

The House Committee on Judiciary offers the following substitute to SB 168:

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 1 of Chapter 10 of Title 13 of the Official Code of Georgia
2 Annotated, relating to bonds relating to contracts for public works, Article 2 of Chapter 91
3 of Title 36 of the Official Code of Georgia Annotated, relating to contracting and bidding
4 requirements, and Chapter 9 of Title 32 of the Official Code of Georgia Annotated, relating
5 to mass transportation, respectively, so as to provide for legislative intent; to provide that no
6 bidder shall be disqualified from a bid or proposal or denied prequalification based upon a
7 lack of previous experience with a job of the size for which the bid or proposal is being
8 sought if the bid or proposal is not more than 30 percent greater in scope or cost from the
9 bidder's previous experience in jobs, the bidder has experience in performing the work for
10 which bids or proposals are sought, and the bidder is capable of being bonded for a bid bond,
11 a performance bond, and a payment bond as required for the scope of the work for which the
12 bid or proposal is being sought; to revise provisions relating to suspension of restrictions on
13 use of annual proceeds from local sales and use taxes by public transit authorities; to
14 reconstitute the board of directors of the Metropolitan Atlanta Rapid Transit Authority; to
15 provide for staggered terms for board members; to provide for a limit on reappointment of
16 board members; to provide for a method for nonparticipating counties to join the authority;
17 to provide for certain information to be addressed during board meetings; to provide for the
18 privatization of certain services; to provide for a limit on annual bonded debt service; to
19 provide for an effective date; to provide for related matters; to repeal conflicting laws; and
20 for other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 It is the intent of the General Assembly to make public contracting opportunities more
24 available both at the Metropolitan Atlanta Rapid Transit Authority and in other governmental
25 entities and to amend and modernize the Metropolitan Atlanta Rapid Transit Authority Act
26 of 1965, approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended.

S. B. 168 (SUB)

27 **SECTION 2.**

28 Part 1 of Article 1 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated,
 29 relating to bonds relating to contracts for public works, is amended by adding a new Code
 30 section to read as follows:

31 "13-10-4.

32 In awarding contracts based upon sealed competitive bids or sealed competitive proposals,
 33 no bidder shall be disqualified from a bid or proposal or denied prequalification based upon
 34 a lack of previous experience with a job of the size for which the bid or proposal is being
 35 sought if:

36 (1) The bid or proposal is not more than 30 percent greater in scope or cost from the
 37 bidder's previous experience in jobs;

38 (2) The bidder has experience in performing the work for which bids or proposals are
 39 sought; and

40 (3) The bidder is capable of being bonded by a surety which meets the qualifications of
 41 the bid documents for a bid bond, a performance bond, and a payment bond as required
 42 for the scope of the work for which the bid or proposal is being sought."

43 **SECTION 3.**

44 Article 2 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to
 45 contracting and bidding requirements, is amended by adding a new Code section to read as
 46 follows:

47 "36-91-23.

48 In awarding contracts based upon sealed competitive bids or sealed competitive proposals,
 49 no responsible bidder shall be disqualified from a bid or proposal or denied prequalification
 50 based upon a lack of previous experience with a job of the size for which the bid or
 51 proposal is being sought if:

52 (1) The bid or proposal is not more than 30 percent greater in scope or cost from the
 53 responsible bidder's previous experience in jobs;

54 (2) The responsible bidder has experience in performing the work for which bids or
 55 proposals are sought; and

56 (3) The responsible bidder is capable of being bonded by a surety which meets the
 57 qualifications of the bid documents for a bid bond, a performance bond, and a payment
 58 bond as required for the scope of the work for which the bid or proposal is being sought."

59 **SECTION 4.**

60 Chapter 9 of Title 32 of the Official Code of Georgia Annotated, relating to mass
 61 transportation, is amended by revising Code Section 32-9-13, relating to the suspension of

62 restrictions on the use of annual proceeds from sales and use taxes by public transit
63 authorities, to read as follows:

64 "32-9-13.

65 Provisions in all laws, whether general or local, including but not limited to the
66 Metropolitan Atlanta Rapid Transit Authority Act of 1965, approved March 10, 1965 (Ga.
67 L. 1965, p. 2243), as amended, that set forth restrictions on the use by public transit
68 authorities of annual proceeds from local sales and use taxes shall be suspended for the
69 period beginning on June 2, 2010, and continuing ~~for three years~~ through June 30, 2016.
70 The greater discretion over such funds shall not abrogate the obligation of the public transit
71 authority to comply with federal and state safety regulations and guidelines. Newly
72 unrestricted funds shall be utilized, subject to total funding, to maintain the level of service
73 for the transit system as it existed on January 1, 2010. Furthermore, except as had been
74 previously contracted to by the public transit authority prior to January 1, 2010, no funds
75 newly unrestricted during this suspended period shall be used by a public transit authority
76 to benefit any person or other entity for any of the following: annual cost-of-living or merit
77 based salary raises or increases in hourly wages; increased overtime due to such wage
78 increases; payment of bonuses; or to increase the level of benefits of any kind."

79

SECTION 5.

80 Said chapter is further amended by revising Code Section 32-9-14, relating to the board of
81 directors of the Metropolitan Atlanta Rapid Transit Authority, to read as follows:

82 "32-9-14.

83 (a) Any provisions to the contrary in the Metropolitan Atlanta Rapid Transit Authority Act
84 of 1965, approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, notwithstanding,
85 the terms of all members of the board of directors of the Metropolitan Atlanta Rapid
86 Transit Authority shall terminate on December 31, ~~2010~~ 2013, and the board shall be
87 reconstituted according to the provisions of this Code section.

88 (b) Effective January 1, ~~2011~~ 2014, the board of directors of the authority shall be
89 composed of 11 voting members and ~~one~~ two nonvoting ~~member~~ members. Of the voting
90 members: three members shall be residents of the City of Atlanta to be nominated by the
91 mayor and elected by the city council; four members shall be residents of DeKalb County
92 with three of the four appointees to be appointed by the DeKalb County Board of
93 Commissioners and at least one of such appointees shall be a resident of that portion of
94 DeKalb County lying south of the southernmost corporate boundaries of the City of
95 Decatur and at least one of such appointees shall be a resident of that portion of DeKalb
96 County lying north of the southernmost corporate boundaries of the City of Decatur and
97 the fourth appointee to be appointed by a majority vote of a caucus of mayors of the

98 municipalities located wholly in DeKalb County; three members shall be residents of
99 Fulton County to be appointed by the local governing body thereof, and one of such
100 appointees shall be a resident of that portion of Fulton County lying south of the corporate
101 limits of the City of Atlanta, to be appointed by a majority vote of a caucus of mayors of
102 the municipalities of Fulton County lying south of the corporate limits of the City of
103 Atlanta, the chairperson of the Fulton County board of commissioners, and the members
104 of the Fulton County board of commissioners whose districts include any portion of Fulton
105 County lying south of the corporate limits of the City of Atlanta, and two of such
106 appointees shall be residents of that portion of Fulton County lying north of the corporate
107 limits of the City of Atlanta to be appointed by a majority vote of a caucus of mayors of
108 the municipalities of Fulton County lying north of the corporate limits of the City of
109 Atlanta; and one member shall be a resident of Fulton or DeKalb County to be appointed
110 by the Governor. Of the nonvoting members: one shall be the commissioner of
111 transportation and one shall be the executive director of the Georgia Regional
112 Transportation Authority. Those board members appointed by a local governing authority,
113 caucus, or the Governor as described in this Code section in office as of January 1, 2014,
114 shall serve initial terms of office as follows: two of the three appointees of the DeKalb
115 County Board of Commissioners, two of the three appointees of the mayor and of the
116 Atlanta City Council, and one of the two appointees of the caucus of mayors from
117 municipalities lying north of the corporate limits of the City of Atlanta shall serve a term
118 of two years, and the remaining appointees shall serve for terms of four years. No later
119 than November 1, 2013, each local governing authority or caucus shall designate which
120 board members shall serve an initial term of two years. After the initial two-year terms of
121 those five board members described in this subsection, that governing body or caucus
122 which appointed the member for that initial term to that office shall appoint successors
123 thereto for terms of office of four years in the same manner that such governing body or
124 caucus makes its other appointments to the board. Those board members in office on the
125 effective date of this Code section shall serve until December 31, 2013. The executive
126 director of the Georgia Regional Transportation Authority and the commissioner of
127 transportation shall become nonvoting members of the board on the effective date of this
128 Code section and shall serve while holding their state offices. The commissioner of
129 transportation shall be a voting member of the board and the executive director of the
130 Georgia Regional Transportation Authority shall be a nonvoting member of the board. The
131 governing body that appoints a member shall appoint successors thereto for terms of office
132 of four years in the same manner that such governing body makes its other appointments
133 to the board.

134 (c) All appointments shall be for terms of four years except that a vacancy caused
 135 otherwise than by expiration of term shall be filled for the unexpired portion thereof by the
 136 ~~local governing body~~ appointing entity that made the original appointment to the vacant
 137 position, or its successor in office. A member of the board may be appointed to succeed
 138 himself or herself for one four-year term; provided, however, that board membership prior
 139 to January 1, 2014, shall not be considered in calculating limits on length of service.
 140 Appointments to fill expiring terms shall be made by the ~~local governing body~~ appointing
 141 entity prior to the expiration of the term, but such appointments shall not be made more
 142 than 30 days prior to the expiration of the term. Members appointed to the board shall
 143 serve for the terms of office specified in this Code section and until their respective
 144 successors are appointed and qualified.

145 (d) The local governing bodies of Clayton, Cobb, and Gwinnett Counties may, any other
 146 provision of this Code section to the contrary notwithstanding, negotiate, enter into, and
 147 submit to the qualified voters of their respective counties the question of approval of a
 148 rapid transit contract between the county submitting the question and the authority, all in
 149 accordance with the provisions of Section 24 of the Metropolitan Atlanta Rapid Transit
 150 Authority Act of 1965, approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended. The
 151 local governing bodies of these counties shall be authorized to execute such rapid transit
 152 contracts prior to the holding of a referendum provided for in said Section 24 ~~of the~~
 153 ~~Metropolitan Atlanta Rapid Transit Authority Act of 1965, approved March 10, 1965 (Ga.~~
 154 ~~L. 1965, p. 2243), as amended;~~ provided, however, that any such rapid transit contract shall
 155 not become valid and binding unless the same is approved by a majority of those voting in
 156 said referendum, which ~~approval~~ shall also be deemed approval of further participation in
 157 the authority. Upon approval of such rapid transit contract, the county entering into such
 158 contract shall be a participant in the authority, and its rights and responsibilities shall,
 159 insofar as possible, be the same as ~~those belonging to Fulton and DeKalb Counties~~ if it had
 160 participated in the authority from its beginning, and the local governing body of the county
 161 may then appoint two residents of the county to the board of directors of the authority, to
 162 serve a term ending on ~~the thirty-first day of December~~ 31 in the fourth full year after the
 163 year in which the referendum approving said rapid transit contract was held, in which event
 164 the board of directors of the authority shall, subsection (c) of this Code section to the
 165 contrary notwithstanding, be composed also of such additional members.

166 (e) Except for the executive director of the Georgia Regional Transportation Authority and
 167 the commissioner of transportation, no ~~No~~ person shall be appointed as a member of the
 168 board who holds any other public office or public employment except an office in the
 169 reserves of the armed forces of the United States or the National Guard; any member who

170 accepts or enters upon any other public office or public employment shall be disqualified
171 thereby to serve as a member.

172 (f) ~~A local governing body~~ An appointing entity may remove any member of the board
173 appointed by it for cause. No member shall be thus removed unless the member has been
174 given a copy of the allegations against him or her and an opportunity to be publicly heard
175 in his or her own defense in person with or by counsel with at least ten days' written notice
176 to the member. A member thus removed from office shall have the right to a judicial
177 review of the member's removal by an appeal to the superior court of the county where ~~of~~
178 ~~the local governing body which appointed the member~~ resides, but only on the ground of
179 error of law or abuse of discretion. In case of abandonment of the member's office,
180 conviction of a crime involving moral turpitude or a plea of nolo contendere thereto,
181 removal from office, or disqualification under subsection (e) of this Code section, the office
182 of a member shall be vacant upon the declaration of the board. A member shall be deemed
183 to have abandoned the member's office upon failure to attend any regular or special
184 meeting of the board for a period of four months without excuse approved by a resolution
185 of the board, or upon removal of the member's residence from the territory qualifying of
186 ~~the local governing body that appointed the member~~ to serve on the board.

187 (g) Each appointed member of the board, except the chairperson, shall be paid by the
188 authority a per diem allowance, in an amount equal to that provided by Code Section
189 45-7-21 for each day on which that member attends an official meeting of the board, of any
190 committee of the board, or of the authority's Pension Committee; or Board of Ethics; ~~or~~
191 ~~Arts Council~~; provided, however, that said per diem allowance shall not be paid to any such
192 member for more than 130 days in any one calendar year. If the chairperson of the board
193 is an appointed member of the board, the chairperson shall be paid by the authority a per
194 diem allowance in the same amount for each day in which the chairperson engages in
195 official business of the authority, including but not limited to attendance of any of the
196 aforesaid meetings. A member of the board shall also be reimbursed for actual expenses
197 incurred by that member in the performance of that member's duties as authorized by the
198 board. A board member shall not be allowed employee benefits authorized under Section
199 8(b) of the Metropolitan Atlanta Rapid Transit Authority Act of 1965, approved March 10,
200 1965 (Ga. L. 1965, p. 2243), as amended.

201 (h) The board shall elect one of its members as chairperson and another as vice
202 chairperson for terms to expire on December 31 of each year to preside at meetings and
203 perform such other duties as the board may prescribe. The presiding officer of the board
204 may continue to vote as any other member, notwithstanding the member's duties as
205 presiding officer, if ~~the member~~ he or she so desires. The board shall also elect from its

206 membership a secretary and a treasurer who shall serve terms expiring on December 31 of
 207 each year. A member of the board may hold only one office on the board at any one time.

208 (i) The board shall hold at least one meeting each month. The secretary of the board shall
 209 give written notice to each member of the board at least two days prior to any called
 210 meeting that may be scheduled, and said secretary shall be informed of the call of such
 211 meeting sufficiently in advance so as to provide for the giving of notice as above. A
 212 majority of the total membership of the board, as it may exist at the time, shall constitute
 213 a quorum. On any question presented, the number of members present shall be recorded.
 214 By affirmative vote of a majority of the members present, the board may exercise all the
 215 powers and perform all the duties of the board, except as otherwise hereinafter provided
 216 or as limited by its bylaws, and no vacancy on the original membership of the board, or
 217 thereafter, shall impair the power of the board to act. All meetings of the board, its
 218 executive committee, or any committee appointed by the board shall be subject to Chapter
 219 14 of Title 50.

220 (j) Notwithstanding any other provisions of this Code section, the following actions by the
 221 board shall require the affirmative vote of one more than a majority of the total
 222 membership of the board as it may exist at the time:

223 (1) The issuance and sale of revenue bonds or equipment trust certificates;

224 (2) The purchase or lease of any privately owned system of transportation of passengers
 225 for hire in its entirety, or any substantial part thereof. Prior to the purchase or lease of
 226 any such privately owned system a public hearing pertaining thereto shall have been held
 227 and notice of such public hearing shall have been advertised as provided in Section 9(c)
 228 of the Metropolitan Atlanta Rapid Transit Authority Act of 1965, approved March 10,
 229 1965 (Ga. L. 1965, p. 2243), as amended; provided, however, that no sum shall be paid
 230 for such privately owned system of transportation in excess of the fair market value
 231 thereof determined by a minimum of two appraisers ~~qualified to appraise privately owned~~
 232 ~~systems of transportation~~ and approved by a majority of the local governments
 233 participating in the financing of such purchase;

234 (3) The award of any contract involving \$100,000.00 or more for construction,
 235 alterations, supplies, equipment, repairs, maintenance, or services other than professional
 236 services or for the purchase, sale, or lease of any property. Any contract involving
 237 \$100,000.00 or more shall be awarded through a competitive bidding process as
 238 described in Section 14 of the Metropolitan Atlanta Rapid Transit Authority Act of 1965,
 239 approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended. The board by appropriate
 240 resolution may delegate to the general manager the general or specific authority to enter
 241 into contracts involving less than \$100,000.00 if such contracts are entered into in
 242 accordance with Section 14 of said Act;

243 (4) The grant of any concession; and

244 (5) The award of any contract for the management of any authority owned property or
245 facility.

246 (k) The board shall appoint and employ, as needed, a general manager and a general
247 counsel, none of whom may be members of the board or a relative of a member of the
248 board, and delegate to them such authority as it may deem appropriate. It may make such
249 bylaws or rules and regulations as it may deem appropriate for its own government, not
250 inconsistent with this Code section, including the establishment of an executive committee
251 to exercise such authority as its bylaws may prescribe.

252 (l) The treasurer of the authority and such other members of the board and such other
253 officers and employees of the authority as the board may determine shall execute corporate
254 surety bonds, conditioned upon the faithful performance of their respective duties. A
255 blanket form of surety bond may be used for this purpose. Neither the obligation of the
256 principal or the surety shall extend to any loss sustained by the insolvency, failure, or
257 closing of any depository which has been approved as a depository for public funds.

258 (m)(~~h~~) In addition to the requirements of subsection (i) of this Code section, each
259 member of the board shall hold a meeting once each 12 months with the local governing
260 body that appointed such member. The secretary of the board shall give written notice
261 to each member of the board, to each local governing body, and to the governing
262 authority of each municipality in the county in which there is an existing or proposed rail
263 line at least two days prior to any meeting that may be scheduled, and said secretary shall
264 be informed of the call of such meeting sufficiently in advance so as to provide for his
265 or her giving such notice. These meetings shall be for the purpose of reporting to the
266 local governing bodies on the operations of the authority and on the activities of the board
267 and making such information available to the general public. No activity that requires
268 action by the board shall be initiated or undertaken at any meeting conducted under this
269 subsection.

270 ~~(2) The board shall submit once each three months a written report on the operations of~~
271 ~~the authority and on the activities of the board to each local governing body that appoints~~
272 ~~a member of the board.~~

273 (n) For any expenditure to a vendor who has received \$5,000.00 or more within a 12
274 month period, such expenditure shall be listed by date, payee, amount, and purpose and
275 shall be listed on a schedule that is included as an appendix to the agenda for the next
276 regular meeting of the board. The schedule shall include all such expenditures for the
277 calendar month of the last regular meeting of the full board and any subsequent calendar
278 month where a full meeting of the board was not held. The agenda for each regular
279 meeting of the full board shall include an opportunity for the board to ask questions or

280 make comments about the expenditures listed in the appendix. The appendix required by
281 this subsection shall be posted on the authority's website no later than 24 hours prior to the
282 meeting."

283 **SECTION 6.**

284 Said chapter is further amended by adding two new Code sections to read as follows:

285 "32-9-15.

286 By July 1, 2018, the Metropolitan Atlanta Rapid Transit Authority shall enter into binding
287 contracts with private contractors for the provision of the following services in their
288 entirety: accounts payable, payroll processing, human resource benefits administration,
289 employee recruiting and staffing, employee data and records management, telephone
290 maintenance and support, information technology service desk, end-user computer support,
291 workers' compensation claims administration, customer care telephone hotline, paratransit
292 bus service, and the interior cleaning of buses and trains. The authority and its employees
293 may serve in a supervisory role for contracts involving the services listed in this Code
294 section to ensure proper, efficient, and cost-effective delivery thereof.

295 32-9-16.

296 The total principal and interest of the Metropolitan Atlanta Rapid Transit Authority's
297 annual bonded debt service shall not exceed 40 percent of the sales tax revenues collected
298 in the previous fiscal year beginning in the fiscal year commencing on July 1, 2016, and
299 for each fiscal year commencing on or after July 1, 2019, the total principal and interest of
300 the authority's annual bonded debt service shall not exceed 35 percent of the sales tax
301 revenues collected in the previous fiscal year."

302 **SECTION 7.**

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

305 **SECTION 8.**

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