

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

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 provide for limitations on restrictions of commercial motor vehicle traffic on certain county
6 road systems; to prohibit camping on portions of the state highway system or property owned
7 by the department; to provide for a definition; to provide for applicability; to provide for a
8 penalty; to revise provisions regarding the procedure for disposition of property; to provide
9 for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

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

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

26 (A) Payment, performance, surety, cosurety, or excess layer surety bonds;

- 27 (B) Letters of credit;
 28 (C) Guarantees of the contractor or its parent companies;
 29 (D) Obligations of the United States and of its agencies and instrumentalities; or
 30 (E) Cash collateral;

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

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

43 **SECTION 2.**

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

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

53 **SECTION 3.**

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

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

58 **SECTION 4.**

59 Said title is further amended in Code Section 32-4-42, relating to powers, by revising
 60 paragraphs (10) and (11) and by adding a new paragraph to read as follows:

61 "(10) In addition to the powers specifically delegated to it in this title and except as
 62 otherwise provided by Code Section 12-6-24, a county shall have the authority to adopt
 63 and enforce rules, regulations, or ordinances; to require permits; and to perform all other
 64 acts which are necessary, proper, or incidental to the efficient operation and development
 65 of the county road system; and this title shall be liberally construed to that end. Any
 66 power vested in or duty placed on a county but not implemented by specific provisions
 67 for the exercise thereof may be executed and carried out by a county in a reasonable
 68 manner subject to such limitations as may be provided by law; ~~and~~

69 (11) In all counties of this state having a population of 550,000 or more according to the
 70 United States decennial census of 1970 or any future such census, the county governing
 71 authority shall be empowered by ordinance or resolution to assess against any property
 72 the cost of reopening, repairing, or cleaning up from any public way, street, road, right
 73 of way, or highway any debris, dirt, sediment, soil, trash, building materials, and other
 74 physical materials originating on such property as a result of any private construction
 75 activity carried on by any developer, contractor, subcontractor, or owner of such property.
 76 Any assessment authorized under this paragraph, the interest thereon, and the expense of
 77 collection shall be a lien against the property so assessed coequal with the lien of other
 78 taxes and shall be enforced in the same manner as are state and county ad valorem
 79 property taxes by issuance of a fi. fa. and levy and sale as set forth in Title 48, known as
 80 the 'Georgia Public Revenue Code.' Code'; and

81 (12) Municipalities whose incorporating Acts became of full force and effect on or after
 82 May 1, 2017, but prior to January 1, 2019, shall not establish or maintain restrictions on
 83 access by commercial motor vehicles as defined in paragraph (8.3) of Code Section
 84 40-1-1 to portions of the road system providing access to commercial driveways as
 85 defined in Code Section 32-6-130, except as to the applicable road system, exceeding any
 86 county restrictions in effect on such portions on the date of incorporation unless such
 87 county by ordinance or resolution concurs on such restriction."

88 **SECTION 5.**

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

92 "32-6-6.

93 (a) For purposes of this Code section, the term 'camping' means temporary habitation
 94 outdoors as evidenced by one or more of the following actions: the erection or use of tents
 95 or other shelters; the laying down of sleeping bags, blankets, or other materials used for

96 bedding; the placing or storing of personal belongings; the making of a fire; or the act of
 97 cooking.

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

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

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

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

109 **SECTION 6.**

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

113 "(2)(A) When an entire parcel acquired by the department, a county, or a municipality,
 114 or any interest therein, is being disposed of, it may be acquired under the right created
 115 in paragraph (1) of this subsection at such price as may be agreed upon, but in no event
 116 less than the price paid for its acquisition. When only remnants or portions of the
 117 original acquisition are being disposed of, they may be acquired for a price no less than
 118 15 percent under the market value thereof at the time the department, county, or
 119 municipality decides the property is no longer needed. The department shall use a real
 120 estate appraiser with knowledge of the local real estate market who is licensed in
 121 Georgia to establish the fair market value of the property prior to listing such property."

122 "(2)(A) Such sale of property may be made by the department or a county or
 123 municipality by listing the property through a real estate broker licensed under Chapter
 124 40 of Title 43 who has a place of business located in the ~~county where the property is~~
 125 ~~located or outside the county if no such business is located in the county where the~~
 126 ~~property is located~~ state. Property shall be listed for a period of at least ~~three months~~.
 127 ~~Such property shall not be sold at less than its fair market value~~ 30 days. The
 128 department shall use a real estate appraiser with knowledge of the local real estate
 129 market who is licensed in Georgia to establish the fair market value of the property
 130 prior to listing such property. If the highest offer received to purchase is less than the
 131 appraised value but within 15 percent of such value, the department, county, or

132 municipality may accept such offer and convey the property in accordance with the
 133 provisions of subsection (c) of this Code section. All sales shall be approved by the
 134 commissioner on behalf of the department or shall be approved by the governing
 135 authority of the county or municipality at a regular meeting that shall be open to the
 136 public, and public comments shall be allowed at such meeting regarding such sale.

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

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

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

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

- 156 (i) A description sufficient to enable the public to identify the property;
- 157 (ii) The time and place of the public auction;
- 158 (iii) The right of the department or the county or municipality to reject any one or all
 159 of the bids;
- 160 (iv) All the conditions of sale; and
- 161 (v) Such further information as the department or the county or municipality may
 162 deem advisable as in the public interest.

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

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

168

SECTION 7.

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