

# REPORT OF THE GENERAL GOVERNMENT, PERSONNEL & BENEFITS SUBCOMMITTEE

(Anthony, Herbkersman, Hayes, Pitts & Whitmire - Staff Contact: Kara Brurok)

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## HOUSE BILL 3860

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H. 3860 -- Rep. White: A BILL TO AMEND SECTION 11-35-3005, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PROJECT DELIVERY METHODS AUTHORIZED FOR PROCUREMENT OF INFRASTRUCTURE FACILITIES UNDER THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE, SO AS TO PROVIDE THAT AN ENTITY OR INDIVIDUAL OFFERING TO CONTRACT FOR DESIGN-BUILD, DESIGN-BUILD-OPERATE-MAINTAIN, OR DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN PROJECT DELIVERY METHODS IS NOT REQUIRED TO HOLD A LICENSE OTHERWISE REQUIRED BY TITLE 40, SO LONG AS THE PERSON WHO ACTUALLY PERFORMS WORK REGULATED BY TITLE 40 HOLDS THE APPROPRIATE LICENSE; AND TO AMEND SECTION 11-35-3030 RELATING TO BOND AND SECURITY UNDER THE CONSOLIDATED PROCUREMENT CODE, SO AS TO REQUIRE PERFORMANCE AND PAYMENT BONDS EQUAL TO ONE HUNDRED PERCENT OF THE VALUE OF DESIGNATED PORTIONS OF CONSTRUCTION, PRIOR TO THE COMMENCEMENT OF WORK ON THOSE PORTIONS OF THE PROJECT.

***Summary of Bill:***

Exempts the bidder from licensing requirements.

Clarifies who is eligible to bid on State DB (Design-Build), DBOM (Design-Build-Operate-Maintain) or DBFOM (Design-Build-Finance-Operate-Maintain) projects.

Makes clear that teams of SC businesses can compete fairly for this work against large national and multi-national firms.

Members of bidding teams (contractor and design professional) must be identified in proposals and after award, substitution is strictly limited by statute.

Every person or business performing regulated work for State projects must hold the appropriate license at bid time-no exceptions.

Codifies current regulation 19-445.2145(N)(3) allowing bonds on CM/R projects to be delivered "per phase" and extends this flexibility to design-build and its variants.

Sets the face amount of payment and performance bonds on DB, DBOM, and DBFOM contracts to 100% of the value of the design and construction work.

In no event can any construction begin until the appropriate bonds are delivered to the State.

***Introduced:***

03/21/2013

***Received by Ways and Means:***

03/21/2013

***Estimated Fiscal Impact:***

No Fiscal Impact

***Subcommittee Recommendation:***

Adopted

***Full Committee Recommendation:***

Pending

FISCAL IMPACT STATEMENT ON BILL NO. **H.3860**  
(Doc. No. 13196dg13.docx)

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TO:	The Honorable W. Brian White, Chairperson, House Ways and Means Committee		
FROM:	State Budget Division, Budget and Control Board		
ANALYSTS:	K. Earle Powell		
DATE:	April 8, 2013	SBD:	2013220

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AUTHOR:	Representative White	PRIMARY CODE CITE:	11-35-3005
SUBJECT:	Procurement		

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ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:  
\$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:  
\$0 (No additional expenditures or savings are expected)

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**BILL SUMMARY:**

House Bill 3860 amends the Code of Laws of South Carolina, 1976, to revise project delivery methods authorized for procurement of infrastructure facilities under the South Carolina Consolidated Procurement Code, so as to provide that an entity or individual offering to contract for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain project delivery methods is not required to hold a professional or occupational license otherwise required by law, so long as the person who actually performs the regulated work holds the appropriate license.

**EXPLANATION OF IMPACT:**

The State Budget and Control Board indicates there is no fiscal impact with the adoption of this Bill.

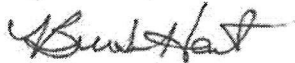
**LOCAL GOVERNMENT IMPACT:**

None.

**SPECIAL NOTES:**

None.

Approved by:



Brenda Hart  
Assistant Director, State Budget Division

**South Carolina General Assembly**  
120th Session, 2013-2014

**H. 3860**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. White

Document Path: I:\council\bills\nl\13196dg13.docx

Introduced in the House on March 21, 2013

Currently residing in the House Committee on **Ways and Means**

Summary: Procurement code

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
3/21/2013	House	Introduced and read first time ( <a href="#">House Journal-page 14</a> )
3/21/2013	House	Referred to Committee on <b>Ways and Means</b> ( <a href="#">House Journal-page 14</a> )

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**VERSIONS OF THIS BILL**

[3/21/2013](#)

1 Whereas, the licensing requirements of Title 40, when applied to  
2 the alternative project delivery methods authorized by the  
3 Consolidated Procurement Code, have been subject to different  
4 and sometimes conflicting interpretations and could disadvantage  
5 South Carolina's construction industry; and

6  
7 Whereas, the relationship between the licensing and procurement  
8 laws needs clarification to assure maximum competition for State  
9 construction projects, consistent with the principle that no design  
10 or construction shall be performed without the appropriate  
11 authorization required by Title 40. Now, therefore,

12  
13 Be it enacted by the General Assembly of the State of South  
14 Carolina:

15  
16 SECTION 1. Section 11-35-3005 of the 1976 Code is amended  
17 by adding a subsection at the end to read:

18  
19 “(4) A business contracting or offering to contract for a project  
20 delivery method specified in Section 11-35-3005(1)(d)  
21 (design-build), Section 11-35-3005(1)(e)  
22 (design-build-operate-maintain), or Section 11-35-3005(1)(f)  
23 (design-build-finance-operate-maintain) is not required to hold a  
24 license required by or issued in accordance with Title 40. Any  
25 person or entity who, pursuant or relating to a contract awarded for  
26 one of the project delivery methods specified in this subsection,  
27 directly and personally practices or engages in a profession or  
28 occupation regulated by a board or commission administered by  
29 the Department of Labor, Licensing and Regulation must hold a  
30 valid authorization to practice as otherwise required by law.”

31  
32 SECTION 2. Section 11-35-3030(2)(a) of the 1976 Code is  
33 amended to read:

34  
35 “(a) When Required-Amounts. The following bonds or security  
36 must be delivered to the governmental body and become binding  
37 on the parties upon the execution of the contract for construction:

38 (i) a performance bond satisfactory to the State, executed  
39 by a surety company meeting the criteria established by the board  
40 in regulations, or otherwise secured in a manner satisfactory to the  
41 State, in an amount equal to one hundred percent of the portion of  
42 the contract price that does not include the cost of operation,  
43 maintenance, and finance;

1 (ii) a payment bond satisfactory to the State, executed by a  
2 surety company meeting the criteria established by the board in  
3 regulations, or otherwise secured in a manner satisfactory to the  
4 State, for the protection of all persons supplying labor and material  
5 to the contractor or its subcontractors for the performance of the  
6 construction work provided for in the contract. The bond must be  
7 in an amount equal to one hundred percent of the portion of the  
8 contract price that does not include the cost of operation,  
9 maintenance, and finance;

10 (iii) in the case of a construction contract valued at fifty  
11 thousand dollars or less, the governmental body may waive the  
12 requirements of (i) and (ii) above, if the governmental body has  
13 protected the State;

14 (iv) in the case of a construction manager at-risk contract,  
15 the solicitation may provide that bonds or security are not required  
16 during the project's preconstruction or design phase, if  
17 construction does not commence until the requirements of (i) and  
18 (ii) above have been satisfied. Additionally, the solicitation may  
19 provide that bonds or security as described in (i) and (ii) above  
20 may be furnished for one or more designated portions of the  
21 project, in an amount equal to one hundred percent of the value of  
22 the construction of each designated portion; and may also prescribe  
23 the time of delivery of the bonds or security. In no event shall  
24 construction of any portion of the work commence until the  
25 appropriate bonds or security have been delivered to the  
26 governmental body.

27 (v) in the case of a design-build,  
28 design-build-operate-maintain, or  
29 design-build-finance-operate-maintain contract, the solicitation  
30 may provide that bonds or security as described in (i) and (ii)  
31 above may be furnished for one or more designated portions of the  
32 project, in an amount equal to one hundred percent of the value of  
33 the design and construction of each designated portion; and may  
34 also prescribe the time of delivery of the bonds or security. In no  
35 event shall construction of any portion of the work commence until  
36 the appropriate bonds or security have been delivered to the  
37 governmental body."

38  
39 SECTION 3. This act takes effect upon approval by the Governor  
40 and applies to contracts formed and offers made after June 30,  
41 2012.

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