 54 organizations on the same or other related construction projects; or

55 (B) Discriminate against, or treat differently, bidders, offerors, contractors,  
 56 subcontractors, or material suppliers for becoming or refusing to become or remain  
 57 signatories or otherwise to adhere to agreements with one or more labor organizations  
 58 on the same or other related construction projects.

59 (2) Nothing in this subsection shall prohibit bidders, offerors, contractors,  
 60 subcontractors, or material suppliers from voluntarily entering into agreements described  
 61 in paragraph (1) of this subsection.

62 (3) The head of a governmental entity may exempt a particular public works construction  
 63 contract from the requirements of any or all of the provisions of paragraph (1) of this

64 subsection if the governmental entity finds, after public notice and a hearing, that special  
 65 circumstances require an exemption to avert an imminent threat to public health or safety.  
 66 A finding of special circumstance under this paragraph shall not be based on the  
 67 possibility or presence of a labor dispute concerning the use of contractors or  
 68 subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with  
 69 one or more labor organizations or concerning employees on the particular project who  
 70 are not members of or affiliated with a labor organization."

71 **SECTION 2.**

72 Said chapter is further amended in Code Section 13-10-20, relating to large public works  
 73 contracts, requirements for bid bonds, and withdrawal of bid, by adding a new subsection to  
 74 read as follows:

75 "(e) When the state invites competitive sealed proposals for a public works construction  
 76 project and the request for proposals for such project states that price or project cost will  
 77 not be a selection or evaluation factor, no bid bond shall be required unless the state  
 78 provides for a bid bond in the request for proposals and specifies the amount of such bond."

79 **SECTION 3.**

80 Said chapter is further amended by revising subsection (b) of Code Section 13-10-62, relating  
 81 to notice of commencement, as follows:

82 "(b) The failure to file a notice of commencement shall render the notice to the contractor  
 83 requirements of paragraph ~~(1)~~ (2) of subsection (a) of Code Section 13-10-63 inapplicable."

84 **SECTION 4.**

85 Said chapter is further amended in Article 1, relating to general provisions, by adding a new  
 86 part to read as follows:

87 "Part 5

88 13-10-70.

89 Public works construction contracts may include both liquidated damages provisions for  
 90 late construction project completion and incentive provisions for early construction project  
 91 completion when the project schedule is deemed to have value. The terms of the liquidated  
 92 damages provisions and the incentive provisions shall be established in advance as a part  
 93 of the construction contract and included within the terms of the bid or proposal."

94

**SECTION 5.**

95 Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to public works  
 96 bidding, is amended in Code Section 36-91-21, relating to competitive award requirements,  
 97 by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by  
 98 adding a new subsection to read as follows:

99 "(f)(1) Unless otherwise required by law, no governmental entity that contracts for public  
 100 works construction shall in its bid documents, specifications, project agreements, or other  
 101 controlling documents for a public works construction contract:

102 (A) Require or prohibit bidders, offerors, contractors, subcontractors, or material  
 103 suppliers to enter into or adhere to prehire agreements, project labor agreements,  
 104 collective bargaining agreements, or any other agreement with one or more labor  
 105 organizations on the same or other related construction projects; or

106 (B) Discriminate against, or treat differently, bidders, offerors, contractors,  
 107 subcontractors, or material suppliers for becoming or refusing to become or remain  
 108 signatories or otherwise to adhere to agreements with one or more labor organizations  
 109 on the same or other related construction projects.

110 (2) Nothing in this subsection shall prohibit bidders, offerors, contractors,  
 111 subcontractors, or material suppliers from voluntarily entering into agreements described  
 112 in paragraph (1) of this subsection.

113 (3) The head of a governmental entity may exempt a particular public works construction  
 114 contract from the requirements of any or all of the provisions of paragraph (1) of this  
 115 subsection if the governmental entity finds, after public notice and a hearing, that special  
 116 circumstances require an exemption to avert an imminent threat to public health or safety.

117 A finding of special circumstance under this paragraph shall not be based on the  
 118 possibility or presence of a labor dispute concerning the use of contractors or  
 119 subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with  
 120 one or more labor organizations or concerning employees on the particular project who  
 121 are not members of or affiliated with a labor organization."

122

**SECTION 6.**

123 Said chapter is further amended in Article 2, relating to contracting and bidding  
 124 requirements, by adding a new Code section to read as follows:

125 "36-91-23.

126 Public works construction contracts may include both liquidated damages provisions for  
 127 late construction project completion and incentive provisions for early construction project  
 128 completion when the project schedule is deemed to have value. The terms of the liquidated

129 damages provisions and the incentive provisions shall be established in advance as a part  
 130 of the construction contract and included within the terms of the bid or proposal."

131 **SECTION 7.**

132 Said chapter is further amended in Part 1 of Article 3, relating to general provisions regarding  
 133 bonds, by adding a new Code section to read as follows:

134 "36-91-41.

135 When a governmental entity invites competitive sealed proposals for a public works  
 136 construction project and the request for proposals for such project states that price or  
 137 project cost will not be a selection or evaluation factor, no bid bond shall be required unless  
 138 the governmental entity provides for a bid bond in the request for proposals and specifies  
 139 the amount of such bond."

140 **SECTION 8.**

141 Said chapter is further amended by revising subsection (b) of Code Section 36-91-92, relating  
 142 to notice of commencement, as follows:

143 "(b) The failure to file a notice of commencement shall render the notice to contractor  
 144 requirements of paragraph ~~(1)~~ (2) of subsection (a) of Code Section 36-91-93 inapplicable."

145 **SECTION 9.**

146 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,  
 147 relating to general authority, duties, and procedure relative to state purchasing, is amended  
 148 by revising Code Section 50-5-72, relating to construction and public works contracts  
 149 conducted by the Department of Administrative Services and exceptions, as follows:

150 "50-5-72.

151 (a) Notwithstanding any other provision of this part or any other law dealing with the  
 152 subject matter contained in this Code section to the contrary, all construction or public  
 153 works contracts, exceeding a total expenditure of \$100,000.00, of any department, board,  
 154 bureau, commission, office, or agency of the state government, except as provided in this  
 155 Code section, shall be conducted and negotiated by the Department of Administrative  
 156 Services in accordance with this part; provided, however, that any expenditure of less than  
 157 \$100,000.00 shall still be subject to review and approval by the Department of  
 158 Administrative Services, which may approve noncompetitive expenditures of up to  
 159 \$100,000.00.

160 (b) All advertising costs incurred in connection with such contracts shall be borne by and  
 161 paid from the funds appropriated to and available to the department, board, bureau,  
 162 commission, office, or agency of the state government for which the contract is negotiated.

163 (c)(1) Notwithstanding subsections (a) and (b) of this Code section and to the extent  
 164 permitted by law, the Department of Administrative Services shall not in its bid  
 165 documents, specifications, project agreements, or other controlling documents for a  
 166 public works construction contract:

167 (A) Require or prohibit bidders, offerors, contractors, subcontractors, or material  
 168 suppliers to enter into or adhere to prehire agreements, project labor agreements,  
 169 collective bargaining agreements, or any other agreement with one or more labor  
 170 organizations on the same or other related construction projects; or

171 (B) Discriminate against, or treat differently, bidders, offerors, contractors,  
 172 subcontractors, or material suppliers for becoming or refusing to become or remain  
 173 signatories or otherwise to adhere to agreements with one or more labor organizations  
 174 on the same or other related construction projects.

175 (2) Nothing in this subsection shall prohibit bidders, offerors, contractors,  
 176 subcontractors, or material suppliers from voluntarily entering into agreements described  
 177 in paragraph (1) of this subsection.

178 (3) The head of a governmental entity may exempt a particular public works construction  
 179 contract from the requirements of any or all of the provisions of paragraph (1) of this  
 180 subsection if the governmental entity finds, after public notice and a hearing, that special  
 181 circumstances require an exemption to avert an imminent threat to public health or safety.  
 182 A finding of special circumstance under this paragraph shall not be based on the  
 183 possibility or presence of a labor dispute concerning the use of contractors or  
 184 subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with  
 185 one or more labor organizations or concerning employees on the particular project who  
 186 are not members of or affiliated with a labor organization.

187 (d) The commissioner of administrative services is authorized and directed to promulgate  
 188 such rules and regulations as shall carry out the additional duties and responsibilities placed  
 189 upon the department by this Code section.

190 (e) Nothing contained in this Code section shall apply to or affect the Department of  
 191 Transportation, the several public authorities of this state, including the Stone Mountain  
 192 Memorial Association and the Board of Regents of the University System of Georgia, or  
 193 the expenditure of money credited to the account of this state in the Unemployment Trust  
 194 Fund by the secretary of the treasury of the United States pursuant to Section 903 of the  
 195 Social Security Act and appropriated as provided in Code Section 34-8-85. No contract  
 196 in existence on March 18, 1964, shall be affected by this Code section, and such contract  
 197 may continue to be utilized."

198 **SECTION 10.**

199 This Act shall become effective upon its approval by the Governor or upon its becoming law  
200 without such approval.

201 **SECTION 11.**

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