

AT ISSUE



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CALENDAR

- 9/2/15 **Joint Economic Development Committee**
Hyatt Regency Grand Ballroom, Savannah | 8:30 a.m.
- 9/14/15 **Senate Consumer Provider and Protection Act Study Committee**
450 CAP | 9:00 a.m.
- 9/14/15 **Joint Study Committee on Preservation of the HOPE Program**
606 CLOB | 1:00 p.m.
- 9/14/15 **Senate Women’s Adequate Healthcare Study Committee**
450 CAP | 2:00 p.m.
- 9/15/15 **Youth Mental Health and Substance Use Disorders Study Committee**
450 CAP | 9:00 a.m.
- 9/15/15 **Senate Preservation of the HOPE Scholarship Program Study Committee**
606 CLOB | 9:30 a.m.

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A Message from Senator Shafer



This month’s *At Issue* leads off with a discussion regarding Georgia’s Certificate of Need Law. Current law requires health care providers to obtain a certificate of need from the Department of Community Health in order to offer certain services. Originally designed to control costs by avoiding duplication, this regulatory system is being challenged in the courts by physicians who call it a “restraint on competition, economic liberty and consumer choice.” We are likely to see continued legislative attempts to modify Georgia’s CON law.

We also take a look at the progress being made on the expansion of the Savannah Harbor. This massive dredging project, which will allow Savannah to accommodate the largest Post-Panamax cargo ships, not only employs thousands of construction workers but will keep Georgia at the center of export and import for decades to come. This issue also examines the latest proposal to

expand gambling in Georgia by authorizing “destination casinos.”

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Health & Human Services

Georgia’s Certificate of Need Program Goes to Court

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In an effort to control health care costs in the 1970s, many states enacted Certificate of Need (CON) laws to ensure that new or improved facilities or equipment would be approved in cases when a genuine need in a community exists. Such laws allow state planning agencies to regulate the number of beds in hospitals and nursing homes and the purchase of expensive medical equipment in a community. The theory behind creating CON programs is rooted in the idea that the overbuilding of facilities creates health care price inflation—when a hospital consistently cannot fill its beds, the hospital must charge higher rates for the beds being used. Georgia’s CON program was established by the General Assembly in 1979 after Congress enacted the National Health Planning and Resources Act of 1974.

Georgia is among the 36 states that continue to maintain CON programs, many of which have undergone various reforms through state legislation and/or changes to state agency rules and regulations. The Georgia Department of Community Health’s (DCH’s) Office of Health Planning is responsible for administering the CON program by evaluating proposals for new or expanded health care services or facilities under Georgia’s Health Planning Statute. A CON is considered the official determination that a new or expanded health care service or facility is needed in Georgia.

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(Georgia's Certificate of Need Program - continued from page 1) In an effort to improve upon Georgia's CON program, the Commission on the Efficacy of the CON Program in Georgia was established in 2005, and its final report to the Georgia General Assembly and Governor Sonny Perdue was published on December 29, 2006. During the 2008 Legislative Session, major reforms to the statute were enacted with the passage of Senate Bill 433—some of which are highlighted here. The bill increased the thresholds for capital improvements and allowed hospitals that maintain near full occupancy rates to increase bed capacity by ten beds or by 10 percent, whichever is greater, without a CON. Senate Bill 433 also outlined CON requirements for destination cancer hospitals, such as Cancer Treatment Centers of America, and modified the CON appeal process. The bill exempted expenditures for nonclinical projects, such as parking decks, medical office buildings, and computer systems from CON requirements.

Prior to the 2008 reforms, Georgia's CON law contained an exemption for physician-owned single-specialty ambulatory surgical centers (ASCs) with capital expenditures which did not exceed \$1,700,000. Senate Bill 433 increased the capital expenditure limit for physician-owned single specialty ASCs to \$2,500,000, indexed annually. It also created an exemption for single specialty ASCs if it is the only ASC in the county owned by the group practice and has less than two operating rooms. Single specialty ASCs that are exempt from CON requirements are required to obtain a Letter of Non-reviewability (LNR) from DCH's Office of Health Planning and are commonly referred to as "LNR single-specialty ASCs." A CON is required, however, for any expansion of such facilities.

Currently, projects that require a CON in Georgia include:

- New hospitals, including general, acute-care, and specialty hospitals;
- New or expanding Nursing Homes and Home health agencies;
- All multi-specialty and certain single-specialty Ambulatory Surgery Centers;
- Providers of Radiation Therapy, Positron Emission Tomography, Open Heart Surgery, and Neonatal Services;
- Major medical equipment purchases or leases (e.g. MRI, CT Scanners) that exceed the equipment threshold;
- Major hospital renovations or other capital activities by any health care facility that exceed the capital expenditure threshold; and
- Before a health care facility can offer a health care service, which was not provided on a regular basis during the previous 12-month period, or add additional beds.

In addition to the 2008 reforms, Georgia's CON program was studied by the 2013 Senate Study Committee on Independent Physicians in Georgia. Those testifying before the Committee included hospitals, as well as independent physicians from multi-specialty groups. The independent physicians stated that they are unable to compete and remain a less costly alternative to hospital-controlled physician services, urging the Committee that Georgia's CON requirements should be loosened for independent physician groups. In its recommendations, the Committee pointed to the upcoming implementation of the Affordable Care Act (ACA) on January 1, 2014 and expressed concern over changing Georgia's CON law before knowing how the ACA would impact the health care industry in the state. While the Committee recommended that no action regarding Georgia's CON program be taken at that time, it recognized that there may be some issues for the Senate's attention in the future. During the 2015 Legislative Session, legislation (House Bill 249) was introduced in the Georgia House of Representatives that called for the repeal of Georgia's CON law. Sponsored by Representative David Stover of the 71st (R) and assigned to the House Health and Human Services Committee, House Bill 249 has remained in "House Second Readers" since February 11, 2015.

Women's Surgical Center, LLC v. Reese: On June 30, 2015, Dr. Hugo Ribot Jr., M.D., Dr. Malcom Barfield, D.O., and Women's Surgical Center, LLC (doing business as Georgia Advanced Surgery Center for Women) filed a complaint against DCH Officials in Fulton County Superior Court to challenge Georgia's CON laws. The complaint for declaratory judgment and injunctive relief seeks to overturn Georgia's CON program and asserts that Georgia's CON laws "are a restraint on competition, economic liberty, and consumer choice."

Dr. Ribot, Jr. and Dr. Barfield are OB/GYNs who co-own an outpatient LNR single-specialty ASC in Cartersville, Georgia. Although their facility falls within the exemption discussed above for single-specialty ASCs under Georgia's CON law, their plans for an expansion of the facility triggered the need to obtain a CON. Their CON application sought permission to: (1) expand the single-specialty ASC by adding a second operating room; and (2) remain a single-specialty ASC but allow other OB/GYNs from other practices to perform surgery at the facility. In March of 2015, they were denied a CON to implement these two things. The plaintiffs list the following violations of federal and Georgia law:

1. Count I – Violation of the Anti-Monopoly Clause of the Georgia Constitution;
2. Count II – Violation of the Privileges and Immunities Clause of the Georgia Constitution;
3. Count III – Violation of the Due Process Clause of the Georgia Constitution;
4. Count IV – Violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;
5. Count V – Violation of the Privileges or Immunities Clause of the Fourteenth Amendment to the U.S. Constitution.

The defendants, Mr. Clyde L. Reese, III, Commissioner of DCH, and Ms. Rachel L. King, Health Planning Director of DCH, filed their motion to dismiss and supporting brief on August 20, 2015. The defendants' brief moves that the plaintiffs' complaint should be dismissed due to lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. The defendants' arguments are outlined as follows.

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Betting on Casino Gaming in Georgia

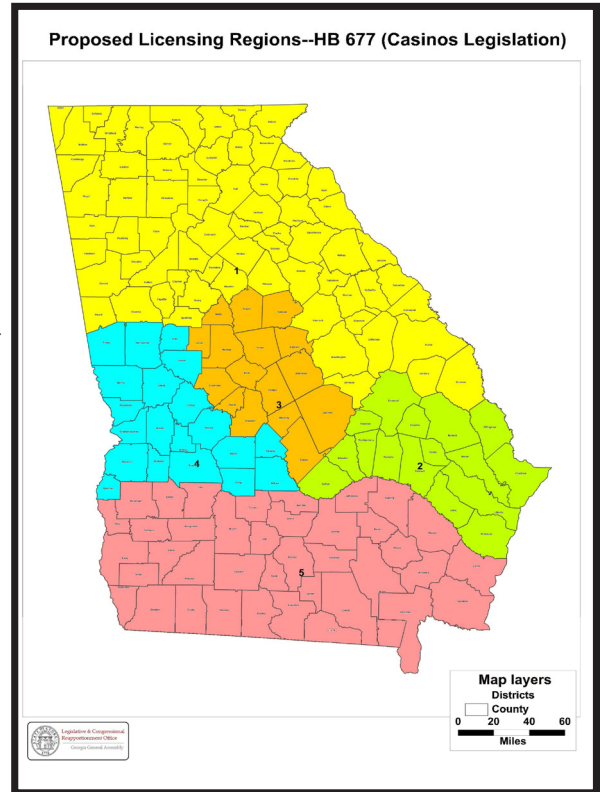
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In the wake of pending legislation authorizing horse racing in Georgia, which stalled in the Senate earlier this year, several proposals have been made to allow for pari-mutuel wagering and casino gaming.

In recent news, this public support for casinos might be realized in a proposal for resort style casinos brought by MGM. According to the Atlanta-Journal Constitution, advocates claim the gaming complex proposed by MGM Resorts International would create 3,500 jobs and generate “tens of millions of dollars” for the HOPE scholarship. More akin to a Las Vegas casino than past proposals, the complex would house a luxury hotel, entertainment venue, and gaming floor. A bill introduced by Representative Ron Stephens would provide the legislative conduit for legalization.

Current Legislation: House Bill 677

Several bills were introduced in the 2015 Legislative Session providing for some form of casino gaming in the state. Introduced in the waning days of the Legislative Session, House Bill 677 and House Resolution 807 would permit casino gaming in Georgia with the main aim of preserving the HOPE scholarship program and other educational purposes. Following voter approval of a constitutional amendment in the 2016 election, casino gaming would be allowed in those counties and municipalities that approve, by public referendum, the establishment of licensed resort facilities. The bill creates five licensing regions throughout the state, within which a maximum of six casinos may operate.



The Georgia Lottery Corporation would become the Georgia Lottery and Casino Gaming Commission; the Commission would retain supervision of the lottery and would be vested with the regulation of casino gaming in the state. *(continued on page 5)*

House Bill 677

	Region Boundaries	Licenses Available	Minimum Investment	Casino Gaming License Fee
Licensing Region One	Banks, Barrow, Bartow, Burke, Carroll, Catoosa, Chattooga, Cherokee, Clarke, Clayton, Cobb, Columbia, Coweta, Dade, Dawson, DeKalb, Douglas, Elbert, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Gordon, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Hart, Heard, Henry, Jackson, Jefferson, Jenkins, Johnson, Lincoln, Lumpkin, Madison, McDuffie, Morgan, Murray, Newton, Oconee, Oglethorpe, Paulding, Pickens, Polk, Rabun, Richmond, Rockdale, Screven, Spalding, Stephens, Taliaferro, Towns, Union, Walker, Walton, Warren, Washington, White, Whitfield, and Wilkes and such independent municipalities located within the borders of those counties	Two licenses available: primary and secondary. Primary must be awarded first. Secondary: maximum 2,000 gaming positions	Primary license: Minimum \$1 billion investment Secondary license: Minimum \$200 million investment	Primary license: \$25 million Secondary license: \$10 million
Licensing Region Two	Bryan, Bulloch, Candler, Chatham, Effingham, Emanuel, Evans, Liberty, Long, McIntosh, Montgomery, Tattmull, Telfair, Toombs, Treutlen, and Wheeler and such independent municipalities located within the borders of those counties	One primary license available	Minimum \$200 million investment	\$10 million
Licensing Region Three	Baldwin, Bibb, Bleckley, Butts, Crawford, Dodge, Houston, Jasper, Jones, Lamar, Laurens, Monroe, Peach, Putnam, Twiggs, and Wilkinson and such independent municipalities located within the borders of those counties	One primary license available	Minimum \$200 million investment	\$10 million
Licensing Region Four	Chattahoochee, Crisp, Dooly, Harris, Macon, Marion, Meriwether, Muscogee, Pike, Pulaski, Quitman, Schley, Stewart, Sumter, Talbot, Taylor, Troup, Upson, Webster, and Wilcox and such independent municipalities located within the borders of those counties	One primary license available	Minimum \$200 million investment	\$10 million
Licensing Region Five	Appling, Atkinson, Bacon, Baker, Ben Hill, Berrien, Brantley, Brooks, Calhoun, Camden, Charlton, Clay, Clinch, Coffee, Colquitt, Cook, Decatur, Dougherty, Early, Echols, Glynn, Grady, Irwin, Jeff Davis, Lanier, Lee, Lowndes, Miller, Mitchell, Pierce, Randolph, Seminole, Terrell, Thomas, Tift, Turner, Ware, Wayne, and Worth and such independent municipalities located within the borders of those counties	One primary license available	Minimum \$200 million investment	\$10 million

Economic Development

Savannah Harbor Expansion Progress

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Large government funded projects are all too often over budget and behind schedule. Plagued by delays, bureaucratic red tape, and inefficiencies, these projects sometimes earn their reputation as boondoggles and bridges to nowhere. With that being said, it is pleasantly surprising to learn that Georgia's largest and most important economic development project in years is proceeding ahead of schedule. The Savannah Harbor Expansion Project is anticipated to begin dredging three months earlier than first expected.

On July 31, the Army Corps of Engineers awarded a \$99.6 million contract to install an oxygen injection system along the Savannah River to provide needed oxygen to the river during hot, dry months. The CSS Georgia, a Civil War ironclad currently sitting at the bottom of the Savannah River, and there since 1864, began its excavation process on January 29, the first project of the deepening. A heavy piece of the vessel standing in the way of dredging was raised from the depths on August 1. The Army Corps of Engineers schedule indicates the dredging will begin on September 7, rather than the originally scheduled start date of December. Completion of the project is anticipated to be in 2020.

The Savannah Harbor Expansion Project involves deepening the 40-mile Savannah Harbor and shipping channel to a depth of 47 feet, allowing larger ships with heavier cargos to navigate the harbor. With the widening of the Panama Canal, scheduled to be completed next year, an increased number of these large ships will be looking for an east coast port in which to unload their cargo. The Army Corps of Engineers estimates the deepening project will return \$5.50 to the economy for every dollar invested. The port of Savannah saw 3.6 million shipping containers in 2014, and the deepening is expected to result in increased traffic. The port has grown into fourth-busiest port container port in the United States, behind Los Angeles, Long Beach and New York. The entire project is estimated to run at \$706 million, of which Georgia has already contributed its \$266 million obligation.

Senate Bill 5, authored by Senator Cowsert and signed by Governor Deal on February 23, ensures that the Georgia Ports Authority will indemnify the federal government for any liability that may occur as a result of the deepening. This measure was necessary in order for the state to continue to accept federal loans and grants for the project. It is clear Georgia's leaders have made the Savannah Harbor Expansion Project a priority. State leaders know the importance of this project, and the speed with which it is currently proceeding is indicative of their continued support. -JC



The Savannah Harbor Expansion Project, which is currently Georgia's most important economic development project, is proceeding ahead of schedule.

(*Betting on Casino Gaming in Georgia - continued from page 3*) The Casino Gaming Education Account, a separate account created in the state treasury, would be the sole repository of designated casino-related revenue and proceeds. At minimum, 90% of the state's casino gaming proceeds must be dispensed to HOPE, other college financial assistance, Pre-k, and educational shortfall reserves. HOPE must be fully funded before allotting funds to the other purposes.

Impact of Gaming

Even though proponents point to the economic benefit of such an endeavor in supporting legalization of gaming, opponents continue to point to the social consequences of casinos. In determining the social and economic impact of casinos, it is difficult to distinguish or even quantify "social" and "economic" impacts because their interactions are so complex and intertwined. Some of the social costs include pathological or compulsive gambling, crime, and personal bankruptcy. In 2000, a study examined the connection between casinos and crime using county-level data for every United States county between 1977 and 1996, a period spanning the introduction of casinos in states other than Nevada. According to the report, casinos increased the crime rate of their host county three to four years after opening; crimes may also rise because casinos attract visitors who are both more prone to commit and be victims of crime.

A number of factors affect the economic impact of casinos: the extent to which the casino functions as an export industry, the ability of the local economy to sustain the introduction of a casino, and the nature of the local casino activity in general. Studies have found that the smaller the region, the more likely a gaming project will benefit the region, as gamers will travel from outside the region and take the costs associated with gaming when they return home. Specifically, the hospitality industry experiences economic benefits when the patron base travels from outside the area. There also tends to be a short-term positive impact of casino gambling on economic growth, but the effect dies out in the longer term.

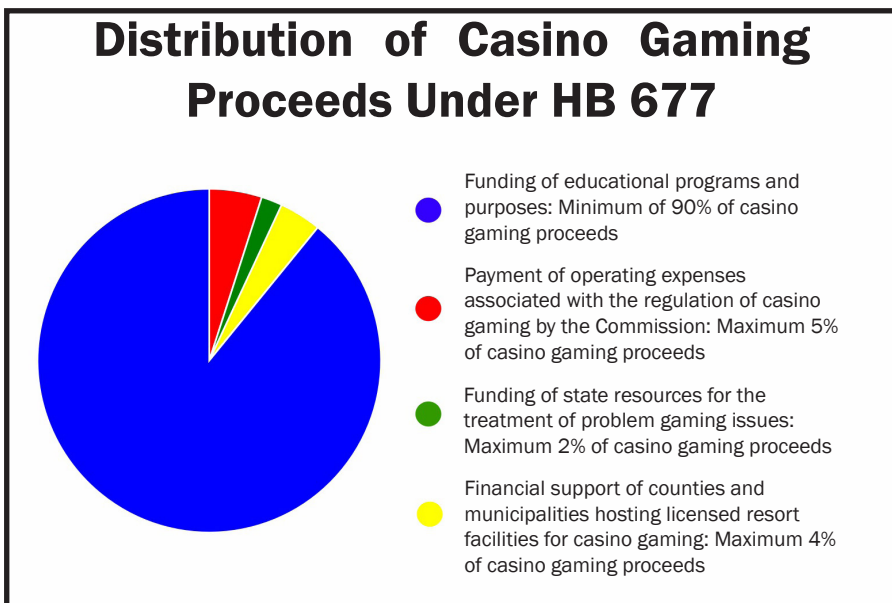
Other States

Market saturation is also an important factor to consider in determining the sustainability of a casino's economic impact. Legalizing gaming typically favors the first actor, who welcomes gamers from other states without gaming. However, as more states legalize gaming, the revenues experienced by the first actor tend to decline. This was seen in Pennsylvania, which opened its casinos in 2006. According to a 2014 report prepared for the Pennsylvania Legislative Budget and Finance Committee, tax revenues from those casinos contributed over \$8 billion in gaming tax revenues, on top of property, wage, and other taxes. As more convenient out-of-state gaming options for Pennsylvania residents became more prominent in following years, the state experienced a decline in revenue. Even with this decline, however, Pennsylvania's casinos' contributions to the state's economy are significant: the state's casinos directly employed 16,665 people as of 2013 and supported around 25,000 total jobs and \$1.0 billion in total labor income. The casinos also invested \$224 million in additional capital expenditures, annualized at \$76 million per year on renovations and upkeep combined. Even with this level of economic impact, some Pennsylvania lawmakers introduced a bill legalizing online gambling during the 2013 session with the express intent of contending with online gaming in border states. A number of proposals legalizing online gambling are currently before the Legislature, which is considering legalization as a method of balancing the state's budget.

Alabama legislators also considered the introduction of casino gaming and lottery in an effort to balance the state's budget. During the Alabama Legislature's regular and first special session earlier this year, Senate President Pro Tempore Del Marsh introduced a bill that would have paved the way for a statewide lottery and for casino gaming at the four existing greyhound racetracks in the state. Even though the bill was passed out of committee, it was never voted on by the Senate. Marsh said he will not be introducing a gaming bill during the second special legislative session, but another proposal allowing a lottery can be expected from another legislator. Senator Paul Sanford of Huntsville said that his district supports the introduction of a lottery because his district borders Tennessee, which has a lottery. This competition against neighboring states is one reason many states have legalized gaming.

Senate Preservation of the HOPE Scholarship Study Committee

The Senate Preservation of the HOPE Scholarship Study Committee, created during the interim, will hold joint meetings with a similar House study committee to determine whether the legalization of casino gaming and pari-mutuel wagering on horse racing could stabilize the HOPE scholarship program. The committees will meet in two joint meetings in mid-September to explore the potential impact of legalizing gaming in Georgia. -EF



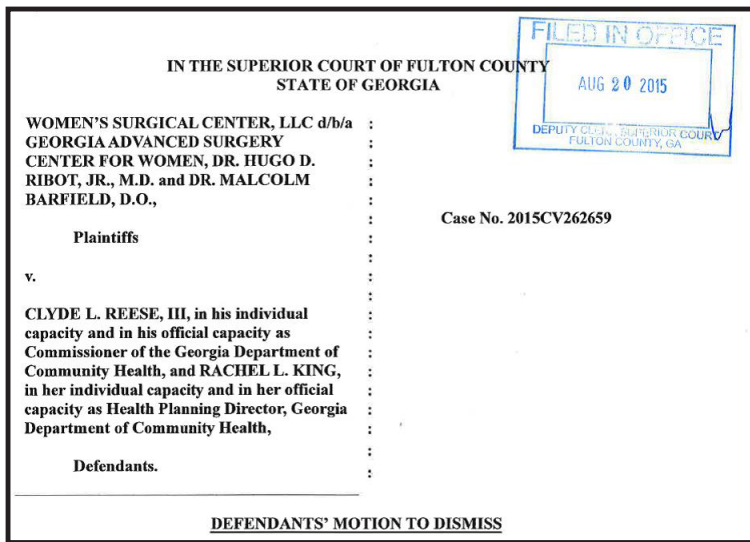
Fulton County Superior Court Lacks Subject Matter Jurisdiction

- Plaintiffs failed to exhaust their administrative remedies by not exercising their right to appeal DCH's decision to the CON Appeal Panel.
- Plaintiffs failed to comply with the Declaratory Judgment Act, O.C.G.A. § 9-4-7(c).
- Plaintiff's underlying state law claims—Counts I, II, and III—are barred under the doctrines of sovereign and official immunity under the Georgia Constitution.

Failure to State a Claim Upon Which Relief Can Be Granted

- Plaintiffs fail to state a claim for declaratory judgment because “no case or controversy exists in the matter at hand” and the plaintiffs’ complaint should not be construed as creating such.
- Plaintiffs fail to state a claim for injunctive relief and “the instant matter is simply not a clear and urgent case warranting injunctive relief.”
- Plaintiffs fail to state a claim under the Anti-Monopoly Clause, Privileges and Immunities Clause, and Due Process Clause of the Georgia Constitution.
- Plaintiffs fail to state a claim under the Due Process Clause and Privileges and Immunities Clause of the Fourteenth Amendment to the U.S. Constitution.

This lawsuit is thought to represent the first legal challenge to overturn our state's entire CON law. -EH



CALENDAR (CONTINUED)

9/21/15 Joint Coastal Greenway Study Committee
 Richmond Hill City Center,
 Richmond Hill | 12:30 p.m.

9/23/15 Education Reform Commission Funding Subcommittee
 450 CAP | 10:00 a.m.

9/29/15 Senate Employee Misclassification Subcommittee
 TBA | TBA

9/22/15 Senate Annexation, Deannexation, and Incorporation Study Committee
 450 CAP | 10:00 a.m.

9/24/15 Education Reform Commission
 DECAL OAK Conference Room,
 Sloppy Floyd Building, Suite 824,
 East Tower | 10:00 a.m.

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