

**SENATE JUDICIARY COMMITTEE
2013-2014 MEMBERS**

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SENATE JUDICIARY COMMITTEE RULES

2013-2014

1. Quorum of the Committee shall be five (5) members. Every member, including ex-officio members, shall count as a voting member for purposes of establishing a quorum at any given meeting.
2. The Chairman shall determine which bills, resolutions, substitutes, or amendments are to be considered and the order in which said measures are considered; the Chairman shall have the authority and discretion to call a bill, resolution, substitute or amendment for debate and explanation only or to limit consideration of such measures.
3. The Chairman shall have the authority to refer bills and resolutions to subcommittee for study. Such subcommittees in turn shall have the authority to make recommendation on such measures to the full Committee at such times as shall be designated by the Chairman. All actions of the subcommittees shall be approved or disapproved by the standing committee.
4. The Chairman shall have the authority to schedule, manage, and regulate the debate on bills, resolutions, substitutes, and amendments, and may in his discretion recognize motions related to such measures and the order in which they are recognized.
5. When a bill or resolution is before the committee for consideration, the following shall be the precedence of the motions: (All motions shall receive a Second before consideration)
 1. A motion that a bill do pass;
 2. A motion that a bill do not pass;
 3. A motion to postpone to a time certain;
 4. A motion to refer a bill to a subcommittee.
6. The Committee shall convene, recess and adjourn upon the order of the Chairman.
7. A bill or resolution will be considered only after presentation by its principal author or other legislator whom he/she may designate unless otherwise directed by the Chairman. The principal author shall be the legislator whose name appears first on the list of authors. The Committee shall not vote on any bill until the author or his or her designee has been given the opportunity to appear and be heard.
8. The Chairman reserves the right to delay or decline action on substitutes and amendments not provided to the Chairman in writing at least 24 hours prior to the hearing in which they are presented.
9. The Chairman shall not vote unless the committee shall be equally divided or unless his or her vote if given in the minority will make the division equal. In case the vote is equally divided, the Chairman must vote.
10. Any Member or Members of the Committee who disagree with the majority report of the Committee shall be privileged to file a minority report if they so desire.
11. These rules may be amended upon a motion duly made and subsequently approved by two-thirds of the members of the Committee.
12. Where these rules are silent on a specific issue, the Rules of the Senate as adopted shall govern. If the Rules of the Senate are silent on a specific issue, Mason's Manual of Legislative Procedure shall govern.

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **January 21, 2014 in Room 307 CLOB at 3:00 p.m.**

SENATORS PRESENT:

McKoon, 29th – Chairman
Crosby, 13th - Vice Chairman
Bethel, 54th - Secretary
Stone, 23rd
Tippins, 37th
Fort, 39th
Cowsert, 46th

Chairman McKoon, 29th called the meeting to order at 3:00 p.m.

The following bills were presented to the Committee:

[HB 135](#) LC29 5432S - Representative Welch, 110th, - Relating to ante litem notice for municipalities, so as to provide that such notices shall specify the amount of damages sought.

Welch, 110th, introduced this bill to clarify responsibilities of plaintiffs and add specificity to the claims process. This bill requires plaintiffs suing municipal corporations to provide notice as to the specific amount of damages sought and requires the notice to be served on the mayor and chair of the city council or commission. The amount listed in the notice is considered an offer of compromise and not binding on the plaintiff. Cowsert, 46th, asked whether this bill was too burdensome on the plaintiffs in determining the amount of their damages, particularly medical bills that accrue at the time of the notice deadline. Welch, 110th, indicated that the bill provided plaintiffs with enough flexibility in those situations. Sen. Cowsert, 46th, asked whether the use of the term “offer to compromise” in the bill was meant to trigger other provisions in the Code which use that term. Welch, 110th, indicated it was not by citing lines 16 and 17.

Bethel, 54th, moved **Do Pass**. Stone, 23rd, seconded the motion. The vote was **unanimous**. **The bill Do Pass**. Chairman McKoon, 29th, will be the Senate sponsor.

Guest Speakers

- Jason Rook, Georgia Trial Lawyers Association: Supports this bill.
- Rushie Patel, Georgia Municipal Association: Spoke in support of this bill.

[HB 215](#) LC29 5581S - Representative Benton, 31st - Act to amend Chapter 6 of Title 15 of the O.G.C.A, relating to superior courts, so as to change provisions relating to filings in the clerk’s office; to increase fees for certain filings; to change provisions relating to office hours.

Benton, 31st, presented the bill to the committee. The bill allows clerks’ offices with 3 or fewer employees to be open from 8:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 5:00 p.m. so as to allow

for an employee lunch break. Requires court clerks to note date and time of filing for recordation for conveyances of property instead of date and time of actual recordation. This bill prohibits court clerk from recording any document without receiving all required fees and taxes for filing. Senator Cowser, 46th, a representative of the Superior Clerks' Association, indicated that between 10 and 20 counties in the State of Georgia have fewer than 3 employees. Bethel, 54th, inquired as to if there was an expiration date for clerks to take a lunch break. Rep. Benton, 31st, responded that there is not. Bethel, 54th, suggested that the clerks offices establish a floating lunch time (having a lunch break at different times on different days) in order to accommodate those citizens that can only come during their work lunch breaks.

Stone, 23rd, moved **Do Pass**. Bethel, 54th, seconded the motion. The vote was (5-1) and the **bill passed**. Yea votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, Tippins, 37th, and Fort, 39th. Nay vote was Cowser, 46th. Chairman McKoon, 29th, will be the Senate sponsor

SB 290 LC 40 0483S - Senator Burke, 11th - Amending Article 2 of Chapter 8 of Title 4 of the Official Code of Georgia annotated, relating to responsible dog ownership, so as to allow local governments to confer dog control authority upon multiple individuals; to provide for the hearing of contested cases by superior courts; to require dog owners to pay for reasonable confinement and housing expenses in certain cases; to provide for an effective date and applicability.

Burke, 11th, introduced this bill with guest, Dr. Chris Hobby, representing the city of Bainbridge, they explained that when large dog rings are discovered the number of dogs found and rescued are extremely high. With a small shelter and large influxes of animals that need shelter, the city shelters are too crowded. There was argument over legalizing surgical neutering being replaced by injections. The argument for this approach was to relieve the shelters of the financial stress of surgeries and lower the aggressiveness of dogs being boarded. The injections discussed did not lower testosterone in dogs but prevent reproduction.

The bill was held until the next Senate Judiciary Committee meeting would be scheduled.

With no further business, Chairman McKoon, 29th adjourned the meeting at 3:30 p.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **January 27, 2014 in Room 307 CLOB at 2:00 p.m.**

SENATORS PRESENT:

McKoon, 29th, – Chairman

Crosby, 13th, - Vice Chairman

Bethel, 54th, - Secretary

Ligon, 3rd

Stone, 23rd

Fort, 39th

Carter, 42nd

Cowsert, 46th

Chairman McKoon, 29th called the meeting to order at 2:06 p.m.

The following bills were presented to the Committee:

[SB 282](#) LC29 5742 - Senator Hufstetler, 52nd - Amend Chapter 6 and Article 1 of Chapter 1 of the Title 19 of the O.C.G.A., relating to alimony and child support and the “Child Support Recovery Act,” respectively, so as to enact provisions recommended by the Georgia Child Support Commission relating to child support and enforcement of child support orders; to revise definitions used in calculating child support.

Chairman McKoon, 29th, assigned this bill to a subcommittee to be readdressed in the Judiciary Committee at a later date. Bethel, 54th, was appointed as Chairman of the subcommittee.

[HB 3](#) LC29 5769S - Representative Willard, 51st - Act to amend Part 2 of Article 1 of Chapter 6 of Title 12 and Title 24 of the Official Code of Georgia Annotated, relating to the practice of professional forestry and evidence, respectively, so as to conform provisions of the Code due to the passage of 2011 HB 24 and HB 214; to reassign functions of the former Division of Public Health of the Department of Community Health to the new Department of Public Health relating to disclosure of AIDS confidential information.

Willard, 51st, presented this bill - This bill eliminates the provision in current law which provides that (a) the board's record are prima facie evidence of the proceedings of the board described in such records, and (b) a transcript of such records that has been certified by the board secretary is admissible in evidence with the same force and effect as if the original transcript had been produced in evidence per the required proceedings of the State Board of Registration of Foresters. Current law prohibits anyone who receives AIDS confidential information from knowingly or intentionally disclosing such information and provides generally that no person in possession of such information may be compelled by subpoena, court order, or judicial process to disclose such information. The bill clarifies exceptions to these restrictions: (a) if a person identified by AIDS confidential information is a minor such information may be disclosed to such person's parent and (b) if the person identified by AIDS confidential information is an incompetent person, such information may be disclosed to such person's legal guardian. This new substitute issued will

delete former Section 2, relating to writings used to refresh memory in evidence.. Also, this substitute reassigns functions of the former Division of Public Health of the Department of Community Health to the new Department of Public Health, created in 2011.

Bethel, 54th, moved **Do Pass by substitute**. Cowser, 46th, seconded the motion. The vote was unanimous and the bill **Passed**. Chairman McKoon, 29th, will be the Senate sponsor.

With no further business, Chairman McKoon, 29th adjourned the meeting at 2:17 p.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **February 3, 2014 in Room 307 CLOB at 2:00 p.m.**

SENATORS PRESENT:

McKoon, 29th, Chairman

Crosby, 13th, Vice Chairman

Bethel, 54th, Secretary

Ligon, 3rd

Stone, 23rd

J. Carter, 42nd

Cowsert, 46th

Fort, 39th (arrived late – voted on SB 332)

Chairman McKoon, 29th, called the meeting to order at 2:05 p.m.

The following bills were presented to the Committee:

[HB 296](#) LC 29 5833S - Representative Powell, 32nd, - Act to amend title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, so as to add certain persons to those authorized to receive motor vehicle registration records; to add certain persons to the list of person authorized to receive motor vehicle certificate of title records; to provide for the Department of Revenue to establish certain procedures and to promulgate rules and regulation.

Representative Powell, 32nd, introduced the bill stating this bill permits individuals licensed by and registered with the Georgia Board of Private Detective and Security Agencies to receive motor vehicle registration and certificate of title records from the Department of Revenue. Under this bill, the Commissioner of Revenue may disclose motor vehicle registration information by means he designates, including by mail, e-mail, or the use of an authorized provider. Powell, 32nd, stated that these private investigators help law enforcement agencies with civil cases like child custody battles, missing persons, etc. not strictly private businesses, so this access would help the public officials immensely. Today, 40 states in the country have already ratified the terms of this bill. Cowsert, 46th, inquired as to how to determine whether these private investigators are attaining records for personal or professional use? Powell, 32nd, replied that under the Driver's Private Protection Act, the federal government has already allowed private investigators access to driving and license records, but it is up to each state to ratify in order to allow private investigators this access.

An amendment to include language about record-keeping of requests to safeguard citizens against the illegal use of reports would be acceptable. Private investigators lose their license if they use their power illegally, so it is uncommon for them to use these records for personal initiatives. Ligon, 3rd, asked for an amendment to provide the same fines and civil remedies for someone who is a victim of a privacy violation for liquid and punitive damages and attorney fees. Knowing false representations in order to gain information is a problem, his amendment will include a fine of \$5000 for the improper release of information resulting in damages, but there will be no fine for

damages less than \$5000. Powell, 32nd, said he agreed that if a private investigator violates this new state law, then they, too, violate federal law.

Mr. Paul Tamaroff spoke to the committee about including an amendment allowing certified process servers access to these same records citing that the critical discovery is discovered before a case not during. Certified process servers must serve papers before a plaintiff lawyer is assigned, therefore they need records to find persons involved in case. Each certified process server is required to take morality classes, so they, too, know the importance of following the law and maintaining professionalism.

Crosby, 13th, moved **Do Pass**. Stone, 23rd, seconded the motion. Ligon, 3rd, motioned to amend (see below).

Chairman McKoon, 29th, **held bill** in order to draft language for amendment to be presented with Representative Powell's, 32nd, approval. Mullis, 53rd, will be the Senate sponsor. HB 296 will be put on the agenda of a future Senate Judiciary Committee meeting.

Guest Speaker

Paul Tamaroff, Georgia Association of Professional Process Servers, Asked for certified process servers to be included in legislation. He supports this bill but feels process servers are vital to the discovery process, and they should be allowed to gain information in order to properly perform duties.

[SB 332 LC29 5822](#) - Senator Stone, 23rd, - Act to amend Code Section 15-10-2 of the Official Code of Georgia Annotated, relating to the jurisdiction of the magistrate courts, so as to increase the fine amount for contempt of court.

Sen. Stone, 23rd, presented the bill stating that it is necessary because many localities use magistrate courts as their primary courts. Currently, law provides that magistrate courts have jurisdiction and power of the punishment of contempt by fines of up to \$200; this bill proposed to raise the contempt fine to \$500. This bill brings magistrate power and punishment to same level of power as municipal and probate courts allowing for uniformity. Sen. Stone, 23rd, argued that it is important to reinforce power of judges to control their courts. You should be subjected to same penalties in various courts. Sen. Cowser, 46th, asked about the extent of problems faced with magistrate courtrooms and the judges' abilities to maintain order. Judge Harvey replied that for most courts holding people in contempt is not a huge issue, however the number of people held in contempt of court rose both for local courts and the State Superior court last year, noting that if you raise the fee then someone may be less likely to act in a contemptuous manner. Sen. Stone, 23rd, included that last year the Senate Judiciary Committee passed legislation allowing the State Supreme Court fee from \$550 to \$1000. Judge Harvey added that there has been no change in the fines for magistrate courts in the last 25 years further emphasizing the need for uniformity among courts. Sen. Bethel, 54th, inquired about the existence of any measures revealing how frequently people are held in contempt in magistrate courts. Judge Harvey replied that no such measure exists.

Crosby, 13th, moved **Do Pass**. J. Carter, 42nd, seconded the motion. The vote was unanimous and the **motion Passed**.

Guest Speaker

Judge Alan Harvey, Council of Magistrate Court Judges from DeKalb County, indicated that this bill is necessary to provide clarity to litigants as to the penalties for contempt regardless of what class of court they are before; he stated that stiffer fines may deter acts of contempt. He supports this bill.

With no further business, Chairman McKoon, 29th adjourned the meeting at 2:45 p.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **February 5, 2014 in Room 307 CLOB at 4:00 p.m.**

SENATORS PRESENT:

McKoon, 29th, – Chairman

Crosby, 13th, - Vice Chairman

Bethel, 54th, – Secretary

Ligon, 3rd

Stone, 23rd

Tippins, 37th

J. Carter, 42nd

Cowsert, 46th

Fort, 39th – left early – Did not vote on SB290 and HB296

Chairman McKoon, 29th, called the meeting to order at 4:15 p.m.

The following bills were presented to the Committee:

[SB 290](#) LC29 5841S - Senator Burke, 11th - Act to amend Article 2 of Chapter 8 of Title 4, Chapter 14 of Title 4, and Article 2 of Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to possible dog ownership, sterilization of dogs and cats in animal shelters.

Burke, 11th, presented this bill - This bill was originally heard in committee on January 21, 2014 and held to add provisions regarding the option to use courts as appellate body if animal control or health boards are not available. The city of Bainbridge originally contacted Senator Burke, 11th, because of increasing costs relating to animal shelters because it could not process appeals of dog confiscations without a fully constituted local animal control or health board. This bill allows probate courts to hear appeals on confiscations of dangerous dogs if there is no animal control or health board. It reduces the time to contest confiscation of dangerous dogs and retrieve dogs from shelter and allows the non-surgical sterilizations of dangerous dogs residing in the shelters. The original language required courts to hear these appeals, but the bill was amended through a new substitute to permit court jurisdiction in cases where animal control and health boards are not in place. Vince Obstinik with the Georgia Veterinary Medical Association identified concerns about the sterilization portion in the bill because non-surgical sterilizations are less effective at reducing testosterone levels in male dogs than current methods of castration. Their fear is that increased use of non-surgical methods will increase the number of violence-prone male dogs adopted from shelters, however these methods are currently available to private veterinarians and are cheaper than the surgeries available. Additional concern is that adopting families will not be aware that their adopted male dog has high testosterone levels even though neutering has occurred. There was discussion about adding language requiring the use of FDA-approved medications for the animals.

Tippins, 37th, moved **Do Pass by Substitute**. Crosby, 13th, seconded the motion. The vote was unanimous and the **bill passed**.

Guest Speaker

- Vince Obstnik, Georgia Veterinary Medical Association: They support this bill except for the provisions on sterilization.

[HB 296](#) LC 29 5874ERS - Representative Powell, 32nd - Act to amend title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, so as to add certain persons to those authorized to receive motor vehicle registration records; to add certain persons to the list of person authorized to receive motor vehicle certificate of title records; to provide for the Department of Revenue to establish certain procedures and to promulgate rules and regulations.

Representative Powell, 32nd, presented this bill - This bill was passed by the Senate Judiciary Committee in 2013 but did not make it through the Senate on the last day of the 2013 legislative session. It was heard in Senate Judiciary Committee on February 3, 2014 without a vote in order to allow Ligon, 3rd, to prepare an amendment. This bill adds licensed private detectives and security agencies to the list of persons authorized to receive vehicle registration and title information from the revenue department. The bill will assist private investigators who aid in searches and investigations that law enforcement agencies lack resources to conduct.

A representative from the Georgia Association of Professional Process Servers asked the bill be amended to add process servers to list of authorized persons during the bill's hearing on February 3, 2014.

Amendment #1 (offered by Ligon, 3rd)

Ligon, 3rd, offered an amendment that protects registered peoples the private right of action against anyone who discloses vehicle or title records for purposes other than allowed by the statute. His amendment added lines 69-95 and transferred lines 72-76 to be incorporated in lines 77-79 in section 2A. Ligon, 3rd, made a **motion to amend**, Carter, 42nd, seconded the motion. The motion **Passed** unanimously.

Amendment #2 (offered by Cowsert, 46th)

Cowsert, 46th, introduced a second amendment with language requiring the revenue department to notify the registrant by mail of the date their records were accessed and the private detective who accessed them. Private investigators opposed this provision, stating it would endanger detectives. Cowsert, 46th, made a **motion to amend**, Stone, 23rd, seconded the motion. Vote was (4-3) and the motion **Passed**. Yay votes were Ligon, 3rd, Stone, 23rd, Tippins, 37th and Cowsert, 46th. Nay votes were Crosby, 13th, J. Carter, 42nd and Bethel, 54th.

Ligon, 3rd, moved **Do Pass by Substitute**. Stone, 23rd, seconded the motion. The motion **Passed** unanimously. Mullis, 53rd, will be the Senate sponsor.

Guest Speaker

- Pam Griggs, Georgia Association of Private Investigators: Spoke of the association's support of the bill with rejection of Cowsert's, 46th, amendment.

With no further business, Chairman McKoon, 29th, adjourned the meeting at 4:45 p.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **February 10, 2014 in Room 307 CLOB at 2:00 p.m.**

SENATORS PRESENT:

McKoon, 29th, – Chairman

Crosby, 13th, - Vice Chairman

Bethel, 54th, - Secretary

Ligon, 3rd

Stone, 23rd

J. Carter, 42nd (arrived late – Did not vote SB 331 and HB 829)

Cowsert, 46th (arrived late – Did not vote SB 331, HB 829 and SB 340)

Chairman McKoon, 29th called the meeting to order at 2:00 p.m.

The following bills were presented to the Committee:

SB 331 LC21 2377 - Senator Harper, 7th - Act to amend Code Section 15-6-2 of the Official Code of Georgia Annotated, relating to the number of superior court judges for each judicial circuit, so as to provide for an additional judge of the Waycross Judicial Circuit; to provide for the initial appointment of such judge by the Governor; to provide for the election and term of office of such judge; to provide for powers, duties, and responsibilities of such judge and the judges of such circuit.

Senator Harper, 7th, introduced the bill to the committee. This bill increases the number of superior court judges on the Waycross Circuit from three to four in order to manage the large caseload. The circuit covers a large geographic area with numerous courts and programs; there are five state courts, six counties, seven senate districts, twelve different types of courts, three prisons, and a detention center within the Waycross Judicial Circuit. The Senator also indicated that a senior judge is nearing retirement and without another full-time judge, the caseload of the circuit will be unmanageable. The Administrative Office of the Courts supported this legislation. Chief Judge Dwayne Gillis of the Waycross Judicial Circuit and Superior Court Judge Jeff Kite were present to support the passing of this bill. The judge who will fill the new vacancy will be appointed by the Governor and will serve from July 1, 2014 until December 31, 2016. Thereafter, the position will be filled by an election every four years.

Crosby, 13th, moved **Do Pass**. Ligon, 3rd, seconded the motion. The vote was unanimous and the motion **Passed**.

HB 829 LC29 5786 - Representative Willard, 51st - Act to amend Code Section 9-11-4.1 of the Official Code of Georgia Annotated, relating to certified process servers, so as to change the sunset and legislative review provisions.

Representative Willard, 51st, introduced the bill to the committee. Current law provides that the statute governing the state certification process for process-servers will be repealed on July 1, 2015 unless continued in effect by the Georgia General Assembly prior to that date. Also, current

law requires the General Assembly to review the statutes relating to process-server certification during the 2013 session of the General Assembly. This bill removes the requirement for the statute to be reviewed during the 2013 session, and extends the sunset of the process-server certification statute to 2020. Rep. Willard, 51st, indicated that the current certification program has been successful and that a lot of training and certification of process-servers has taken place. He wants to extend the period of the program to grow participation.

Stone, 23rd, moved **Do Pass**. Bethel, 54th, seconded the motion. The vote was unanimous and the motion **Passed**. Stone, 23rd will be the Senate Sponsor.

SB 340 LC33 5266 - Senator Stone, 23rd - Act to amend the Official Code of Georgia Annotated, so as to revise, modernize, correct errors or omissions in, and reenact the statutory portion of said Code, as amended, in furtherance of the work of the Code Revision Commission; to repeal portions of said Code, or Acts in amendment thereof, which have become obsolete, have been declared to be unconstitutional, or have been preempted or superseded by subsequent laws.

This bill incorporates numerous updates and corrections to grammar, terminology, and punctuation to the Official Code of Georgia recommended by the Georgia Code Revision Commission (CRC).

Crosby, 13th, moved **Do Pass**. Bethel, 54th, seconded the motion. The vote was unanimous and the motion **Passed**.

SR 808 LC34 3977 - Senator Williams, 19th - A resolution proposing an amendment to the Constitution so as to prohibit the application of foreign law in Georgia courts when such foreign law is in violation of rights guaranteed natural citizens by the United States and Georgia Constitutions; to prohibit the application of laws enacted by other states that violate the public policy of the State of Georgia.

This resolution prohibits courts, arbitrators, administrative agencies, and other enforcement authorities from applying or enforcing a foreign law that violates a state law or constitutional right. Where possible, if the application of a foreign law or enforcement of a forum selection clause placing forum in a foreign court would abridge the constitutional rights of a party, contracts are to be modified or amended by courts to the extent necessary to preserve the constitutional rights of the parties. Any agreement incapable of being modified or amended in order to preserve the constitutional rights of the parties is to be null and void. However, this resolution does not limit the right of a natural person or entity to voluntarily restrict his/her/its own constitutional rights by contract or a specific waiver that is consistent with constitutional principles. Georgia courts are required to apply or enforce any foreign law. However, this resolution does not apply if a legal entity voluntarily subjects itself to foreign law in jurisdictions outside Georgia or the United States. This resolution also provides that notwithstanding Article IV, Section I of the United States Constitution, the State of Georgia will not give full faith and credit to public acts, records, or judicial proceedings of another state that violate Georgia public policy.

Due to the absence of the author of the resolution, testimony regarding the resolution was heard and the Chairman held the resolution to be voted on at a later committee meeting. **HEARING ONLY**

Guest Speakers

- David Bores, Georgia Association of Private Investigators: He cited the already existing supremacy clause of the United States Constitution, and two Supreme Court Justices stating that foreign law will be regarded in their deliberations. He opposed this resolution in order to prevent unfairness and renunciation of constitutional rights in the State of Georgia.

- Eric Fisher, Anti-Defamation League: He opposed SR 808 because the Georgia Constitution and United States Constitution already prohibit fundamentally unfair and unconstitutional application of foreign and religious laws. He recognized the broad definition of "foreign law" and the possible inability to include religious laws in that definition. He deemed the resolution unnecessary.

- Ben Greer: Came in a personal capacity due to lack of notice, but he is the Chairman of the State Bar Committee of International Trade and Legal Services. He argued that this legislation does not address a problem because violations of Constitutional rights are not popular issues currently in the international business sphere within Georgia. He identified that there is already a remedy statute to this issue in the Official Code of Georgia, Title 1, Section 9, Article 3. He noted that Alabama turned down a similar provision introduced to their General Assembly.

- Doug Yarn, Board Member of Atlanta International Arbitration Society (ATLAS): Opposed this resolution. The General Assembly passed Georgia International Arbitration Code to make Georgia a more desirable place to handle international disputes which will be undermined by this legislation. Also, he noted that this resolution resembles a popular adaptation of anti-sharia law that has already been passed and caused problems in Kansas.

- James Nobles, State Bar-International Law Committee Chairman: He opposed this resolution. He admitted that paragraph B would make international business transactions even more confusing than they already are. Georgia courts already have international business and contractual laws advocating these ideas and protecting the policy interests of the State of Georgia.

- Kirk Watkins: A trial lawyer from Georgia opposed this resolution. He argued that this resolution is not a satisfying resolution because in section F, the judges are advised to favor United States citizens regardless of the circumstances creating unfairness.

- Chuck Meadows, Metro Atlanta Chamber: Opposed this resolution because Georgia businesses spend public and private funds to attract international imports and exports, so this reverses the positive impacts of global commerce in all sectors of industry.

- Frank Molcahy, Georgia Catholic Conference: As a former member of the State Bar and on behalf of the Georgia Catholic Conference, he disagrees with the passing of this resolution. He identified that this resolution will lead to confusion about the acceptance of Canon Law within the Catholic churches and it will impact proceedings about church ownership, material distribution, and education. O.C.G.A. section 57 incorporates language about the title and ownership of church property already.

With no further business, Chairman McKoon, 29th, adjourned the meeting at 3:00 p.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **February 17, 2014 in Room 307 CLOB at 2:00 p.m.**

SENATORS PRESENT:

McKoon, 29th, – Chairman

Crosby, 13th, - Vice Chairman

Bethel, 54th, - Secretary

Stone, 23rd

J. Carter, 42nd

Cowsert, 46th

Fort, 39th (arrived late – Did not vote SB 341)

Chairman McKoon, 29th, called the meeting to order at 2:00 p.m.

The following bills were presented to the Committee:

[SB 341](#) LC29 5845 - Senator Stone, 23rd - Act to amend Code Section 15-9-36 of the Official Code of Georgia Annotated, relating to judges of probate courts as clerks thereof, chief clerk, authority to appoint other clerks, and powers of appointed clerks, so as to repeal a population provision relative to a clerk's authority to act uncontested matters; to provide for a clerk's authority to act on uncontested matters.

Senator Stone, 23rd, presented this bill - The bill permits chief probate court clerks to exercise jurisdiction of probate judge in uncontested matters, regardless of the size of the county in which it sits; current law only gives clerks this authority in counties with populations in excess of 90,000 as of 2010 census. Stone, 23rd, indicated that this will permit probate courts statewide to manage uncontested probate matters (uncontested matters refer to instances where all parties have consented to an action or no one has objected before a state deadline) in the same manner that is currently available only to probate courts that sit in large counties. Bethel, 54th, said that the threshold 90,000 coincides with the probate judge in order to allow him to be a member of the bar. He clarified that these issues arose due to the issue of an attorney reporting to a non-attorney.

Bethel, 54th, moved **Do Pass**. Carter, 42nd seconded the motion. The motion **Passed** unanimously.

[SB 354](#) LC29 5850ER - Senator Cowsert, 46th - Act to amend Chapter 11 of Title 9 of the O.C.G.A, relating to the "Georgia Civil Practice Act," so as to change provisions relating to general provisions governing discovery; to provide for discovery of electronically stored information; to provide for preservation of electronically stored information; to change provisions relating to when an interrogatory answer allows the option to produce business records; to change provisions relating to production of documents and things and entry upon land for inspection and other purposes; to correct cross-references; to change provisions relating to failure to make discovery; to change provisions relating to subpoenas for taking depositions.

Cowsert, 46th, introduced the bill which is similar, but not identical, to House Bill 643, revising the Georgia Civil Practice Act by adding provisions regarding electronic discovery, primarily in the form of e-mail, in subsections relating to depositions, interrogatories, production of documents, motions to compel, items not permitted to copy for certain evidence seized in criminal proceedings, failure to make discovery, and subpoenas for taking depositions. Further, the bill adds provisions for failure to preserve electronic discovery in anticipation of litigation. Also, the bill adds provisions for limitations on frequency and extent of discovery, specified procedure for claiming privilege and protecting trial materials, and provides provisions for discovery meetings, conferences, plans, and court orders. The detailed discovery plan on page 6 follows the federal court standard by administering a grace period to determine a course of action for proceedings and to create parameters for the course of discovery. Sen. Carter, 42nd, asked whether this discovery plan would trump the rules set forth by the State and Federal government. Sen. Carter 42nd, recognized his support for the encouragement for this freedom for parties to negotiate, but he identified concerns about a possible incentive for a party to claim the plan is too burdensome due to costs. Cowsert, 46th, replied that the discovery plan cannot be identified as burdensome because both parties will have agreed. He further identified that this discovery plan will trump State and Federal law because it has been agreed upon by the negotiating parties. Sen. Cowsert, 46th, acknowledged the need to include language about “presuming assumption” and desired help with a friendly amendment. Carter, 42nd, asked Jeff Hamling, Rocco, and Allison about their opinion on the efficiency and purpose of the meet and confer process. The guest speakers spoke of their support for this bill due to the very specific talking points designed for this meeting such as scope of preservation, search and retrieval techniques, format of production, etc. Sen. Carter, 42nd, asked Sen. Cowsert, 46th, about the proximity of this legislation with the federal legislation citing national corporations need uniformity in order to protect their businesses. Cowsert, 46th, replied that this legislation was written in consensus with federal studies and receives support from the national business community. Bethel, 54th, questioned the lack of language about document retention and asked about the creation of a limit for responsibility of document retention. He further stated that he wanted to address the question about what needs to be preserved indicating a need for a safe-harbor clause in order to secure discovery from a party with a document purging policy and establish an appropriate timeline for parties to identify and gage their submissions of discovery. Sen. Cowsert, 46th, noted that page 15, under section 7, sub-section C, touches this subject and referenced that the Statute of Limitations tends to start with day of injury. Sen. Cowsert, 46th, said he was welcome to a friendly amendment about the issue.

This bill was held until the next Senate Judiciary Committee meeting on Monday, February 24th.

HEARING ONLY

Guest Speakers

- Jeff Hamling, Georgia Chamber of Commerce: The Georgia Chamber of Commerce supports this bill. He brought Allison Grounds of Troutman Sanders LLP and Rocco Testani of Southerland Asbill & Brennan LLP to discuss the taskforce between the Georgia Chamber and the State Bar. The taskforce noted that Florida and North Carolina recently passed legislation addressing electronic discovery and identified six main principles of the issue: proportionality, mechanisms for early cooperation and discussion to agree on the needs/wants/rules for scope of discovery, protocols for inadvertent disclosure, production formatting, non-party protection, and safe harbor provisions for failure to preserve ESI. This problem has risen significantly recently and will continue to do so even for small businesses not solely large multinationals. The Federal rules highlight specific issues, and

this legislation aims to keep Georgia modernized and allow consistency and clarity for current practices. The meet and confer process is a crucial piece and there are guidelines to allow parties to address issues or continue discord.

- C. Matthew Smith, Medical Association of Georgia (MAG): Experienced lawyer and partner at Weathington Smith. He represented Ambulatory Surgery Centers (ASCS) and Georgia Orthopedic Society as well as MAG. He proposed an amendment to better the legislation for non-parties. The amendment requires parties showing particularized need for documents in their non-native format to fund the retrieval, production, converting, and formatting of non-party documents and includes a presumption that non-party requests be presented via physical copy. Sen. Stone, 23rd questioned if there would be an estimated sum of the costs to convert the documents. Mr. Smith replied that there is no language requiring an estimate, but it should be included in a meet and confer between the non-party and the party in order to address these issues; he said he was open to adding this language into his amendment, which was sent to Chairman McKoon, 29th, after this Committee Meeting.

- Bill Clark, Georgia Trial Lawyers Association (GTLA): He admitted concern about the constricting of a party's ability to gain meaningful discovery. He acknowledged that the issues need to be argued in court without hindrance to producing discovery. GTLA felt the word "proportionality" and the concept of proportionality in the scope of discovery clause should be discussed through the process of trial not at the beginning of the process in the meet and confer process. The meet and confer should not be required for each court case but occur only if both parties deem it necessary for production of discovery. GTLA is currently working on language with the Medical Association of Georgia in order to prevent the alteration of the scope of discovery. GTLA mentioned the desire for a protective order to establish proportionality with review by judge. GTLA wants the adoption of Federal Rule 37-E added in order to govern spoliation in regards to electronically stored information due to the 11th Circuit and Georgia Courts ability to interpret the rule as of today. GTLA prefers Senate Bill 354 to that of House Bill 643 and will bring lawyers to deliberate on changes during the next meeting.

With no further business, Chairman McKoon, 29th adjourned the meeting at 3:35 p.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **February 20, 2014 in Room 307 CLOB at 4:00 p.m.**

SENATORS PRESENT:

McKoon, 29th, – Chairman

Crosby, 13th, – Vice Chairman (left early did not vote)

Bethel, 54th, – Secretary

Stone, 23rd

Cowsert, 46th (arrived late – here in time to vote)

Tippins, 37th (left early – did not vote on SB 377)

Fort, 39th (arrived late – did not vote on SB 282)

Chairman McKoon, 29th called the meeting to order at 4:05 p.m.

The following bills were presented to the Committee:

SB 368 LC 29 5884 – Senator Bethel, 54th - relating to dismissal of actions, so as to change provisions relating to a plaintiff's right to dismiss an action.

Bethel, 54th, presented this bill. You can't just file a dismissal for any reason – there has to be a good and a viable reason. **HEARING ONLY.**

Guest Speakers:

- Jeff Hamling – Georgia Chamber. We worked with Senator Bethel on this legislation. We support this bill.

- Bill Clark, Georgia Trial Lawyers. We have worked with Senator Bethel on this legislation. We do have some concerns about the cost of a dismissal. There are many reasons why dismissals are appropriate. We have some concerns about the wording of the bill. What does prejudice mean in this process?

SB 345 LC 29 5854ER - Senator Stone, 23rd - relating to courts, so as to provide for a technology fee to be collected under certain circumstances; to provide for a short title; to provide for a purpose for such fees; to provide for imposition of additional civil filing fees and criminal penalties; to provide for adoption of county resolutions; to provide for a technology fund; to provide for technology plans; to provide for expenditure of funds collected; to preempt local Acts providing for technology fees; to provide for an automatic repeal; to amend Code Section 36-15-7 of the O.C.G.A., relating to the use of law library funds, so as to change provisions relating to the use of law library funds for a court's technology needs.

Guest Speakers:

- Judge Betsy Kidwell – President – Magistrates Council

- Judge James Anderson – President – Municipal Court Council

- Judge David Emerson – Council of Superior Court Judges

- Rusi Patel & Marcia Rubenjohn - Georgia Municipal Association – GMA

We should have an automated up and running system – we are way behind. We are all for SR 986 study resolution for technology. Municipals want the state and the standards to be the same.

- Linda Pierce – Metro Clerks Association

Clerks are against this since the technology should be with the clerks and not the judges. Judges do not have access or the time for entering data and maintaining it. The role of the clerks is clear – the law has not changed as far as responsibility. This will put it in the wrong area – needs to be redirected.

- Bill Clark – Georgia Trial Lawyers

- Mike Holiman – Council of Superior Court Clerks

Five years – uniform fee for all instead of 159 counties having their own. In the trial the losers should pay all the fees.

[SB 282](#) LC 29 5742 - Senator Hufstetler, 52nd - relating to alimony and child support and the "Child Support Recovery Act," respectively, so as to enact provisions recommended by the Georgia Child Support Commission relating to child support and enforcement of child support orders; to revise definitions used in calculating child support; to clarify that worksheets and the calculator determine monthly child support figures; to clarify provisions relating to gross income; to change provisions relating to the duties of the GCSC; to provide for definitions and correct cross-references relating to the Department of Human Services Bank Match Registry and child support orders.

Senator Hufstetler, 52nd, presented this bill - (This bill was originally assigned to subcommittee – due to time restraints it was brought back to full committee to be voted on.) Laws have to be reviewed every two years for child support. There was a panel named Georgia Child Support Commission (GCSC) that studied this legislation. The categories (in brief) were; process of calculating child support obligation, proof of income, Veterans' disability benefits included in gross income, resolution of disputes regarding income, adjustments to gross income of self-employed parents, grounds for deviation from presumptive child support obligation, case reviews, child support worksheets, duties of Georgia Child Support Commission (GCSC), definitions in "Child Support Recovery Act" and payment records kept in computerized case registry. The bill was approved by the committee without comment from witnesses or questions by members.

Bethel, 54th, moved **Do Pass**. Cowser, 46th, seconded the motion. The vote was unanimous and the motion **Passed**.

[SB 386](#) LC 29 5956S – Senator Albers, 56th – relating to civil practice, so as to prohibit the public disclosure of social security numbers, taxpayer identification numbers, and financial account numbers in court documents; to provide for procedures for such filings; to provide for exceptions.

Albers, 56th, presented this bill – HB 977 is the companion bill in the House. Requires redaction of personal identifiable information including; social security numbers, birth dates, bank account numbers, and names of minor children, from public court filings. The bill is designed to largely track federal court standards regarding redaction of personal information by placing burden on

litigants filing documents to redact this information (rather than placing this requirement on court clerks).

Bill was revised several times leading up to committee meeting to include concerns expressed by Georgia Court Clerks Association.

Guest Speakers:

- Bill Clark – Georgia Trial Lawyers
- Mike Holiman – Council of Superior Court Clerks

We have worked very closely with Senator Albers on this Senate bill as well as the House on their bill. Violating Title 10 if you publicly post someone's information referenced in the bill.

Bethel, 54th, moved **Do Pass by Substitute**. Tippins, 37th, seconded the motion. The vote was unanimous and the motion **Passed**.

[SB 377](#) LC 41 0122 - Senator McKoon, 29th - relating to state government, so as to provide for the preservation of religious freedom; to provide for a short title; to provide for definitions; to provide for penalties; to provide for the granting of relief.

McKoon, 29th, presented this bill - Enacts State Religious Freedom Preservation Act. Bill provides relief to citizens whose religious freedom is burdened by government action. Why is this needed? Religious freedom is not protected as it once was.

Comments/discussion - this bill largely tracks language passed by 18 other states and the federal government and which has been adopted by judicial decision in 11 additional states. He, along with representatives of the Ethics and Public Policy Center, argued that this aids in litigation avoidance by providing a balancing mechanism for private citizens against the state. Representatives of Georgia Baptists and Catholics expressed support for the bill. Americans United, GMA, and the City of Atlanta expressed concern that the bill would spark and prolong litigation, particularly because it places a large burden on the government to justify state actions that may limit an individual's religious exercise. Upon a question from Sen. Fort, the representative from Americans United indicated that the bill would allow someone to challenge state action on the basis that it inhibited such person's free exercise of Sharia law. The City of Atlanta expressed concern that the bill might require the city's airport authority to violate federal law by making certain accommodations to passengers on the basis of their religious freedom. This could result in the loss of federal grants and contracts.

Supports this bill:

- Frank Mulcahy - Georgia Catholic Conference
- Mike Griffin - Georgia Baptist Convention
- Tim Schultz - Ethics and Public Policy Center

Opposes this bill:

- Maggie Garrett - Americans United for the Separation of Church and State
- Rusi Patel & Marcia Rubenjohn - Georgia Municipal Association – GMA
- Justin Tanner - City of Atlanta

Amendment offered by Stone, 23rd - Clarified use of terms "burden" and "state entity" in bill. Stone, 23rd, made **Motion for Amendment**, Bethel, 54th, seconded the motion. The vote was (3-1) and **Amendment Passed**. Yay votes were Bethel, 54th, Stone, 23rd, and Cowsert, 46th. Nay vote was Fort, 39th.

Bethel, 54th, moved **Do Pass by Substitute**. Stone, 23rd, seconded the motion. The vote was (3-1) and the motion **Passed**. Yay votes were Bethel, 54th, Stone, 23rd, and Cowsert, 46th. Nay vote was Fort, 39th.

With no further business, Chairman McKoon, 29th, adjourned the meeting at 5:45 p.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **February 24, 2014** in **Room 307 CLOB** at **3:00 p.m.**

SENATORS PRESENT:

McKoon, 29th, – Chairman

Crosby, 13th, - Vice Chairman

Bethel, 54th, - Secretary

Ligon, 3rd

Stone, 23rd

Tippins, 37th

Fort, 39th

J. Carter, 42nd

Cowsert, 46th

Chairman McKoon, 29th called the meeting to order at 3:15 p.m.

The following bill was presented to the Committee:

[SB 354](#) LC29 5850ER - Senator Cowsert, 46th - Act to amend Chapter 11 of Title 9 of the O.C.G.A, relating to the “Georgia Civil Practice Act,” so as to change provisions relating to general provisions governing discovery; to provide for discovery of electronically stored information; to provide for preservation of electronically stored information; to change provisions relating to when an interrogatory answer allows the option to produce business records; to change provisions relating to production of documents and things and entry upon land for inspection and other purposes; to correct cross-references; to change provisions relating to failure to make discovery; to change provisions relating to subpoenas for taking depositions.

Cowsert 46th, presented this bill – This bill revises the Georgia Civil Practice Act by adding provisions regarding electronic discovery in subsections relating to depositions, interrogatories, production of documents, motions to compel, items not permitted to copy for certain evidence seized in criminal proceedings, failure to make discovery, and subpoenas for taking depositions. Further, the bill adds provisions for failure to preserve electronic discovery in anticipation of litigation.

This bill also adds provisions for limitations on frequency and extent of discovery, specifies procedure for claiming privilege and protecting trial materials, and provides provisions for discovery meetings, conferences, plans, and court orders. This bill has an effective date of January 1, 2015. This bill is similar, but not identical, to House Bill 643 sponsored by Representative Willard of the 51st and others. **HEARING ONLY**

Guest Speakers:

- Joe Cregan & David Hayes – MAG Mutual Insurance

- Alan Hamilton & Mike McGlamry – Georgia Trial Lawyers

We appreciate E Discovery. There are some problems with the notification portion. Federal meets the standard and confer rules exist. Federal trumps state. Line 17 and 25 (subject to) does that change what you can and can't get? What can you get as evidence? Lines 45-48 – Federal rules plays into this. Burden and experience against the benefit. Line 516 – Has to do with backup data. Federal has a safe Harbor for good faith. Plaintiff has failed to preserve the law. Either eliminate this section or include the Safe Harbor language.

- Bobby Potter – State Farm AIA

He was on the House working group with the Chamber and State Bar headed by Judge Schuster. We are in favor of this bill.

Support Documentation provided by NFIB and Georgia Chamber in support of this bill.

With no further business, Chairman McKoon, 29th, adjourned the meeting at 4:20 p.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **February 25, 2014 in Room 310 CLOB at 8:00 a.m.**

SENATORS PRESENT:

McKoon, 29th, – Chairman

Crosby, 13th, - Vice Chairman

Bethel, 54th, – Secretary (Didn't vote Amendment #2 for SB354)

Ligon, 3rd

Stone, 23rd

Carter, 42nd

Cowsert, 46th

Fort, 39th (arrived late – Didn't vote SB406 or 1st amendment for SB354)

Chairman McKoon, 29th, called the meeting to order at 8:05 a.m.

The following bills were presented to the Committee:

SB 406 LC 25 6306ERS - Senator McKoon, 29th - relating to general authority, duties, and procedures relative to the Department of Administrative Services, so as to change certain provisions relating to contracting with companies having business operations in Sudan, scrutinized companies, and certifications; to make certain of such provisions applicable to contracting with companies having business operations in Iran; to repeal conflicting laws.

McKoon, 29th, presented this bill - Limitation on state contracting with certain companies having business operations in Iran - Title 50 currently prevents so-called "scrutinized companies" from being eligible for or bidding on contracts with Georgia state agencies for goods or services. Scrutinized companies currently include companies conducting business operations in Sudan that are involved in power production activities, mineral extraction activities, oil related activities, or the production of military equipment. Any company that conducts such operations in Iran will be deemed a scrutinized company. Permits companies conducting business in Iran to receive state contracts if certain requirements are met, including verification by a third party that the company is engaged in humanitarian efforts. Requires companies with business operations outside the United States to certify that they are not scrutinized companies and provides penalties in the interest a company provides a false certification, including disbarment from receiving future contracts with the state.

Bethel, 54th, moved **Do Pass by Substitute**. Ligon, 3rd, seconded the motion. The vote was unanimous and the motion **Passed**.

SB 354 LC 29 5850ERS - Senator Cowsert, 46th - Act to amend Chapter 11 of Title 9 of the O.C.G.A, relating to the "Georgia Civil Practice Act," so as to change provisions relating to general provisions governing discovery; to provide for discovery of electronically stored information; to provide for preservation of electronically stored information; to change provisions relating to when an interrogatory answer allows the option to produce business records; to change provisions relating to production of documents and things and entry

upon land for inspection and other purposes; to correct cross-references; to change provisions relating to failure to make discovery; to change provisions relating to subpoenas for taking depositions.

Guest Speakers - Supports this bill:

- Georgia Chamber of Commerce (convened joint task force with State Bar of Georgia which unofficially supports)
- National Federation of Independent Business
- Mag Mutual (stating that bill aligns Georgia law with anticipated changes to federal procedural rules and indicating preference for SB 354 over HB 643)
- State Farm/AIA expressed support for bill as to its alignment with anticipated revisions to federal law. Expressed concern over sanctions provisions regarding spoliation of evidence if those provisions punished inadvertent or routine deletion of electronic information.

Guest Speakers - Opposes this bill:

- MAG - *Medical Association of Georgia* (as to provisions regarding discovery taken from non-parties, including production of documents in particular formats)
- *Georgia Trial Lawyers Association* (as to provisions in original bill on scope of discovery, spoliation of evidence, and discovery plan, particularly if discovery plans are required in all cases and if discovery plans are required before further discovery can occur). GTLA concerns seem to have been largely addressed in amendments adopted by committee on Feb. 24, but did not comment further.

(There were three amendments offered by Carter, 42nd)

Amendment #1 offered by Carter, 42nd - Alters language on discovery plans to make them voluntary unless ordered by a court upon a party's motion. This change largely tracks language of HB 643 on this issue. Amendment allows discovery to proceed if no discovery meeting is held or plan agreed to, unless parties agree or court orders otherwise.

Amendment #1 - Motion to Do Pass Amendment, Carter, 42nd, seconded by Stone, 23rd - Vote was unanimous and the motion **Passed**.

Amendment #2 offered by Carter 42nd - Alters language on penalties for spoliation of evidence to provide penalties if evidence is not preserved that reasonably should have been preserved in anticipation of litigation.

Amendment #2 – Motion to Do Pass Amendment, Carter, 42nd, seconded by Stone, 23rd. The vote was (4-2) and the motion **Passed**. Yay votes were Crosby, 13th, Stone, 23rd, Ligon, 3rd, and Carter, 42nd. Nay votes were Cowsert 46th and Fort, 39th. (Bethel, 54th stepped out – didn't vote.)

Amendment #3 offered by Carter 42nd - Required party who disclosed privileged information to "promptly" notify other party of disclosure.

Amendment #3 - Motion to Do Pass Amendment, Carter, 42nd, seconded by Stone, 23rd. The vote was (4-3) and the motion **Passed**. Yay votes were Stone, 23rd, Crosby, 13th, Fort, 39th and Carter, 42nd. Nay votes were Bethel, 54th, Cowsert, 46th and Ligon, 3rd.

Stone, 23rd, moved **Do Pass by Substitute**. Bethel, 54th, seconded the motion. Vote was unanimous and the motion **Passed**.

SB 405 LC 28 6991 - Senator McKoon, 29th - relating to the Attorney General, so as to establish the Office of the State Prosecutor; to provide for the manner of appointment, term of office, qualifications, removal, filling of vacancies, duties, powers, and procedures of the State Prosecutor; to provide for the State Prosecutor Selection and Disabilities Commission and its membership.

McKoon, 29th presented this bill - This bill establishes a new Office of State Prosecutor as an independent unit within the office of the Attorney General.

This bill establishes the qualifications for office (lines 15-26) and establishes the process by which the State Prosecutor will be nominated, appointed, and confirmed (lines 27-29). The bill also outlines the State Prosecutor's term of office, the grounds for their removal, the method of determining their compensation, and the process for filling vacancies (lines 30-39 and 84-129).

The bill also creates the State Prosecutor Selection and Disabilities Commission which is charged with nominating candidates for State Prosecutor. The bill establishes the membership of the commission, the process for their appointment and/or selection, their terms of office, and the process for filling vacancies (lines 40-83).

The bill also provides a list of offenses that the State Prosecutor may investigate (lines 130-142) but provides specifically that the State Prosecutor may not investigate alleged offenses involving the State Prosecutor or its staff members (lines 143-144). The bill also provides that the State Prosecutor may, on their own initiative, or at the request of the Governor, Attorney General, General Assembly, Georgia Government Transparency and Campaign Finance Commission, or a district attorney, investigate any offense listed in lines 130-142.

The bill provides for the process of reporting results of investigations to the Attorney General and for prosecuting cases involving those offenses (lines 156-185). The bill also provides that the State Prosecutor will have the powers of a district attorney, including the use of a grand jury, in any case investigated or prosecuted by the State Prosecutor (lines 186-190). The bill gives the State Prosecutor subpoena powers (lines 191-208).

The bill provides that the State Prosecutor and his staff will fall under the budget of the Attorney General and that the State Prosecutor and his staff will not engage in private law practice (lines 214-227). The bill also requires the State Prosecutor to make annual reports to the Governor, Attorney General, and General Assembly (lines 228-235).

HEARING ONLY

Guest Speakers:

-Chuck Spahos – PAC – Prosecutors Council – concern about solicitors general. Already a process in place for this.

-Danny Porter -DAAG – Oppose this bill.

With no further business, Chairman McKoon, 29th adjourned the meeting at 9:03 a.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **March 4th, 2014 in Room 310 CLOB at 3:00 p.m.**

SENATORS PRESENT:

McKoon, 29th, – Chairman

Crosby, 13th, - Vice Chairman

Ligon, 3rd

Stone, 23rd

J. Carter, 42nd

Cowsert, 46th

Tippins, 37th (arrived late – did not vote on SR1053)

Fort, 39th (arrived late - did not vote on SR1053)

Chairman McKoon, 29th called the meeting to order at 3:09 p.m.

The following resolution and bills were presented to the Committee:

SR 1053 LC41 0212 - Senator McKoon, 29th - Resolution creating the Senate Study Committee on the Court of Appeals Workload.

Chairman McKoon, 29th, presented this resolution to the committee. This resolution will create a study committee on the workload of the Court of Appeals. The study committee will determine if the composition of the court should be increased to include another division of three judges. This study is supported by the Court of Appeals as needed.

Cowsert, 46th, moved **Do Pass**. Carter, 42nd, seconded the motion. The vote was unanimous and the motion **Passed**.

HB 654 LC29 5979S - Representative Oliver, 82nd - Act to amend Code Section 29-2-4 of the Official Code of Georgia Annotated, relating to nomination of testamentary guardian, so as to change provisions relating to the appointment of a testamentary guardian; to provide for objections to the nomination of a testamentary guardian and procedure.

Representatives Oliver, 82nd, and Quick, 117th, presented the bill to the committee. This bill creates a notice requirement for testamentary guardianship when a will is offered for probate. It creates a hearing requirement if person receiving notice of testamentary guardianship files a timely objection to the appointment of the testamentary guardian nominated in the will. Also, the bill amends code section relating to wills to provide a conforming cross-reference. Carter, 42nd, wanted clarity on who will provide the required notices. Oliver, 82nd, said the probate court would have forms delivered through council. Cowsert, 46th, asked whether this bill would apply to all guardianship cases instead of specifically to murder/suicide cases as cited by. Oliver, 82nd, while presenting bill. Oliver, 82nd, replied that these requirements only apply when both parents are deceased or for any case with the absence of any legitimate parental guardianship. She clarified that this bill aims to reduce the amount of time children are in limbo for these kinds of cases. Cowsert, 46th, asked about who will become guardian should there be an objection due to unfitness and where is it

included in the bill? Oliver, 82nd, replied that Paragraph 4 addresses that scenario stating that the issue will become a Petition of Custody. Ligon, 3rd, asked whether or not this kind of case could be sent to the Superior Courts or Juvenile Courts to be approved? Oliver, 82nd, noted that this bill aims to create uniformity within all Georgia courts for this kind of guardianship issue. Cowser, 46th, voiced concerns about whether this process undermines the interests or wishes of the deceased parents. John Collar with the Georgia State Bar answered that it does not undermine decisions but permits objection in order to further prove whether or not this chosen guardian remains suitable for guardianship.

No vote was taken. Rep. Oliver, 82nd, agreed to present the bill at the next Senate Judiciary Committee meeting with several recommendations by the Committee.

Guest Speakers

- Lynwood Jordan, Council of Probate Judges: Indicated they're very concerned with this legislation and the impact it will have within the probate courts. They consider the best interest test too loose and are unsure whether or not it will work successfully. He noted an evidentiary problem regarding testimony against family members to determine best interest of child.

- John Collar, Family Law Section of Georgia State Bar: They support this bill. To answer Sen. Carter, 42nd, about which amendment they preferred, the State Bar recognized that unfitness standard is not the best approach, but they prefer a best interest approach. Mr. Collar noted that in most guardianship cases there will not be an objection, and there should be a time requirement for objections.

- Rusty Sewell, Fiduciary Section of State Bar: As long as legislation remains the same and requires clear and convincing evidence in order to support guardianship claim, they support this bill.

[HB 790](#) LC29 5883S - Representative Williams, 119th - Act to amend Article 2 of Chapter 3 of Title 9 of the O.C.G.A., relating to specific periods of limitation, so as to provide for a four-year statute of limitations for actions involving the removal of timber from the property of another; to amend Part 1 of Article 1 of Chapter 6 of Title 12 of the O.C.G.A., relating to the State Forestry Commission; to amend Code Section 12-6-23 of the O.C.G.A., relating to wood load ticket required for wood removal; to amend Chapter 4 of Title 44 of the O.C.G.A., relating to real estate boundary determinations, so as to repeal provisions relating to processioning.

Representative Williams, 119th, introduced the bill to the committee. This bill defines "forestry laws" as laws relating to forestry or timber resources and the protection, security, conservation, or sales of such resources. This bill adds that an appointed State Forestry Commission investigator's arrest may be based from the information and observation of a commission firefighter or forester in addition to a law enforcement officer. This bill also authorizes these investigators to execute search and arrest warrants for criminal forestry law violations. Under this bill, damages for converted timber should be treble the fair market value of the trees cut as they stood, treble the diminished fair market value of any trees incidentally harmed, costs of reasonable reforestation activities related to the plaintiff's injury, and attorney fees and expenses of litigation. Further, when the defendant is a willful trespasser, the plaintiff may also recover punitive damages. The defendant should be presumed a willful trespasser when the boundary lines of the property have been clearly and accurately marked. Rep. Dickey, 140th, came and spoke about the unresolved

issues carried over from the House Judiciary Committee. Dickey, 140th expressed concerns about Section 6 regarding small landowners, especially those who cannot afford to have their land surveyed. Rep. Dickey, 140th argued that Section 7 makes every offense an intentional cut and automatically multiply the damages. Sen. Carter, 42nd acknowledged the Representative's concerns by arguing an agreement between neighbors could provide insurance against that scenario, but it is the lawyer's responsibility to ensure they mark their property according to their agreement as stated on line 132 in Section 6. Williams, 119th relayed his flexibility to an amendment of Paragraph 3 in Section 6.

No vote was taken. Williams, 119th agreed to present the bill at the next Senate Judiciary Committee meeting with several recommendations by the Committee and address Dickey, 140th concerns.

Guest Speakers

Bill Guthrie and Steve McWilliams, Georgia Forestry Association: They support this legislation due to the Georgia Forestry Commission's limited resources to handle these increasingly prevalent issues.

[HB 820 LC29 5864S](#) - Representative Powell, 171st - Act to amend Code Section 44-3-106 of the Official Code of Georgia Annotated, relating to the powers and responsibilities of condominium associations and tort actions, so as to clarify provisions relating to the standing of the association to participate in litigation under certain circumstances...

Powell, 171st presented the bill to the committee. He notified the committee that this bill provides that the condominium associations' capacity, power, and standing to participate in litigation regarding the portions of units or common areas which the association has the responsibility to administer, repair, or maintain cannot be waived, abridged, modified, or removed by any document or contract, including the condominium instruments, that were recorded, entered, or established prior to the expiration of the condominium declarant's right to control the condominium association. This bill does not alter, modify, or remove the condominium association's obligation to comply with the provisions of Title 8 regarding alternative methods of dispute resolution in constructive defect matters. This bill is aimed to protect homeowners from being held responsible for defects within the structure as sold from the developer/contractor to the homeowner association. There is a provision requiring notice to be given to developer for a filing in order to give developer time to fix the issue and conflict amiably.

No vote was taken. Powell, 171st agreed to present the bill at the next Senate Judiciary Committee meeting to discuss several recommendations offered by the Committee and an amendment offered by donors.

Guest Speakers

- Randy Lipshutz, Community Association Institute: Approved this bill in order to allow concise filings to address these issues and appease all parties at lower litigation costs.
- Bruce Bowers, Massey & Bowers LLC: Offered amendment for lines 20-21 should have explicit language for 2/3 vote by owners of condominiums to take court action as is already legislation for Right to Repair. They support the initiative of this bill and believe it will protect developers with their

amendment in order to prevent inaccurate decision-making by overlooking already standing 2/3 rule.

With no further business, Chairman McKoon, 29th adjourned the meeting at 5:08 p.m.

RESPECTFULLY SUBMITTED,

/s/Senator Josh McKoon, 29th, Chairman

/s/Donna Nealey, Recording Secretary

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **March 6, 2014 in Room 307 CLOB at 4:30 p.m.**

SENATORS PRESENT:

McKoon, 29th, – Chairman

Crosby, 13th, - Vice Chairman

Bethel, 54th, – Secretary

Stone, 23rd

J. Carter, 42nd (left early – did not vote HB 670)

Cowsert, 46th

Fort, 39th (Arrived late and left early – did not vote HB 790 and HB 670)

Chairman McKoon, 29th called the meeting to order at 5:05 p.m.

The following bills were presented to the Committee:

[HB 790](#) LC40 6023ERS - Representative Williams, 119th - Act to amend Article 2 of Chapter 3 of Title 9 of the O.C.G.A., relating to specific periods of limitation, so as to provide for a four-year statute of limitations for actions involving the removal of timber from the property of another; to amend Part 1 of Article 1 of Chapter 6 of Title 12 of the O.C.G.A., relating to the State Forestry Commission; to amend Code Section 12-6-23 of the O.C.G.A., relating to wood load ticket required for wood removal; to amend Chapter 4 of Title 44 of the O.C.G.A., relating to real estate boundary determinations, so as to repeal provisions relating to processioning.

Williams, 119th, presented the bill - Bill was designed to protect land owners from unauthorized cutting. The bill was the product of a House study committee commissioned to determine ways of protecting the supply of timber. Bill creates safe harbor for timber owners if they clearly mark boundaries of their property, through survey or by agreement with adjacent property owners. Changes provisions and penalties relating to cutting of timber and investigative authority of State Forestry Commission. Provides treble and punitive damages in the event of unauthorized cutting in some case. Amends Titles 9, 12, 44, and 51.

SUPPORT THIS BILL:

- Georgia Forestry Association, Georgia Farm Bureau, Georgia Trial Lawyers Association, and Georgia Forestry Commission (unofficial)

AMENDMENT - The committee clarified provisions in the safe harbor based on concerns raised by Rep. Dickey, who also testified.

Bethel, 54th, moved **Do Pass Amendment**, Carter 42nd, seconded the motion. The vote was unanimous and the motion **Passed**.

Bethel, 54th, moved **Do Pass by Substitute**. Stone, 23rd, seconded the motion. The vote was unanimous and the motion **Passed**. Cowsert, 46th, will be the Senate sponsor. (Fort, 39th arrived late while vote was being taken and did not vote.)

[HB 820](#) LC29 5864S - Representative Powell, 171st - Act to amend Code Section 44-3-106 of the Official Code of Georgia Annotated, relating to the powers and responsibilities of condominium associations and tort actions, so as to clarify provisions relating to the standing of the association to participate in litigation under certain circumstances.

Representative Powell – 171st, presented the bill - Changes provisions regarding ability of condo associations to participate in tort litigation involving construction defects. This limits circumstances under which authority to participate in litigation can be waived by the association.

The bill was prompted by judicial decision which rules that condo association lost ability to participate in construction defect case involving condos in the association because of changes to the condominium instruments filed in public records. This bill narrows the ability of the condo association to limit this ability.

SUPPORT THIS BILL:

- Community Association Institute

Crosby, 13th, moved **Do Pass**. Stone, 23rd, seconded the motion. The vote was unanimous and the motion **Passed**. Jeffares, 17th, will be the Senate sponsor.

[HB 654](#) LC29 6012S - Representative Oliver, 82nd - Act to amend Code Section 29-2-4 of the Official Code of Georgia Annotated, relating to nomination of testamentary guardian, so as to change provisions relating to the appointment of a testamentary guardian; to provide for objections to the nomination of a testamentary guardian and procedure.

Representative Oliver, 82nd, presented the bill - Changes provisions regarding objection to appointment of testamentary guardian. Gives preference to child's adult siblings and grandparents, then to great grandparents, aunts, uncles, etc. Provides that guardian appointed can be removed if deemed to be unfit.

The bill was brought about because of a case in Athens in which both parents of a minor child died and guardian appointed by child was unfit in view of grandparents and siblings of surviving child. Current law left little room to challenge appointment of guardian made in will, and this bill addresses ability of close surviving family to challenge appointment of guardian in circumstances where they view that choice skeptically. The version that passed the House required the challenging family member to show that the appointed guardian was unfit. A proposed committee substitute changed this test to be whether the appointment of the listed guardian was in the best interest of the child. The committee and a testifying judge did not think this test was appropriate and wanted the unfitness test restored to the bill. In addition, the House version sent the initial notice only to adult siblings of the child, with follow-on notices to the grandparents, aunts, uncles, etc. Senator Crosby wanted grandparents included in the initial notice, noting that grandparents often assume guardianship responsibilities in these circumstances. Rep. Oliver, 82nd, agreed, and this change was made.

SUPPORT THIS BILL:

- State Bar of Georgia, Family Law Section

Stone, 23rd, moved **Do Pass by Substitute**. Cowser, 46th, seconded the motion. The vote was unanimous and the motion **Passed**. Cowser, 46th, will be the Senate sponsor.

[HB 670](#) LC29 5931S - Representative Fleming, 121st - Act to amend Code Section 10-1-490 of the Official Code of Georgia Annotated, relating to registration of businesses using trade names, so as to require registration of trade names with the clerk of superior court; to amend Article 2 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated, relating to clerks of superior courts, so as to establish a state-wide trade name registry; to provide for duties of clerks of superior courts; to provide for fees.

Fleming, 121st, presented the bill - Requires registration of business trade names with clerk of superior court, requires clerk to establish online databases of registered trade names. Registrants must pay fee to register name.

Bill is designed to establish online database of registered trade names to mirror process used for other filings with the court (UCC filings, etc.). Representatives of the court clerks' association could not provide estimate of cost to establish and maintain such system when asked by Sen. Cowser, 46th, and also could not project amount of revenue to be received through the program. Sen. Bethel, 54th, suggested a sunset provision be added to the bill, so that the registration fee could not be charged indefinitely. He anticipates making that a floor amendment after further discussion with the clerks association.

Stone, 23rd, moved **Do Pass**. Bethel, 54th, seconded the motion. The vote was unanimous and the motion **Passed**. Miller, 49th, will be the Senate sponsor.

[HB 731](#) LC33 5568S - Representative Welch, 110th - Act to amend various titles of the Official Code of Georgia Annotated so as to enact the "J. Calvin Hill, Jr., Act"; to repeal obsolete and outdated provisions; to repeal provisions which have been deemed unconstitutional; to update obsolete and outdated terminology; to repeal certain provisions relating to preclearance requirements.

Welch, 110th, presented the bill – Amend various titles to the official code of Georgia to enact the “J Calvin Hill Jr. Act – this bill will be on a future agenda. This bill covers the following topics: Aid to Pollution Control and Surface Water Management, Authority of Shore Protection Committee, Local Shore Assistance Programs, Leases of State-Owned Marshlands, Bonds Issued for State Development Assistance, Expenditures for Public Roads Serving Planned Communities, Licensing of Peddlers and Traders, Functions of Office of Planning and Budget, Projects and Facilities on Confederate Soldiers' Home Property, Transit Governance Study Commission, Repeal of Criminal Defamation Statute, Employment of Aliens, National Institute of Standards and Technology, Mental Retardation Centers and Retardation, Communism and Related Activities, Voting Rights Act Preclearance under Section 5 and Prohibited Conduct on Licensed Premises. **HEARING ONLY**

With no further business, Chairman McKoon, 29th adjourned the meeting at 6:15 p.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **March 10, 2014 in Room 307 CLOB at 4:00 p.m.**

SENATORS PRESENT:

McKoon, 29th, – Chairman

Crosby, 13th, - Vice Chairman

Bethel, 54th, – Secretary

Stone, 23rd (arrived late – Did not vote on HB731 and HB973)

Tippins, 37th (arrived late – Did not vote on HB842, HB731 and HB973)

Fort, 39th 37th (arrived late – Did not vote on HB842, HB731 and HB973)

Cowsert, 4th 37th (arrived late – Did not vote on HB842, HB731 and HB973)

Carter, 42nd (left early – Did not vote on HB 449, HB776 and HB890)

Dugan, 30th - Ex-Officio (Voted on HB973, HB731 and HB842)

Judson Hill, 32nd - Ex-Officio (Voted only on HB643)

Chairman McKoon, 29th called the meeting to order at 4:11 p.m.

The following bills were presented to the Committee:

[HB 973](#) LC 29 5942S - Representative Lindsey, 54th - Act to amend Article 7B of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to false Medicaid claims, so as to provide for changes to civil penalties for false or fraudulent Medicaid claims; to provide for a definition; to revise certain provisions relating to when the court shall dismiss a civil action or claim.

Lindsey, 54th, introduced the bill to the committee. This is a tweak to the Medicaid Fraud Act of 2007. This legislation allows the Attorney General and private whistle blowers to go after entities who may be defrauding the Georgia Medicaid program. More than 10% of the money dispersed by Medicaid is connected to fraud. This type of legislation has been implemented in other states and has worked to recover money from Georgia taxpayers. This bill aligns Federal and State law, and if Georgia has matching law, Georgia will receive a 10% increase in funding for Medicaid. A representative for the Department of Community Health notified the committee that this bill works in cooperation with Attorney General's office as well as U.S. Health and Human Services. The Department of Community Health's office estimates that \$11.6 million have been recovered due to the 2007 Medicaid Fraud Act. Bethel, 54th, asked about the vagueness in paragraph 3, and Lindsey, 54th, admitted that it can be changed if necessary, but it was aimed to include issues of conspiracies to defraud Georgia's Medicaid.

Bethel, 54th, moved **Do Pass**. Carter, 42nd, seconded the motion. The vote was unanimous and the motion **Passed**. (4-0). Yay votes were Crosby, 13th, Bethel, 54th, Dugan, 30th (ex-officio) and Carter 42nd. Beach, 21st, will be the Senate sponsor.

[HB 731](#) LC 33 5568S - Representative Welch, 110th - Act to amend various titles of the Official Code of Georgia Annotated so as to enact the "J. Calvin Hill, Jr., Act"; to repeal obsolete and outdated provisions; to repeal provisions which have been deemed

unconstitutional; to update obsolete and outdated terminology; to repeal certain provisions relating to preclearance requirements.

Welch, 110th, introduced the bill to the committee after being heard during the Judiciary Committee meeting on March 6th. This bill repeals provisions in numerous Code sections that have become outdated or sunset and provisions that have been ruled unconstitutional. The committee members noted specifically that Section 6 of the bill repeals provisions regarding compliance with certain provisions of the Voting Rights Act of 1965 that were recently declared unconstitutional. Carter, 42nd, voiced notable concern about amending the Voting Rights Act in Section 6 to cure the constitutional defect, and that the repealed provisions would need to be re-added in the event Congress acts. The committee did not address any of those provisions through a proposed amendment.

Bethel, 54th, moved to **Do Pass**. Crosby, 13th, seconded the motion. The vote was (3-1) and the motion **Passed**. Yay votes were Crosby, 13th, Bethel, 54th, and Dugan, 30th (ex-officio). Nay vote was Carter, 42nd, over concern about the Voting Rights Act provisions. Chairman McKoon, 29th, will be the Senate sponsor.

[HB 842](#) LC29 5708 - Representative Willard, 51st - Act to amend Article 1 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to general provisions for certiorari and appeal to appellate courts generally, so as to clarify provisions relating to payment of costs and indecency affidavits; to provide for related matters.

Willard, 51st, introduced the bill to the committee. This bill waives filing fees for habeas corpus appeals for applicants who file without counsel while in prison, applicants who file through appointed counsel, and applicants who complete affidavit of indecency. This bill was requested by the Georgia Supreme Court in order to minimize administrative burden of returning non-notarized fee waiver forms to indigent or incarcerated habeas applicants. In response to Crosby's, 13th, question, Willard, 51st, said that the court expected increase in applications would be small, while eliminating an extra documentation requirement would reduce the court's administrative workload. Bethel, 54th, and Carter, 42nd, added a friendly amendment to clean language.

Supports this bill:

- Georgia Supreme Court

Bethel, 54th, moved **Do Pass Amendment**. Carter, 42nd, seconded the motion. The vote was unanimous and the motion **Passed**.

Bethel, 54th, moved **Do Pass by Substitute**. Crosby, 13th, seconded the motion. The vote was unanimous and the motion passed (5-0). Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, Dugan, 30th (ex-officio), and Carter, 42nd. Crosby, 13th, will be the Senate sponsor.

[HB 643](#) LC 29 5965ERS - Representative Willard, 51st - Act to amend Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to the "Georgia Civil Practice Act," so as to change provisions relating to general provisions governing discovery; to provide for discovery of electronically stored information; to provide for preservation of electronically stored information; to change provisions relating to production of documents and things

and entry upon land for inspection and other purposes; to correct a cross-reference; to change provisions relating to failure to make discovery; to change provisions relating to subpoenas for taking depositions.

Willard, 51st introduced this bill to the committee. It was heard previously by the committee and held for amendments to be drafted. This bill would harmonize Georgia's civil procedure regarding discovery with anticipated federal changes to the Rules of Civil Procedure governing discovery of electronically-stored information. This bill incorporates the concept of proportionality into the definition of what information is discoverable by parties to litigation and creates obligations with respect to preservation of electronic data in anticipation of litigation and penalties for spoliation of electronic evidence. This bill is similar to Senate Bill 354 which passed out of the Senate Judiciary Committee on February 25, 2014.

Supports this bill:

- Georgia Chamber of Commerce and State Bar of Georgia (Joint Task Force) supports this with the addition of Cowser's, 46th, amendments, which will return the bill largely to the original House version
- Georgia Trial Lawyers Association (prefers version that passed House without Cowser, 46th, Amendments)
- National Federation of Independent Business (supports with Cowser, 46th, Amendments)

Amendments - Nine amendments were proposed:

Amendment #1 proposed by Bethel, 54th - line 212: clarifies that if parties agree to discovery planning conference, or such conference is ordered by court, parties must participate. Vote was unanimous and **Amendment Passed** (8-0). Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, J. Hill, 32nd (ex-officio), Tippins, 37th, Fort, 39th, Carter, 42nd, and Cowser, 46th.

Amendment #2 proposed by Cowser, 46th – lines 26-27: adds language on proportionality to scope of discovery. Vote was (6-2) and **Amendment Passed**. Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, J. Hill, 32nd (ex-officio), Tippins, 37th, and Cowser, 46th. Nay votes were Fort, 39th, and J. Carter, 42nd.

Amendment #3 proposed by Cowser, 46th – lines 118-132: eliminates detailed requirements regarding privilege log to be provided by responding party. Vote was unanimous and **Amendment Passed** (8-0). Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, J. Hill, 32nd (ex-officio), Tippins, 37th, Fort, 39th, Carter, 42nd, and Cowser, 46th.

Amendment #4 proposed by Cowser, 46th – lines 133-144: clarifies production requirements. Vote was unanimous and **Amendment Passed** (8-0). Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, J. Hill, 32nd (ex-officio), Tippins, 37th, Fort, 39th, Carter, 42nd, and Cowser, 46th.

Amendment #5 proposed by Cowser, 46th – lines 264-265: clarifies court authority to require one party to pay for reasonable costs of responding to discovery. Vote was unanimous and **Amendment Passed** (8-0). Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, J. Hill, 32nd (ex-officio), Tippins, 37th, Fort, 39th, Carter, 42nd, and Cowser, 46th.

Amendment #6 proposed by Cowser, 46th – lines 527-559: clarifies that preservation requirements apply only to electronic information. Vote was unanimous and **Amendment Passed** (8-0). Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, J. Hill, 32nd (ex-officio), Tippins, 37th, Fort, 39th, Carter, 42nd, and Cowser, 46th.

Amendment #7 proposed by Cowser, 46th – line 528: provides that penalties are only available when evidence is not preserved willfully and in bad faith. Vote was (4-3 – see notes below*). Yay votes were Bethel, 54th, J. Hill, 32nd (ex-officio), Tippins, 37th and Cowser, 46th. Nay votes were Stone, 23rd, Fort, 39th, and J. Carter, 42nd.

*Note for Amendment #7 - Chairman McKoon originally thought the vote was (4-3) and voted nay to force the tie. Count was challenged and vote was reconsidered without his vote. Reconsidered vote was (5-3) and **Amendment Passed**. Yay votes were Crosby 13th, Bethel, 54th, J. Hill, 32nd (ex-officio), Tippins, 37th and Cowser, 46th. Nay votes were Stone, 23rd, Fort, 39th, and J. Carter, 42nd.

Amendment #8 proposed by Cowser, 46th – line 529: clarifies that obligation to preserve information only arises after receiving notice of potential litigation. Vote was (6-2) and **Amendment Passed**. Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, J. Hill, 32nd (ex-officio), Tippins, 37th and Cowser, 46th. Nay votes were Fort, 39th and J. Carter, 42nd.

Amendment #9 proposed by Cowser, 46th – lines 536-559: clarifies penalties for spoliation of evidence. Vote was (6-2) and **Amendment Passed**. Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, J. Hill, 32nd (ex-officio), Tippins, 37th and Cowser, 46th. Nay votes were Fort, 39th and J. Carter, 42nd.

Bethel, 54th moved **Do Pass by Substitute**. Carter, 42nd, seconded the motion. Vote was unanimous and the motion **Passed** (8-0). Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, J. Hill, 32nd (ex-officio), Tippins, 37th, Fort, 39th, Carter, 42nd, and Cowser, 46th. Cowser, 46th, will be the Senate sponsor.

[HB 449](#) LC 29 5899S - Representative Gravley, 67th - Act to amend Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure of agency records is not required, so as to change certain provisions relating to 9-1-1 calls .

Gravley, 67th, introduced the bill to the committee. This bill provides that audio recordings of 911 calls to emergency authorities may not be disclosed pursuant to a request under the Georgia Open Records Act if the call contains distressed speech or cries from an individual who died during the call or contains speech or cries of a person who was a minor at the time the call was placed. This bill was brought because of a case where a woman drowned to death and the family was subjected to hearing her suffer and die because of the 911 recording. Bethel, 54th, raised a question about whether time of death was pertinent to policy or language of the bill. Gravley, 67th, and Legislative Counsel indicated that the bill was narrowly drawn not to prohibit the investigation but to protect family members.

Bethel, 54th, moved **Do Pass**. Crosby, 13th, seconded the motion. The vote was unanimous and the motion **Passed** (5-0). Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, Tippins, 37th, and Cowsert, 46th. Dugan, 30th will be the Senate sponsor.

Guest Speaker

- Bill Clark, Georgia Trial Lawyers Association: He supported the concept of the bill and felt it was needed, however he did voice concerns about proportionality and spoliation.

[HB 776](#) LC 29 5766 - Representative Atwood, 179th - Act to amend Title 15, Code Sections 21-2-231, 31-2A-4, 35-3-33, and 40-5-2, and Title 42 of the O.C.G.A., relating to courts, lists of persons convicted of felonies, persons identified as noncitizens, persons declared mentally incompetent, and deceased persons, the Department of Public Health's obligation to safeguard and promote the health of people of this state, the powers and duties of the Georgia Crime Information Center, keeping of records or applications for driver's licenses and information on licenses and furnishing such information, and penal institutions, respectively, so as to clarify information to be provided in order to compile state-wide master jury lists and county master jury lists; to change provisions relating to the eligibility of persons to serve on a jury.

Atwood, 179th introduced the bill to the committee. This bill required the Department of Public Health, the Department of Corrections, the Georgia Crime Information Center, Department of Driver Services, and the State Board of Pardons and Paroles to provide certain information in order to compile state-wide master jury lists and county master jury lists. The information required to be provided includes lists of deceased persons, convicted felons, noncitizens, and persons declared mentally incompetent and other records. The information is to be provided to The Council of Superior Court Clerks of Georgia, the Administrative Office of the Courts, and/or the Secretary of State.

Bethel, 54th moved to **Do Pass**. Crosby, 13th, seconded the motion. The vote was unanimous and the motion **Passed** (4-0). Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, and Tippins, 37th. Ligon, 3rd, will be the Senate sponsor.

[HB 890](#) LC 29 5839 - Representative Atwood, 179th - Act to amend Code Section 15-16-21 of the Official Code of Georgia Annotated, relating to fees for sheriff's services, so as to provide for the sheriff to collect and deposit certain fees.

Atwood, 179th introduced the bill to the committee. This bill provides that fees for sheriff's services should be turned over to the county treasurer or fiscal officer of the county. In counties where the sheriff is paid on a salary only, this legislation applies only to fees to be charged. The types of fees included under the amended code section, O.C.G.A. 15-16-21 include sheriff's fees for service of summons, process, citations, commissions on sales of property, dispossession, executing warrants, titles of land, and bills of sale, collecting taxes, taking bonds, levying attachments, removing prisoners, and attending persons taken by warrant to judge's chambers. Currently, these fees are paid at the clerk's office at the time of filing.

Bethel, 54th, moved **Do Pass**. Tippins, 37th, seconded the motion. The vote was unanimous and the motion passed (4-0). Yay votes were Crosby, 13th, Bethel, 54th, Stone, 23rd, and Tippins, 37th. Ligon, 3rd, will be the Senate sponsor.

With no further business, Chairman McKoon, 29th, adjourned the meeting at 6:42 p.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary



OFFICE OF LIEUTENANT GOVERNOR

240 STATE CAPITOL
ATLANTA, GEORGIA 30334

CASEY CAGLE
LIEUTENANT GOVERNOR

March 10, 2014

Mr. David Cook
Secretary of the Senate
353 State Capitol
Atlanta, GA 30334

Dear David:

In accordance with the Senate Rules, the Senate Committee on Assignments hereby appoints Senator Mike Dugan to serve as Ex-Officio for the Senate Judiciary Committee meeting on March 11, 2014. This appointment shall expire upon the adjournment of the committee meeting.

Sincerely,


Lt. Governor Casey Cagle
President of the Senate

CC/cbe

cc:
Senate Committee Chairman
Fiscal Office
Appointee

SENATE JUDICIARY COMMITTEE MEETING

DATE, TIME, LOCATION:

The Senate Judiciary Committee met on **March 13th, 2014 in Room 307 CLOB at 11:00 a.m.**

SENATORS PRESENT:

McKoon, 29th, – Chairman

Crosby, 13th, - Vice Chairman

Bethel, 54th, – Secretary (arrived late – not here for HB758)

Tippins, 37th

Carter, 42nd

Ligon, 3rd

Fort, 39th

Stone, 23rd (arrived late – not here for HB758 and HB 701)

Chairman McKoon, 29th called the meeting to order at 11:08 a.m.

The following bills were presented to the Committee:

HB 758/FA – Coomer, 14th - Relating to terms of court, so as to change the terms of court for the Superior Court of Bartow County.

Commer, 14th, introduced this bill – This bill changes court terms of Superior Court of Bartow County to create four equal quarterly terms each year. The bill eliminates uneven term session terms and odd start dates. This bill was requested by the Superior Court and the District Attorney of Bartow County.

Tippins, 37th, moved **Do Pass**, Fort, 39th, seconded the motion. The vote was unanimous and the motion **Passed** (5-0). Yay votes were Ligon 3rd, Crosby, 13th, Carter, 42nd, Fort, 39th and Tippins, 37th. Thompson, 14th, will be the Senate sponsor.

HB 701 LC 29 5882S – Barr, 103rd - Relating to alimony and child support and the "Child Support Recovery Act," respectively, so as to enact provisions recommended by the Georgia Child Support Commission relating to child support and enforcement of child support orders; to revise definitions used in calculating child support; to clarify that worksheets and the calculator determine monthly child support figures; to clarify provisions relating to gross income; to change provisions relating to the duties of the GCSC; to provide for definitions and correct cross-references relating to the Department of Human Services Bank Match Registry and child support orders.

Barr, 103rd, presented the bill – This bill incorporates changes recommended by the Georgia Child Support Commission on child support and enforcement of child support orders. This house bill is identical to SB 282 passed by the Senate February 26, 2014.

Ligon, 3rd, moved **Do Pass**, Fort, 39th, seconded the motion. The vote was unanimous and the motion **Passed** (6-0). Yay votes were Bethel, 54th, Ligon 3rd, Crosby, 13th, Carter, 42nd, Fort, 39th and Tippins, 37th. Hufstetler, 52nd, will be the Senate sponsor.

HB 438 LC 21 2105 – Powell, 171st - Relating to collection of additional legal costs in civil actions for purposes of providing court-connected or court-referred alternative dispute resolution programs, so as to increase the maximum amount of such additional cost.

Crosby, 13th, presented this bill for Representative Powell, 171st – This bill increases maximum civil action filing fee for court-sponsored mediation programs from \$7.50 to \$10.00. Local judicial council on alternative dispute resolution establishes fee. Fee is paid with the filing of every lawsuit, and funds are used to fund mediation, arbitration, and other court-sponsored dispute resolution programs. Total fees received have declined during the economic downturn due to decrease in number of civil filings. However, because of lower cost, there has been a higher demand for ADR over traditional litigation. The increase in maximum fees would be used to support existing programs.

Guest Speakers

– Bill Clark - Georgia Trial Lawyers Association has withdrawn its opposition to the bill. GTLA wants to address entire civil filing fee structure next session, with an emphasis on looking at ways to have defendants bear some costs associated with filing.

– Mike Cuccaro, Judicial Council and Shinji Morokuma, Georgia Office of Dispute Resolution – This bill would be a savings. Collection of additional legal costs in civil action increase the fee - \$22 million to process these 20,000 cases (example).

Carter, 42nd, moved **Do Pass**, Stone, 23rd, seconded the motion. The vote was unanimous and the motion **Passed** (7-0). Yay votes were Bethel, 54th, Ligon 3rd, Crosby, 13th, Carter, 42nd, Stone, 23rd, Fort, 39th and Tippins, 37th. Crosby, 13th, will be the Senate sponsor.

With no further business, Chairman McKoon adjourned the meeting at 11:27 a.m.

RESPECTFULLY SUBMITTED,

/s/Senator Charlie Bethel, 54th, Secretary

/s/Donna Nealey, Recording Secretary

April 28, 2014

Mr. David Cook
Secretary of the Senate
State Capitol
Atlanta, GA 30334

RE: Senate Judiciary Committee
Bills Left In Senate Judiciary Committee After The 2014 Session
Bills Passed out of the Senate Judiciary Committee for 2014 Session
Listing Of Committee Meeting Dates

Dear Secretary Cook:

The Senate Judiciary Committee respectfully submits the following Senate and House bills and resolutions left in the Senate Judiciary committee during the 2014 General Assembly session to be returned to you:

SB123 SB126 SB127 SB159 SB221 SB239 SB269 SB285 SB312 SB345 SB368 SB405
SB413 SR420 SR808
HB977

Please find attached the following documents:

- Minutes for the dates listed below
- Senate Judiciary Committee members and their addresses
- Rules for Senate Judiciary Committee 2013 session
- Committee legislation report from the website showing all bills/resolutions assigned to Senate Judiciary Committee

Listed below are the dates for the Senate Judiciary Committee meetings.

- January 21, 2014 - February 3, 2014 - March 4, 2014
- January 27, 2014 - February 5, 2014 - March 6, 2014
- February 10, 2014 - March 10, 2014
- February 17, 2014 - March 13, 2014
- February 20, 2014
- February 24, 2014
- February 25, 2104

Listed below are the 30 Senate and House bills and resolutions that were passed out of the Senate Judiciary Committee for 2014:

SB282 SB290 SB331 SB332 SB340 SB341 SB354 SB377 SB386 SB406 SR1053
HB3 HB135 HB215 HB296 HB438 HB449 HB643 HB654 HB670 HB701 HB731
HB758 HB776 HB790 HB820 HB829 HB842 HB890 HB973

Thank you.

Sincerely,

Senator Josh McKoon
Chairman Senate Judiciary Committee

Donna Nealey
Legislative Assistant Senate Judiciary Committee