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CRIMINAL PROCEDURE State Contracts: Certain Violations: Bid Provisions

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CRIMINAL PROCEDURE

State Contracts: Certain Violations: Bid Prohibitions

CODE SECTION: O.C.G.A. § 16-10-22 (amended)
BILL NUMBER: HB 940
ACT NUMBER: 669
SUMMARY: The Act prohibits persons who are convicted of or plead guilty to certain violations involving contracts, competitions or conspiracies from submitting a bid on, entering into or participating in certain contracts for a period of five years following conviction or entry of the plea under O.C.G.A. § 16-10-22(a) or (b).

History

O.C.G.A. § 16-10-22 contains two sections which specify punishment for persons convicted of entering into a contract, combination or conspiracy in restraint of free and open competition for goods, materials or services. The first section prohibits such transactions with the State or its agencies and the second concerns transactions with a political subdivision or its agency. Upon conviction, a violation is punished by imprisonment of not less than one nor more than five years.

To carry out the legislative intent, the Georgia Supreme Court held "that a court may sentence a corporation to serve a term for years . . . and may suspend that sentence [since it is incapable of enforcement] and impose a fine."¹

HB 940

HB 940 strengthens the penalty provisions of O.C.G.A. § 16-10-22. A corporation may no longer simply pay a fine if found guilty of violating the requirements for free and open competition in transactions with state or political subdivisions. HB 940, as introduced, provided that a person who was convicted of or pleaded guilty to a violation of subsections (a) or (b) of this Code section would be prohibited from doing business with the State or its political subdivisions for ten years from its conviction or plea. However, the period was reduced to five years in the Act. The new Act

1. State v. Sheperd Constr. Co., 248 Ga. 1, 5-6, 281 S.E.2d 151, 157 (1981).

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gives the State a stronger hand in preventing bid-rigging among contractors by increasing the cost of noncompliance.