



AT ISSUE STATE EDITION



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Table of Contents

- 1 **“Some Assembly Required” – Decisions of the Georgia Supreme Court and Court of Appeals from the Past Year that Call for Action by the General Assembly**
- 4 **The Retirement Legislation Process: Fiscal v. Nonfiscal Legislation**
- 6 **2020 Statewide Ballot Measures**



In our latest State Edition of At Issue, we turn our focus to three important issues that each impact the way we will conduct our business in the General Assembly during the upcoming 2021 Legislative Session. In this issue, we will review: recent Supreme Court and Court of Appeals decisions which will ultimately require action by the legislature; the unique process of retirement legislation and the differences between fiscal and non-fiscal retirement bills; and we will provide an overview of the Statewide Ballot Measures you will encounter on your general election ballot.

Georgia’s appellate courts are often tasked with interpreting the various laws passed by the General Assembly and, occasionally, their judicial decisions make it clear that additional legislation may be necessary to provide further clarity and to clear up any ambiguity. Our first article details a few cases in which additional future legislative action is likely necessary in order to provide the clearest and most accurate interpretation of the law’s intent.

Retirement legislation composes some of the most important bills we consider each year, but also some of the most complex. Our second article explores how retirement bills differ from other legislation introduced in the General Assembly and, importantly, how fiscal retirement bills differ from non-fiscal retirement bills.

As we inch ever closer to Election Day, it’s important to note that along with a list of candidates for various state and federal offices, you will also be presented with several ballot questions and a referendum. Our final article will provide you with the full text of the question being asked, a brief description of how that question could impact the state, and a summary of the bills and resolutions which led to the creation of each question.

I hope you find the information in this edition of At Issue useful and informative. Be on the lookout for future State and Federal Editions in the next few months, as we approach the start of the 2021 Legislative Session. Please don’t hesitate to reach out to me or my office if you have any questions or ideas for future articles.

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Judiciary

“Some Assembly Required” – Decisions of the Georgia Supreme Court and Court of Appeals from the Past Year that Call for Action by the General Assembly

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“The General Assembly meant what it said and said what it meant” is a popular catch phrase in opinions from the Court of Appeals and the Supreme Court of Georgia in cases that involve statutory interpretation. From time to time, the judges and justices of Georgia’s appellate courts may even be hinting that the General Assembly should take action in the interests of justice, to correct possible mistakes in the wording of the Code, or avoid unjust or nonsensical results in future cases.

As we look back on the decisions from Georgia’s appellate courts from the past year, here are key examples of cases that prompted recent legislative action and other cases that may still present public policy concerns and prompt the question – “is some Assembly required”?

Recent Legislative Action from 2020 Session

(1) Mechanic and Materialman Lien Waiver Statute

In 2019, the Court of Appeals of Georgia in *ALA Construction Services, LLC v. Controlled Access, Inc.* held that the mechanic/materialman statutory lien waiver in O.C.G.A. § 44-14-366 was binding for all purposes, not just for the purpose of preserving the right to file a lien on the property.¹

In other words, the subcontractor would not be able to recover the debt that the contractor owed because the subcontractor signed the statutory form and had not filed a claim of lien or affidavit of nonpayment in accordance with the provisions of the statute, and as such, the amount owed was deemed to be paid in full. In reaching this conclusion, the Court of Appeals noted that "the plain and unambiguous language of OCGA § 44-14-366 (f)(1) clearly provides that the General Assembly intended the Waiver to be binding against the parties for 'all purposes,' not just for the purposes of preserving the right to file a lien on the property." The opinion also returned to citing the common refrain in cases of statutory interpretation – that the court is required to "presume that the General Assembly meant what it said and said what it meant."² This decision and similar cases like this one surprised the Georgia construction industry, which as noted in *The Daily Report*, previously understood the lien waivers to be limited to a waiver of the lien and bond rights but would not wipe out a claim for breach of contract if the payment was not made at a later date.

Once it goes into effect, [Senate Bill 315](#), sponsored by Senator Lindsey Tippins of the 37th, will revise O.C.G.A. § 44-14-366 to, among other things, remove from the statute and the statutory form the statements that the amount owed will be conclusively deemed to have been paid in full. This change is meant to clarify that the waiver is related to lien and labor or material bond rights on that property. Senate Bill 315 also extends the window in which the claimant would need to file an affidavit of nonpayment from 60 days to 90 days, among other changes. Senate Bill 315 passed unanimously in the Senate and in the House, was signed by Governor Kemp on August 5, 2020, and will go into effect on January 1, 2021.

(2) Statute of Repose for Actions Involving Improvements to Real Property

In 2019, the Georgia Court of Appeals held in *Southern States Chemical, Inc. v. Tampa Tank & Welding, Inc.* that the eight-year statute of repose for actions to recover damages arising from any deficiency in an improvement to real property under O.C.G.A. § 9-3-51 applied to contract and express warranty claims.³ The Court of Appeals stated that "[t]he cardinal rule of statutory construction requires this Court to look diligently for the intention of the General Assembly, and the golden rule of statutory construction requires us to follow the literal language of the statute unless it produces contradiction, absurdity, or such an inconvenience as to ensure that the legislature meant something else."

[Senate Bill 451](#), sponsored by Senator John Kennedy of the 18th, revised O.C.G.A. § 9-3-51 to provide that this Code Section will not apply to actions for breach of contract, including but not limited to, actions for breach of express contractual warranties. This bill applies to causes of action which have accrued on or after January 1, 1968. Senate Bill 451 also passed unanimously in the Senate and in the House and was signed by Governor Kemp on June 29, 2020. This law went into effect on July 1, 2020.

2020 Georgia Appellate Court Opinions That Call for Legislative Attention

In the meantime, the Supreme Court of Georgia and the Court of Appeals have continued to flag various issues for potential intervention by the General Assembly.

(1) Tolling of the Time Period to File an Ante Litem Notice for Victims of an Alleged Crime

In *Department of Public Safety v. Ragsdale*, the Supreme Court of Georgia held that the Tort Claims Act's ante litem notice period is not subject to tolling under O.C.G.A. § 9-3-99.⁴ This Code section provides that:

The running of the period of limitations with respect to any cause of action in tort that may be brought by the victim of an alleged crime which arises out of the facts and circumstances relating to the commission of such alleged crime committed in this state shall be tolled from the date of the commission of the alleged crime or the act giving rise to such action in tort until the prosecution of such crime or act has become final or otherwise terminated, provided that such time does not exceed six years, except as otherwise provided in Code Section 9-3-33.1.



The Supreme Court of Georgia and the Georgia Court of Appeals are now located in the Nathan Deal Judicial Center, which was dedicated in February 2020. (Photo courtesy of Tabitha Cooper, Deputy Clerk of the Court of Appeals of Georgia).

In *Ragsdale*, the plaintiff filed a personal injury action against the Department of Public Safety (“DPS”) after he was injured in a car accident that occurred when the driver of another vehicle fled law enforcement. The plaintiff sent a timely ante litem notice to the Department of Administrative Services (“DOAS”) but failed to include all of the information required. The plaintiff later sent another ante litem notice to DOAS, but DPS filed a motion to dismiss, contending that the second ante litem notice was untimely. The plaintiff argued that he was a victim of a crime committed by the driver who was fleeing from law enforcement and that the timing for the ante litem notice had been tolled “from the date of the commission of the alleged crime or the act giving rise to such action in tort until the prosecution of such crime or act has become final or otherwise terminated,” pursuant to O.C.G.A. § 9-3-99.

In an opinion authored by Justice John Ellington, the Supreme Court of Georgia held that “the time for filing an ante litem notice under O.C.G.A. § 50-21-26 (a) (1) is not subject to tolling under O.C.G.A. § 9-3-99, and that the Court of Appeals erred in concluding otherwise. We acknowledge that *in certain circumstances the lack of tolling of the Tort Claims Act’s ante litem notice time requirement may produce inequitable results, but it is for the General Assembly to waive that requirement as it deems appropriate.*”

(2) “Active” Tortfeasor for Uncapped Punitive Damages in DUI Collision

In *Reid v. Morris*, the Supreme Court of Georgia “[upended more than a decade of case law](#)” and ruled that the owner of a car who asked someone who had been drinking with him to drive his car (although the owner of the car was not himself the DUI driver who caused the collision) could potentially be considered an “active tortfeasor” liable for uncapped punitive damages.⁵

O.C.G.A. § 51-12-5.1 (f) provides that:

In a tort case in which the cause of action does not arise from product liability, if it is found that the defendant acted, or failed to act, with the specific intent to cause harm, or that the defendant acted or failed to act while under the influence of alcohol, drugs other than lawfully prescribed drugs administered in accordance with prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to that degree that his or her judgment is substantially impaired, there shall be no limitation regarding the amount which may be awarded as punitive damages against an active tortfeasor but such damages shall not be the liability of any defendant other than an active tortfeasor.

In the *Reid* case, the owner of the vehicle asked his friend who he had been drinking with to drive his car and gave him the keys, despite the fact that the owner of the vehicle knew that his friend was obviously drunk, that he did not have a valid driver’s license, and that he had a habit of driving recklessly. While driving, the friend collided with a car driven by an 18-year old, who had to be hospitalized. The injured 18-year old sued the driver of the car for negligence and the owner of the car for negligent entrustment. The plaintiff prevailed following a bench trial, but the trial court declined to order punitive damages against the owner of the vehicle even while granting punitive damages against the driver. The trial court found that the term “active tortfeasor” meant the DUI driver alone.

However, in an opinion authored by Justice Michael Boggs, the Supreme Court of Georgia found that O.C.G.A. § 51-12-5.1(f) does not categorically bar an award of punitive damages against the owner of the vehicle, because the term “active tortfeasor,” as used in the statute, is not necessarily limited to drunk drivers. The case was remanded to the trial court to: (1) determine whether the owner of the vehicle was intoxicated to the degree that his judgment was substantially impaired and whether he was an “active tortfeasor” within the meaning of OCGA § 51-12-5.1(f); and (2) if so, to set the amount of punitive damages to be awarded against the owner of the vehicle.

In a concurring opinion, Justice Charlie Bethel opined that the Court had “applied the right tools and the right law and delivered the right answer” in this case, but he expressed concerns that this interpretation of the statute may not, in fact, be what the General Assembly intended. Justice Bethel noted specifically that he was writing this separate concurring opinion “to bring attention to the Court’s interpretation of ‘active tort-feasor’ in O.C.G.A. § 51-12-5.1(f) in the hopes that the General Assembly will consider whether our interpretation of its language is, in fact, the desired law of Georgia.” Justice Bethel stated that he “suspect[s] that the ‘active’ modifier addressed by the Court was not meant to delineate between tortfeasors whose torts involved affirmative acts and tortfeasors whose torts involved a failure to act” and that he “generally doubt[s] that the General Assembly intended to exclude from enhanced liability exposure a tortfeasor who was shown to have personally intended a harm but whose tort involved the withholding of some act compelled by a legal duty, while subjecting a similarly malicious tortfeasor whose breach of duty involved an affirmative act to such liability.”

(3) Judgment in Civil Actions for Injuries from Criminal Gang Activity

In *Star Residential, LLC v. Hernandez*, a tenant in an apartment complex, who was shot during a robbery, brought an action against the owner and operator of the complex asserting claims of personal injury under the Georgia Street Gang Terrorism and Prevention Act (the “GSGTPA”) and negligence per se under city and county nuisance ordinances.⁶

Under the GSGTPA, O.C.G.A. § 16-15-7(c) provides that “[a]ny person who is injured by reason of criminal gang activity shall have a cause of action” for treble (i.e., triple) damages. However, O.C.G.A. § 16-15-7(c) also explicitly states that a judgment on the cause of action is not available “unless the finder of fact determines that the action is consistent with the intent of the General Assembly as set forth in Code Section 16-15-2,” which is the legislative intent section for the GSGTPA.⁷

The trial court denied the motion to dismiss filed by the owner and operator, and following an interlocutory appeal, the Court of Appeals of Georgia affirmed. However, in a special concurrence joined by Presiding Judge Sara Doyle, Judge Todd Markle noted that, although the GSGTPA “is silent as to who is the proper defendant, the plain language makes it clear that the factfinder is to decide whether the action comports with the legislative intent.” Judge Markle expressed concern that reading the statute in this way “causes the unintended consequence of allowing the jury to engage in statutory interpretation and determine whether the landlord or property owner is a proper defendant even if there was no evidence the landlord or property owner participated in the gang activity. Moreover, by placing this decision in the hands of the factfinder, this interpretation will essentially eviscerate the summary judgment statute, O.C.G.A. § 9-11-56.” However, he concluded that “this is clearly what the statute says, and, to the extent it leads to an absurd result, the remedy is with the legislature. If the General Assembly enacted into law something different from what it intended, then it should amend the statute to conform to its intent.”⁸

(4) Units of Prosecution for Child Molestation Charges

Pursuant to O.C.G.A. § 16-6-4(a)(1), a person commits the offense of child molestation when he or she does any immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person. In *Scott v. State*, the defendant was convicted on multiple counts of child molestation, and the Court of Appeals held on June 30, 2020 that the defendant was subject to only one conviction and sentence because the three child molestation counts arose out of the same conduct, that occurred within a relatively short time frame and in a single, uninterrupted course of conduct.⁹ Although the victim testified the defendant touched her breasts, vagina, and buttocks while she was in bed, she did not testify as to how much time, if any, elapsed between the touches. In the opinion authored by Judge Elizabeth Gobeil, the Court of Appeals recognized that that the conduct underlying the defendant’s three child molestation convictions, which included his touching the victim’s breasts and inserting his finger into her vagina and buttocks, involved trauma to and violated three distinct parts of the victim’s body. This scenario contrasts with assault cases, where courts have found that a series of shots fired or blows administered in quick succession, often in the heat of the moment, do not constitute a renewed assault and thus are subject to merger. However, based on the text of O.C.G.A. § 16-6-4(a)(1), the Court of Appeals found that “the General Assembly has not, by clear and unambiguous language, provided that multiple touches to a victim, during a single uninterrupted course of conduct, authorize multiple prosecutions and convictions for separate acts of child molestation.” The Court of Appeals also noted that the Supreme Court of Georgia has instructed “that if reasonable minds disagreed as to whether the statute is, in fact, ambiguous, the rule of lenity would require us to interpret it in favor of the defendant.”¹⁰

The Court of Appeals concluded by stating that, if the General Assembly intended for child molestation under O.C.G.A. § 16-6-4(a)(1) to be punishable for “each separate invasion of a protected area of a victim’s body in a single uninterrupted course of conduct, we urge the General Assembly to ‘employ[] such clear, unambiguous language’ to specify the unit of prosecution accordingly.”¹¹ -BV

Retirement

The Retirement Legislation Process: Fiscal v. Nonfiscal Legislation

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Under the Gold Dome, most legislation can be introduced during either year of the legislative biennium and enacted during that same year. However, passing and introducing retirement legislation that has a fiscal impact on any retirement system is a two-year process. According to the National Association of State Retirement Administrators (NASRA), while the majority of other states have some extraordinary legislative requirements, Georgia and Oklahoma are the only two states that have a two-year process for enacting a fiscal retirement bill.¹ In Georgia, retirement legislation that has a fiscal impact can only be introduced during the first year of the legislative biennium and acted on during the second year after the completion of an actuarial investigation. Article III, Section X, Paragraph V of the Georgia Constitution provides that it is “the duty of the General Assembly to enact legislation to define funding standards which will assure the actuarial soundness of any retirement or pension system supported...from public funds.” Further, the Constitution prohibits any legislation to be passed by the General Assembly if it does not have concurrent funding provisions in accordance with the defined funding standards.

In an effort to comply with the Georgia Constitution, the Georgia General Assembly enacted the [Public Retirement Systems Standards Law](#) in 1983. This law establishes procedures required for the consideration and enactment of retirement legislation. After retirement legislation has been drafted by the Office of Legislative Counsel and given an LC number, Code Section 47-20-32 requires the primary sponsor to present it to the state auditor for determination of fiscal impact. The determination must be completed no later than November 1 of the same year. A certificate denoting whether proposed legislation has fiscal impact will be issued to the primary sponsor by the state auditor. The certificate must be attached and presented alongside the bill for consideration with the legislation by the Senate or House standing committee on retirement.

If the legislation has been found to not have a fiscal impact it can proceed through the legislative process normally during either year of the legislative biennium. O.C.G.A. § 47-20-33(a) prohibits nonfiscal bills to be amended in any manner that causes the bill to become a retirement bill having a fiscal impact. However, if an amendment is made to a nonfiscal bill, it must be sent to the state auditor for a certificate of fiscal impact. If the amendment is found to have no fiscal impact, it may be adopted and the bill may continue as normal through the legislative process.

For legislation to have a fiscal impact it must increase a retirement benefit, create or increase an actuarial accrued liability, or increase the normal cost of the retirement system affected by the bill. Pursuant to O.C.G.A. § 47-20-34(b), during the interim between the first and second years of the legislative biennium, the House and Senate standing committees on retirement will meet to consider all of the fiscal retirement bills introduced during the previous legislative session. Members will vote in favor of an [actuarial investigation](#), or to oppose the bill granting no study or future action by the committee or respective chamber.

After an actuarial investigation has been completed, during the second year of the legislative biennium, members of the House and Senate standing committees on retirement can hold a meeting to deliberate on the legislation and the effect it has on the members of the retirement system. Any amendment to the legislation either during a committee meeting or by the House or Senate, unless it reduces the cost of the legislation, is prohibited by Code Section 47-20-37(b). After all appropriate measures have occurred for fiscal retirement legislation, the legislation can continue through the general legislative process.

For bills that impact or change the investments of a public retirement system, Code Section 47-20-34(d) requires that the legislation be introduced with a statement from the Governor, Lieutenant Governor, or the Speaker of the House describing the primary goal the bill is designed to achieve. Also, a fiscal analysis from the affected public retirement system is required by [law](#) stating the annual fiscal losses which will be incurred as a result of complying with the legislation.

Fiscal Retirement Legislation 2019-2020

The following list of legislation is comprised of all the retirement legislation that had a fiscal impact and went through the complete process during this past legislative biennium including a completion of an actuarial study. The corresponding actuarial study can be found at the bottom of each summary of legislation webpage. A full list of fiscal and nonfiscal retirement legislation from the 2019 and 2020 legislative sessions can be found [here](#).

Senate Bill 26

Employees' Retirement System; Georgia Defined Contribution Plan

Sponsor: Senator Ligon of the 3rd; Representative N. Williams of the 148th

Effective Date: July 1, 2020 (Signed June 29, 2020; Act 386)

This bill allows past members of the Georgia Defined Contribution Plan, which is no longer offered, to obtain creditable service in the Employees' Retirement System (ERS) if the past member has: (a) accrued at least five years of membership in the ERS system; (b) provides proof of such prior service under the Georgia Defined Contribution Plan; (c) authorizes the transfer of all funds from the individual's Georgia Defined Contribution Plan account related to the prior service; and (d) pays an amount, determined by the Board, to cover the full actuarial cost of granting the new creditable service.

Senate Bill 249

Peace Officers' Annuity and Benefit Fund; Revisions

Sponsor: Senator Albers of the 56th; Representative Gravley of the 67th

Effective Date: July 1, 2020 (Signed on August 3, 2020; Act 551)

This bill adds jail officers to the list of eligible persons for the Peace Officers' Annuity and Benefit (POAB) Fund. The bill also increases monthly contributions of a member from \$20 to \$25 per month to the POAB Fund. Additionally, the bill revises payments to the POAB Fund from fines and bonds collected in criminal and quasi-criminal cases for violation of state statutes, county ordinances, or municipal ordinances. Current law provides a portion of each fine and forfeiture to be paid to the POAB Fund based on a tiered schedule. This bill streamlines the amounts paid to the POAB Fund: (1) the greater of \$10.00 or 10 percent of each bond forfeited and collected; (2) an amount equal to the greater of \$10.00 or 10 percent of each fine imposed; and (3) the greater of five percent or \$5.00 of each fee collected prior to adjudication of guilt in pretrial diversion.

Currently, POAB Fund members receive \$17.50 per month for each full year of creditable service. This bill increases the monthly retirement benefit payable to members to \$25.15 and on July 1, 2021 will increase to \$30.00 per month for each full year of creditable service.

[House Bill 195](#)

Georgia Firefighters' Pension Fund; Increases Death Benefits

Sponsor: Representative Benton of the 31st; Senator Walker, III of the 20th

Effective Date: July 1, 2020 (Signed June 29, 2020; Act 370)

Currently, the Georgia Firefighters' Pension Fund provides a death benefit of \$5,000 to beneficiaries upon the death of an active member. The beneficiaries of a retired member receive a death benefit if the retired member has not received benefits equal to \$5,000 prior to death. This legislation increases the amount of the death benefit payable to beneficiaries to \$10,000.

[House Bill 663](#)

Judicial Retirement System; State-wide Business Court Judges

Sponsor: Representative Efstrotation of the 104th; Senator Black of the 8th

Effective Date: July 1, 2020 (Signed June 29, 2020; Act 371)

This bill provides that judges employed full-time on or after July 1, 2020 in the state-wide business court must become members of the Judicial Retirement System (JRS). Current state-wide business court judges can transfer their creditable service from the Employees' Retirement System to the JRS if they pay any amount necessary to cover the full actuarial cost of the service.

[House Bill 664](#)

Judicial Retirement System; Office of Legislative Counsel

Sponsor: Representative Fleming of the 121st; Senator Ligon of the 3rd

Effective Date: July 1, 2020 (Signed June 29, 2020; Act 383)

This bill provides that individuals employed on or after July 1, 2020 by the General Assembly's Office of Legislative Counsel in a full-time position that requires admission to and good standing with the State Bar of Georgia as a condition of employment must become members of the Judicial Retirement System (JRS). Current employees who meet this criteria can elect to become members of the JRS if they notify the JRS Board of Trustees and pay the remaining amount necessary for the full actuarial cost to transfer their Employees' Retirement System service to JRS.

The COVID-19 pandemic forced the Georgia General Assembly to address fewer bills during the 2020 legislative session. This left some legislation, including fiscal retirement bills that had received an actuarial investigation, hanging in the balance. Fiscal retirement matters that could be revisited in the upcoming session include allowing a retired member to revoke an elected beneficiary if the beneficiary has predeceased the retired member and changes to the Georgia Firefighters' Pension Fund, including increases to monthly benefits. Legislators actively preparing their legislative priorities must remember that any fiscal retirement legislation, from past sessions or newly drafted, is required by law to be introduced during the first year of the biennium which is the 2021 legislative session. - LV

2020 Statewide Ballot Measures

Constitutional Amendment 1 – Dedication of Fees and Taxes to Their Intended Purpose by General Law

Ballot Question: "Shall the Constitution of Georgia be amended so as to authorize the General Assembly to dedicate revenues derived from fees or taxes to the public purpose for which such fees or taxes were intended?"

Brief Description: *The Georgia Constitution provides for the dedication of fees and taxes to specific purposes. The constitutional dedication of such revenue must be accomplished through an approved ballot measure that adds language to the Georgia Constitution specifying the fees and taxes to be dedicated and to what purpose. Constitutional Amendment 1 proposes a new process by adding a provision to the Georgia Constitution that would allow the legislature to introduce general legislation amending specific Code sections to dedicate revenue streams to the specific public purpose for which the fees or taxes were imposed without adding them to the Georgia Constitution. For example, there are various trust funds with associated fees and taxes set forth in statute pertaining to hazardous waste, solid waste, and the "Joshua's Law" driver's education program.*

If this ballot measure passes, the legislature could dedicate such fees and taxes to their specific purposes by introducing general legislation, subject to certain requirements and conditions (see below).

House Resolution 164

Proposed Amendment to the Georgia Constitution Authorizing the Dedication of Revenue Derived from Fees or Taxes

Sponsors: Representative J. Powell of the 32nd and Senator Ligon of the 3rd

Effective Date: Upon Ratification of November 2020 Ballot Question (Signed on August 5, 2020; Act 597)

This resolution amends Article III, Section IX, Paragraph VI of the Georgia Constitution by adding a new subparagraph authorizing the General Assembly to provide by general law for the dedication of revenues derived from fees or taxes to the public purpose for which such fees or taxes were imposed. Such general law dedicating the fee or tax must reference this provision of the Constitution and:

- Provide the specific public purpose for which the revenue derived from such fee or tax must be used;
- Identify the agency to administer such revenue;
- Require annual reporting of the revenues and expenses by such agency; and
- Include an automatic expiration of such fee or tax within a period not to exceed 10 years.

Fees dedicated pursuant to this resolution must be less than 1 percent of the total state revenues based on the previous fiscal year's state revenues subject to appropriation. In the event of a financial emergency where state revenue collections decline for three consecutive months from the revenues collected for the same months in the previous fiscal year, the Governor or General Assembly may temporarily suspend the dedication of revenue. Such option to suspend is limited to three, two-year periods in any 10-year period.

Constitutional Amendment 2 – Civil Actions Against State and Local Governments

Ballot Question: “Shall the Constitution of Georgia be amended to waive sovereign immunity and allow the people of Georgia to petition the superior court for relief from governmental acts done outside the scope of lawful authority or which violate the laws of this state, the Constitution of Georgia, or the Constitution of the United States?”

Brief Description: *Sovereign immunity means that the government as the sovereign is immune from lawsuits. Court decisions on sovereign immunity in Georgia have made it very difficult to file lawsuits to challenge state or local government actions in the courts of this state. The ballot question from HR 1023 is asking Georgia voters if they would like to amend the state Constitution to waive sovereign immunity to allow actions in superior court seeking declaratory relief (in other words, a legal determination of the parties' rights from the court) regarding whether the acts of state or local governments and their officers and employees are outside the scope of lawful authority or in violation of state laws or the Georgia Constitution, or the U.S. Constitution. If the court enters declaratory judgment against the government, the court could stop the government from taking further action. No damages, attorney's fees, or costs of litigation will be awarded from such a lawsuit if this ballot question is approved, unless the General Assembly specifically passes a law to allow that to happen.*

House Resolution 1023

Proposed Amendments to the Georgia Constitution to Allow Certain Civil Actions against the State and Local Governments

Sponsors: Representative Welch of the 110th and Senator Kennedy of the 18th

Effective Date: Upon Ratification of November 2020 Ballot Question (Signed on August 5, 2020; Act 596)

This resolution provides for the voters of Georgia to consider a ballot question regarding whether the Constitution of Georgia will be amended to waive sovereign immunity and allow the people of Georgia to petition the superior court for relief from governmental acts done outside the scope of lawful authority or which violate the laws of this State, the Constitution of Georgia, or the U.S. Constitution.

The resolution proposes amendments to the Georgia Constitution, which if approved by the voters, will provide that sovereign immunity is waived for actions in the superior court seeking declaratory relief from acts of the State or any agency, authority, branch, board, bureau, commission, department, office, or public corporation of this State or officer or employee thereof, or any county, consolidated government, or municipality or officer or employee thereof that is outside the scope of lawful authority or in violation of the laws or the Georgia Constitution of this State or the U.S. Constitution. Sovereign immunity is also waived so that a court awarding declaratory relief may, only after awarding declaratory relief, enjoin the acts to enforce its judgment. This waiver of sovereign immunity will apply to past, current, and prospective acts which occur on or after January 1, 2021.

Such actions against the State, a state entity, or an officer or employee of the State must be filed exclusively against the State and in the name of the State of Georgia. Such actions filed against any county, consolidated government, or municipality of the state or officer or employee thereof must be brought exclusively against that county, consolidated government, or municipality and in the name of that county, consolidated government, or municipality.

The resolution provides that no damages, attorney's fees, or costs of litigation will be awarded in such an action, unless specifically authorized by Act of the General Assembly.

Referendum A - Tax Exemption for Certain Real Property Owned by Charitable Organizations

Ballot Question: "Shall the Act be approved which provides an exemption from ad valorem taxes for all real property owned by a purely public charity, if such charity is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code and such real property is held exclusively for the purpose of building or repairing single-family homes to be financed by such charity to individuals using loans that shall not bear interest?"

Brief Description: *Referendum A proposes an exemption from ad valorem tax on property held by a charity for the exclusive purpose of building or repairing single-family homes financed using no interest loans. This property tax exemption would apply to a small category of 501(c)(3) organizations including Habitat for Humanity.*

House Bill 344

Property Tax Exemption for Charities Building/Repairing Single-Family Homes

Sponsors: Senator Thompson of the 14th and Representative Gambill of the 15th Effective Date: Upon Governor's Approval and Approval by Electors of the Entire State in the 2020 General Election (Signed on May 2, 2019; Act 149)

This bill adds to the list of properties exempt from ad valorem tax, property owned by a purely public charity that is held exclusively for the purpose of building or repairing single-family homes. The single family homes must be financed by the charity to individuals using no interest loans. The full amount of the ad valorem taxes exempted under this bill will become due if any portion of the real property is not financed without interest by the charity to an individual purchasing a single-family home. This exemption must be approved by the electors of the entire state in the November 2020 election.

Endnotes

"Some Assembly Required" – Decisions of the Georgia Supreme Court and Court of Appeals from the Past Year that Call for Action by the General Assembly

1 *ALA Constr. Servs., LLC v. Controlled Access, Inc.*, 833 S.E.2d 570 (Ga. Ct. App. 2019), cert. denied (Ga. Apr. 20, 2020).

2 *Id.* at 572 (quoting *Bibler Masonry Contractors v. J. T. Turner Constr. Co.*, 798 S.E.2d 19 (Ga. Ct. App. 2017) (citations and punctuation omitted)).

3 *S. States Chem., Inc. v. Tampa Tank & Welding, Inc.*, 836 S.E.2d 617 (Ga. Ct. App. 2019).

4 *Dep't of Pub. Safety v. Ragsdale*, 839 S.E.2d 541 (Ga. 2020).

5 *Reid v. Morris*, 845 S.E.2d 590 (Ga. 2020).

6 *Star Residential, LLC v. Hernandez*, 841 S.E.2d 392 (Ga. Ct. App. 2020).

7 O.C.G.A. § 16-15-2 provides that:

(a) The General Assembly finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly, however, further finds that the State of Georgia is in a state of crisis which has been caused by violent criminal street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

(c) The General Assembly finds that there are criminal street gangs operating in Georgia and that the number of gang related murders is increasing. It is the intent of the General Assembly in enacting this chapter to seek the eradication of criminal activity by criminal street gangs by focusing upon criminal gang activity and upon the organized nature of criminal street gangs which together are the chief source of terror created by criminal street gangs.

(d) The General Assembly further finds that an effective means of punishing and deterring the criminal activities of criminal street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by criminal street gangs.

Endnotes

8 Quotation and citation omitted.

9 *Scott v. State*, 846 S.E.2d 241, 243 (Ga. Ct. App. 2020).

10 Quotation and citations omitted.

11 Quoting *Coates v. State*, 818 S.E.2d 622, 625 (Ga. 2018).

The Retirement Legislation Process: Fiscal v. Nonfiscal Legislation

1 National Association of State Retirement Administrators (NASRA), Extraordinary Legislative Requirements for Retirement Legislation, (October 2016).

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