

Senate Bill 445

By: Senators Gooch of the 51st, Beach of the 21st, Miller of the 49th, Ginn of the 47th and Dugan of the 30th

**AS PASSED SENATE**

**A BILL TO BE ENTITLED**

**AN ACT**

1 To amend Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges,  
 2 and ferries, so as to provide for standards for contracts entered into by the Department of  
 3 Transportation; to provide for the advertisement for contracts to be let by public bid on the  
 4 department's website; to provide for a contract bidding process and award procedure; to  
 5 prohibit camping on portions of the state highway system or property owned by the  
 6 department; to provide for a definition; to provide for applicability; to provide for a penalty;  
 7 to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,  
 11 is amended in Code Section 32-2-60, relating to authority of the Department of  
 12 Transportation to contract, form and content of construction contracts, federal-aid highway  
 13 contracts, and bonds, by revising subsections (d) and (e) as follows:

14 ~~"(d) The provisions of subsections (b) and (c) of this Code section shall be applicable only~~  
 15 ~~to federal-aid highway contracts.~~

16 ~~(e)~~(d)(1) When the estimated amount of any department construction contract exceeds  
 17 \$300 million, performance and payment bonds shall be required in the amount of at least  
 18 the total amount payable by the terms of the contract unless the department, after public  
 19 notice, makes a written determination supported by specific findings that single bonds in  
 20 such amount are not reasonably available, and the board approves such determination in  
 21 a public meeting. In such event, the estimated value of the construction portion of the  
 22 contract, excluding right of way acquisition and engineering, shall be guaranteed by a  
 23 combination of security including, but not limited to, the following:

- 24 (A) Payment, performance, surety, cosurety, or excess layer surety bonds;
- 25 (B) Letters of credit;
- 26 (C) Guarantees of the contractor or its parent companies;

27 (D) Obligations of the United States and of its agencies and instrumentalities; or

28 (E) Cash collateral;

29 provided, however, that the aggregate total guarantee of the project may not use a  
30 corporate guarantee of more than 35 percent. The combination of such guarantees shall  
31 be determined at the discretion of the department, subject to the approval of the board;  
32 provided, however, that such aggregate guarantees shall include not less than \$300  
33 million of performance and payment bonds and shall equal not less than 100 percent of  
34 the contractor's obligation under the construction portion of the contract.

35 (2) Payment guarantees approved pursuant to this subsection shall be deemed to satisfy  
36 the requirements of Code Section 13-10-61. Contractors requesting payment under  
37 construction contracts guaranteed pursuant to this subsection shall provide the following  
38 certification under oath with each such request: 'All payments due to subcontractors and  
39 suppliers from previous payment received under the contract have been made, and timely  
40 payments will be made from the proceeds of the payment covered by this certification.'

41 **SECTION 2.**

42 Said title is further amended in Code Section 32-2-65, relating to advertising for bids, by  
43 revising subsection (a) as follows:

44 "(a) On all contracts required to be let by public bid, the commissioner shall advertise for  
45 competitive bids for at least two weeks; the public advertisement shall be inserted once a  
46 week in such newspapers or other publications, or both, as will ensure adequate publicity,  
47 the first insertion to be at least two weeks prior to the opening of bids, the second to follow  
48 one week after the publication of the first insertion; provided, however, that the  
49 advertisement requirement provided in this Code section shall be satisfied by posting the  
50 required information on the department's website for the required time period."

51 **SECTION 3.**

52 Said title is further amended in Code Section 32-2-69, relating to bidding process and award  
53 of contract, by adding a new subsection to read as follows:

54 "(f) The signed, notarized affidavit required in subsection (b) of Code Section 13-10-91  
55 shall be submitted to the department prior to the award of any contract."

56 **SECTION 4.**

57 Said title is further amended in Article 1 of Chapter 6, relating to general provisions  
58 regarding the regulation of maintenance and use of public roads, by adding a new Code  
59 section to read as follows:

60 "32-6-6.

61 (a) For purposes of this Code section, the term 'camping' means temporary habitation  
 62 outdoors as evidenced by one or more of the following actions: the erection or use of tents  
 63 or other shelters; the laying down of sleeping bags, blankets, or other materials used for  
 64 bedding; the placing or storing of personal belongings; the making of a fire; or the act of  
 65 cooking.

66 (b) It shall be unlawful for any person to use any portion of road on the state highway  
 67 system or any property owned by the department for camping.

68 (c) Nothing in this Code section shall prohibit the normal, customary, and temporary use  
 69 of safety rest areas, welcome centers, tourist centers, and other property of the department  
 70 or state highway system specifically designated for purposes of resting, sleeping, eating,  
 71 or other similar activities by persons traveling by vehicle.

72 (d) This Code section shall not apply to state or local government officials or employees  
 73 acting in their official capacity and while performing activities as part of their official  
 74 duties and shall not apply to any employee of a contractor or subcontractor performing  
 75 duties under a contract with the department.

76 (e) Any person convicted of violating this Code section shall be guilty of a misdemeanor."

77 **SECTION 5.**

78 Said title is further amended in Code Section 32-7-4, relating to procedure for disposition of  
 79 property, by revising subparagraph (a)(2)(A) and paragraphs (2) and (3) of subsection (b) as  
 80 follows:

81 "(2)(A) When an entire parcel acquired by the department, a county, or a municipality,  
 82 or any interest therein, is being disposed of, it may be acquired under the right created  
 83 in paragraph (1) of this subsection at such price as may be agreed upon, but in no event  
 84 less than the price paid for its acquisition. When only remnants or portions of the  
 85 original acquisition are being disposed of, they may be acquired for a price no less than  
 86 15 percent under the market value thereof at the time the department, county, or  
 87 municipality decides the property is no longer needed. The department shall use a real  
 88 estate appraiser with knowledge of the local real estate market who is licensed in  
 89 Georgia to establish the fair market value of the property prior to listing such property."

90 "(2)(A) Such sale of property may be made by the department or a county or  
 91 municipality by listing the property through a real estate broker licensed under Chapter  
 92 40 of Title 43 who has a place of business located in the county where the property is  
 93 located or outside the county if no such business is located in the county where the  
 94 property is located state. Property shall be listed for a period of at least three months.  
 95 Such property shall not be sold at less than its fair market value 30 days. The

96 department shall use a real estate appraiser with knowledge of the local real estate  
 97 market who is licensed in Georgia to establish the fair market value of the property  
 98 prior to listing such property. If the highest offer received to purchase is less than the  
 99 appraised value but within 15 percent of such value, the department, county, or  
 100 municipality may accept such offer and convey the property in accordance with the  
 101 provisions of subsection (c) of this Code section. All sales shall be approved by the  
 102 commissioner on behalf of the department or shall be approved by the governing  
 103 authority of the county or municipality at a regular meeting that shall be open to the  
 104 public, and public comments shall be allowed at such meeting regarding such sale.

105 (B) Commencing at the time of the listing of the property as provided in  
 106 subparagraph (A) of this paragraph, the department, county, or municipality shall  
 107 provide for a notice to be inserted once a week for two weeks in the legal organ of the  
 108 county indicating the names of real estate brokers listing the property for the political  
 109 subdivision. The department, county, or municipality may advertise in newspapers, on  
 110 the Internet, or in magazines relating to the sale of real estate or similar publications.

111 (C) The department, county, or municipality shall have the right to reject any and all  
 112 offers, in its discretion, and to sell such property pursuant to the provisions of  
 113 paragraph (1) of this subsection.

114 (3)(A) Such sale of property may be made by the department, a county, or a  
 115 municipality to the highest bidder at a public auction conducted by an auctioneer  
 116 licensed under Chapter 6 of Title 43. ~~Such property shall not be sold at less than its fair~~  
 117 ~~market value.~~ If the highest offer received to purchase is less than the appraised value  
 118 but within 15 percent of such value, the department, county, or municipality may accept  
 119 such offer and convey the property in accordance with the provisions of subsection (c)  
 120 of this Code section.

121 (B) The department, county, or municipality shall provide for a notice to be inserted  
 122 once a week for the two weeks immediately preceding the auction in the legal organ of  
 123 the county including, at a minimum, the following items:

- 124 (i) A description sufficient to enable the public to identify the property;
- 125 (ii) The time and place of the public auction;
- 126 (iii) The right of the department or the county or municipality to reject any one or all  
 127 of the bids;
- 128 (iv) All the conditions of sale; and
- 129 (v) Such further information as the department or the county or municipality may  
 130 deem advisable as in the public interest.

131 The department, county, or municipality may advertise in magazines relating to the sale  
 132 of real estate or similar publications.

133 (C) The department, county, or municipality shall have the right to reject any and all  
134 offers, in its discretion, and to sell such property pursuant to the provisions of  
135 paragraph (1) or (2) of this subsection."

136 **SECTION 6.**

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