



AT ISSUE STATE EDITION



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The 2016 Legislative Session of the Georgia General Assembly adjourned *Sine Die* on March 24, 2016. We dealt with a number of significant issues. Perhaps our most important accomplishments were within the State Budget where we prioritized transportation, education and health care.

I am proud of the work of our standing committees. The Senate Appropriations Committee and its subcommittees, chaired by Senator Jack Hill, deserve our appreciation for their meticulous work on the State Budget. We also owe a debt of gratitude to the Senate Health and Human Services Committee, led by the indefatigable Senator Renee Unterman. This committee dealt with the lion's share of the bills and resolutions considered by the Senate, yielding a work product second to none.

In preparation for the next legislative session, we are establishing two separate editions of *At Issue*. The *At Issue* State Edition focuses on emerging issues in our state and the latest legislative trends in other states, along with a Spotlight from our Senate Budget and Evaluation Office (SBEO) that highlights a part of our budget each issue. The *At Issue* Federal Edition takes an in-depth look at federal topics that affect our state, with insight into the federal appropriations process from SBEO. In this first State Edition, we will take a closer look at legislation related to teacher and student practices, changes to the Judicial Qualifications Commission, improved access to prenatal care and regulation of eminent domain practices.

If you have issues you would like us to cover in future editions of *At Issue*, please send me an email.

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Education

Assessing Teacher Effectiveness and Student Achievement

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The transformative power of a teacher is something almost all of us have experienced. How many of us would be where we are today were it not for the personal impact of a talented teacher? Effective teachers inspire us to engage in ideas, think deeply about a subject matter, take on more challenging work, and even to pursue careers in a particular field. However, there are multiple approaches to teaching. There is also a wide range in the ways teaching quality is measured, including the academic qualifications of teachers, their instructional practices, their contribution to the school community, the achievement gains made by students, and the experiences and satisfaction of students and parents. Teacher evaluation systems are intended to serve the purpose of providing feedback and guidance for improving teacher practice in order to improve student learning.

Since 2009, over two-thirds of states have made significant changes in how teachers are evaluated. For most states, the changes were motivated by incentives made available through the federal Race to the Top grant program. States earned additional credit under the program for upgrading teacher evaluation systems when conducted on an annual basis and based in part on student achievement. According to the National Council on Teacher Quality, 27 states required annual evaluations for all teachers in 2015, compared to just 15 states in 2009; additionally, 45 states required annual evaluations for all new, probationary teachers. Forty-three states required teacher evaluations that included measures of student achievement.

Georgia's Teacher Keys Effectiveness System (TKES) was developed and piloted in 2012 to assist with implementing Georgia's Race to the Top plan. House Bill 244, which passed during the 2013 Legislative Session, required, no later than the 2014-2015 school year, each local school system and charter school to implement TKES as formally adopted by the State Board of Education. The bill required TKES to use multiple rigorous and transparent measures and prioritize growth in student achievement. Growth in student achievement on the

state assessments accounted for at least 50 percent of the evaluation for teachers. The evaluations also included multiple classroom observations and other measures such as student perception data.

Many teachers and school administrators voiced concerns over TKES in the beginning of its implementation. One of their concerns centered on the “value-added” model which based a teacher’s evaluation on student academic growth, i.e. students’ assessment scores. These teachers argued that “value-added” models do not address the fact that even in the best of circumstances, a teacher’s efforts are one of many indistinguishable conditions for student success. Other variables, such as student demographics, cause teachers to become unduly advantaged or disadvantaged based on the students they teach. Teacher evaluation scores could fluctuate from class-to-class, from year-to-year, and from test-to-test. Further, student success is often predicated on the work of many in a school, including reading teachers, resource teachers, reading and English Language Learner specialists, guidance counselors, social workers, psychologists, and other personnel. Other teachers argued that while TKES may not be perfect, it would provide greater feedback which would, in turn, help improve teaching and was, at least, a step in the right direction.

Another concern expressed about TKES was in regard to the amount of unnecessary testing. According to a 2015 study by the Council of Great City Schools, students in large city schools in grades three through 11 spend between 20 and 25 hours per school year on testing. Teachers also want to work more quickly to improve the outcomes of students, rather than waiting until the following year for test results. One national trend that will likely continue to grow is the use of formative assessments which continually monitor student progress that teachers can access on an ongoing basis so that they can adjust practice in real time.

Senate Bill 364, sponsored by Senator Lindsey Tippins, adopted by the General Assembly in the 2016 Legislative Session and signed by Governor Deal on May 3, 2016, addresses many of these concerns. The bill’s provisions include:

- Reducing the amount that student growth accounts for in teacher evaluations from 50 percent to 30 percent;
- Requiring student growth to account for 40 percent of principal and assistant principal evaluations;
- Requiring a student to attend 90 percent of the available classes to be counted in a teacher’s student growth measures;
- Reducing the number of state mandated tests by eliminating social studies and science tests in grades three through four and six through seven. Students are still tested in these subjects in grades five and eight;
- Authorizing a tiered evaluation system with a reduced number of observations for certain teachers;
- Requiring the State Board of Education to adopt a school readiness assessment for students entering first grade; and
- Strongly encouraging schools to develop and implement a program of multiple formative assessments in reading and mathematics, including mastery of reading by the end of third grade and mastery in mathematics by the end of fifth grade, which may take the place of an end-of-grade assessment if the formative assessments result in a summative score that is valid and reliable in measuring student achievement or growth.

Senator Tippins noted that SB 364 seeks to increase effectiveness in public education. The bill was crafted to allow for teacher and educational flexibility and was premised on the notion that all students should be evaluated properly. The continued development and implementation of teacher effectiveness and student achievement measures in Georgia ensures that our students are prepared for success in a globally competitive world. -AF

A teacher affects eternity; he can never tell where his influence stops. – Henry Adams

Judiciary

General Assembly Pursues Reform of Judicial Watchdog Agency

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Late in the 2016 Legislative Session, the General Assembly backed two measures that, if they become law, will remake the agency that oversees the conduct of Georgia’s judges. That agency, known as the Judicial Qualifications Commission (JQC), was created in 1972 via an amendment to the Georgia Constitution. Under the Georgia Constitution, the JQC has the power to “discipline, remove, and cause involuntary retirement of judges.” The JQC is currently comprised of a pair of judges appointed by the Supreme Court, three experienced attorneys selected by the State Bar Board of Governors, and two non-attorneys chosen by the governor. Much of the JQC’s work is confidential, as the Georgia Constitution also provides that “[t]he findings and records of the commission shall not be open to the public.” The two pieces of legislation, House Resolution 1113 and House Bill 808, made significant changes to the legal authority underlying the JQC’s work. Those pieces of legislation are discussed in detail below.

House Resolution 1113

House Resolution 1113 proposed a constitutional amendment that, if adopted on this November's ballot, will significantly change the legal standing of the JQC. First, the current JQC will be abolished as of June 30, 2017, and the General Assembly will be directed to create and provide for the composition, manner of appointment, and governance of a new JQC. Second, for the first time, all appointments to the JQC will be subject to Senate confirmation. Third, the amendment clarifies that procedures of the JQC must comport with due process and that JQC procedures and advisory opinions are subject to review by the Supreme Court. Finally, the General Assembly will have the ability to provide by statute whether and to what extent the findings and records of the JQC will be public. The major thrust of HR 1113 is thus to remove the current constitutional status of the JQC, and make it largely a creature of statute. This will give the General Assembly and the governor greater control over the JQC than they have under current law.

House Bill 808

House Bill 808 is the JQC's enabling legislation. Under this bill, members will serve three-year terms beginning in 2020 (after a period of interim terms beginning January 1, 2017), subject to term limits. The Supreme Court will appoint two judges to the JQC, as it currently does. However, the State Bar's role will change significantly. Instead of making three appointments, the State Bar will submit slates of ten nominees each to the Governor, Speaker of the House of Representatives, and President of the Senate, each of whom will select one member from the respective slates. The Governor's appointee will chair the JQC. Both the Speaker of the House and the President of the Senate will also appoint a single non-attorney to the JQC.

HB 808 also provides that the JQC may adopt governance procedures which are not otherwise provided by the Georgia Constitution or the provisions of HB 808. Importantly, HB 808 bars an individual member from unilaterally initiating an investigation and allows a JQC member to be removed by a unanimous vote of the other six members.

Following a model established in North Carolina for its Judicial Standards Commission, HB 808 also details the investigatory process to be utilized by the JQC as well as the confidential treatment of records, testimony, and recommendations of the JQC. While findings and records of the JQC during an open meeting are not exempt from disclosure under the Open Records Act, the bill provides that, unless waived by the judge involved, all papers and proceedings of the JQC, including any investigation undertaken by the JQC, any testimony received by the JQC, and all documents and recommendations submitted to the Supreme Court, are confidential, and no person is permitted to disclose information obtained from the JQC proceedings or any papers of the JQC, except as set forth in the bill. Only when the Supreme Court takes disciplinary action do the records relating to a complaint become public.

HB 808 contains other procedural safeguards. It requires that a majority of the JQC concur in a recommendation, that the accused judge receive notice of the recommendation and an opportunity to propose corrections to the record and be heard by the Supreme Court, and that a majority of the Supreme Court concur in any disciplinary action. The bill permits the Supreme Court wide latitude to approve or reject the JQC's recommendation or remand the case for further proceedings. HB 808 also clarifies that a member of the JQC who is a judge is disqualified from acting in a case in which he or she is a respondent.

Additional Study in 2016

The House and Senate also adopted resolutions creating study committees that will further examine and investigate the current JQC and its operations. House Resolution 1363 creates the House Special Study Committee on Judicial Qualifications Commission Reform. The seven members of the committee, which will have subpoena authority and the ability to place witnesses under oath, will examine the current work of the JQC and potentially recommend additional reform. Likewise, under Senate Resolution 1171, a five-member Senate Judicial Qualifications Commission Study Committee will also examine the work of the JQC. The Senate committee will be headed by the chair of the Senate Judiciary Committee and, per Senate Resolution 1171, will "review . . . the policies and procedures that the [JQC] employs to investigate alleged ethical misconduct of state judges and a review of the process of selection of [JQC] members" as well as study ways "to improve transparency and accountability of the [JQC]" and identify "additional resources to assist the [JQC] in accomplishing its mission."

Both committees will complete their work and submit recommendations, if any, by December. - BV

Regulated Industries & Utilities

Pushback on Palmetto Pipeline

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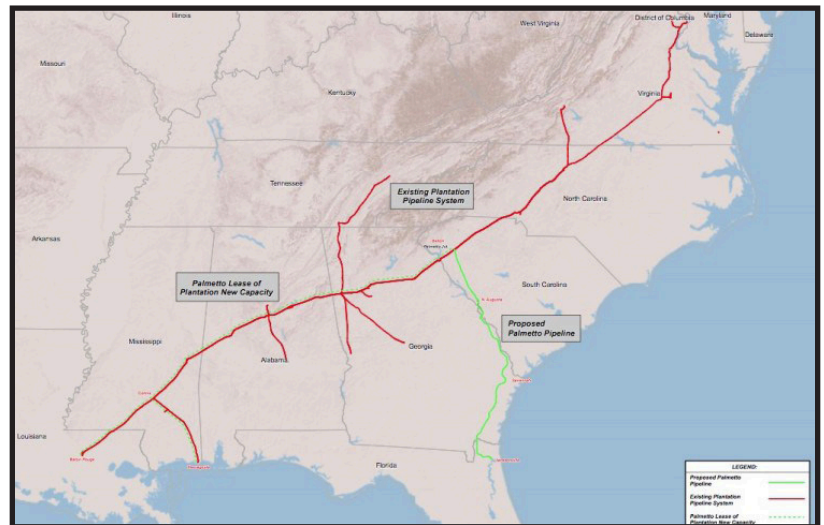
Pipelines provide a means of transporting large quantities of crude oil, natural gas and other petroleum products over land. These pipelines transport billions of barrels of petroleum products each year stretching thousands of miles across the United States.

Kinder Morgan, Inc. is the largest energy infrastructure company in North America. In addition to the 84,000 miles of pipelines that the company has already constructed, it has proposed to build another billion-dollar pipeline project, called the Palmetto Pipeline. The Palmetto Pipeline would stretch across 360 miles and transport 167,000 barrels per day of refined petroleum products from the Gulf Coast of Belton, South Carolina to Jacksonville, Florida. In doing so, the pipeline would cover 200 miles of eastern and coastal Georgia, ultimately touching 23 Georgia counties.

In order to construct the Palmetto Pipeline, Kinder Morgan would either have to purchase the private land where the proposed pipeline would be built from individual landowners, or seize it by the power of eminent domain. In order to exercise the power of eminent domain under Georgia law, a pipeline company must:

1. Provide written notice to each landowner whose property may be condemned prior to instigating eminent domain procedures;
2. Obtain a certificate of public convenience and necessity from the Commissioner of the Georgia Department of Transportation (DOT) showing that the public necessity for the petroleum pipeline justifies the use of the power of eminent domain, along with a reasonable public notice requirement and a requirement for a hearing; and
3. Obtain a permit from the Director of the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources by showing, after a public hearing, that the location, construction, and maintenance of the pipeline is consistent with, and not an undue hazard to, the environment and natural resources of the state, in accordance with certain factors.

Pursuant to these provisions, Kinder Morgan filed an application for a certificate of public convenience and necessity with the DOT on February 13, 2015, arguing that the pipeline is needed: to meet existing demands for petroleum products; to increase competition and the reliability of fuel supplies in major markets like Savannah that currently lack access to petroleum pipelines; and to meet increasing needs for petroleum-based fuels. However, on May 18, 2015, the DOT denied Kinder Morgan a certificate of public convenience and necessity. Kinder Morgan appealed DOT's decision to Fulton County Superior Court; but in March of this year, the court denied the company's appeal and affirmed DOT's decision to deny the certificate.



Georgia residents and environmental groups in the state have strongly opposed the proposed pipeline project, citing the risk of pipeline leak and damage to sensitive coastal habitats. Private property owners and advocates of constitutional property rights have also objected to the pipeline, as Kinder Morgan would use the power of eminent domain to condemn private land for the pipeline's proposed route.

Opponents of the pipeline can rest easy, however, as Kinder Morgan has suspended work in response to the passage of House Bill 1036. HB 1036, sponsored by Representative Bill Hitchens, provides for a moratorium on the exercise of eminent domain powers by pipeline companies until June 30, 2017. In other words, HB 1036 temporarily prohibits the DOT from accepting applications for, or issuing, certificates of public necessity, which are required prior to using the power of eminent domain. Also, under the bill, the Environmental Protection Division of the Department of Natural Resources is prohibited from accepting applications for, or issuing, permits granting the authority to use the power of eminent domain.

Representative Don Parsons proposed an amendment to the legislation which would have removed a provision prohibiting the state from issuing any environmental permits during the moratorium. However, this amendment lost, meaning the state may not issue permits granting permission to cross over, under, or through any body of water, state wildlife management area, heritage or historic preserve area, historical site, area of particular concern as set out in the State of Georgia Coastal Management Program, or public road of the state highway system, during the moratorium.

The purpose of the moratorium is to provide the General Assembly with time to study the need for changes to land use controls and restrictions related to pipeline companies seeking to deliver petroleum products to residents of Georgia and other states. In order to study these issues, HB 1036 also creates the State Commission of Petroleum and Gas Pipelines, which will examine various issues related to pipeline construction and operation, including their impacts on land, and their current legal and regulatory structure. After a thorough study of these issues, the Commission will then recommend legislation to the General Assembly to accomplish the continuing goals of both pipeline companies and Georgia residents. - KM

Positive Alternatives for Pregnancy and Parenting Grant Program

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Senate Bill 308, sponsored by Senator Renee Unterman of the 45th, reached final passage just hours before the General Assembly adjourned for the 2016 Legislative Session. This legislation creates the “Positive Alternatives for Pregnancy Parenting Grant Program” within the Georgia Department of Public Health (DPH) and serves to promote healthy pregnancies and childbirth by awarding grants to nonprofit organizations that provide pregnancy support services, such as pregnancy tests, health screenings, prenatal care, birth classes, and planning. Funding for the grant program will come from private donations as well the \$2 million dollars that was appropriated to DPH for this purpose in the budget for State Fiscal Year 2017.

Restrictions on Use of Funds

This grant program will be overseen by DPH and administered by a contract management agency, allowing grants to be awarded to direct client service providers annually on competitive basis. Only those direct client service providers that meet the criteria set forth under SB 308 will be eligible to receive grant money. The criteria, which must be published online by DPH, are listed in Figure 1. For each grant awarded, there must be an accompanying grant agreement stipulating that the grant be used specifically to fund pregnancy support services. Additionally, each client service provider is prohibited from performing, promoting, or acting as a referral for an abortion; and grant funds are not to be used to promote or be in furtherance of any political or religious purposes.

As specified in the provisions of SB 308, DPH must determine the maximum grant amount to be awarded to each direct service provider and ensure such amount does not to exceed 85 percent of such provider’s annual revenue for the prior year.

Collection of Data and Annual Reporting

DPH is credited with establishing and maintaining a number of complex registries (e.g., the Low THC Oil Registry, Maternal Mortality Review Committee, Alzheimer’s Disease and Related Dementia Registry, to name a few) to ensure the state is on top of monitoring the patterns, incidence, and prevalence of health conditions and diseases of Georgians. DPH will carry out a similar role under SB 308 by collecting data from each direct service provider receiving a grant under this program and submitting an annual report to the General Assembly no later than September 30 of each year, with the first report being submitted on September 30, 2017. Reports must include the number of clients who utilized pregnancy support services; are pregnant; chose childbirth after receiving pregnancy support services; chose adoption after receiving pregnancy support services; and chose abortion after receiving pregnancy support services. All information collected under the grant program must be treated as confidential by DPH, the contract management agency, and direct client service providers, and be in accordance with federal and state laws on privacy and medical records (including HIPAA).

Although SB 308 was only recently signed into law by Governor Nathan Deal on April 26 and the law will not go into effect until July 1, 2016, DPH has already begun planning to ensure the state agency is prepared to carry out its role in overseeing the grant program. -EH

FIGURE 1

Eligibility Criteria for Grant Program Applicants

To be considered for a grant under this program, each direct client service provider must:

- Be a nonprofit organization incorporated in this state with a tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986;
- Have a primary mission of promoting healthy pregnancy and childbirth;
- Have a system of financial accountability consistent with generally accepted accounting principles, including an annual budget;
- Have a board that hires and supervises a director who manages the organization’s operations;
- Have provided pregnancy support services for a minimum of one year;
- Offer, at a minimum, pregnancy tests and counseling for women who are or may be experiencing unplanned pregnancies;
- Provide confidential and free pregnancy support services;
- Provide each pregnant client with accurate information on the developmental characteristics of babies and of unborn children, including offering printed materials on fetal development and assistance available following a birth;
- Ensure that grant money is not used to encourage or affirmatively counsel a client to have an abortion unless the client’s attending physician diagnoses a condition which makes such abortion necessary to prevent her death; to provide her an abortion; or to directly refer her to an abortion provider for an abortion; and
- Maintain confidentiality of all data, files, and records of clients related to the services provided and in compliance with state and federal laws.

Budget and Evaluation Spotlight: *Education*

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The Fiscal Year 2017 budget was approved by the Georgia General Assembly during the 2016 Legislative Session. Here's a closer look at the budget's education line items.

- Funds for K-12 Education total \$8,911,091,964 and include \$393.5 in new funds dedicated to QBE and Equalization. Specifically:
 - Increase formula, enrollment growth, and training and experience: \$135.6 million.
 - Audio-Video Technology and Film Grants to middle and high schools for film and AV equipment: \$2.5 million.
 - Increase to support the information technology applications utilized by local school systems: \$2.8 million.
 - Increase for Positive Behavioral Intervention Supports (PBIS) trainers: \$300,000.
 - Reduction based on savings from updated information on State Commission Charter Schools: \$2.5 million.
 - Reduction that implements some restrictions on local school systems operating virtual charter schools: \$6.5 million.
 - In the Governor's Office of Student Achievement, increase in new (\$100,000) and existing (\$500,000) funds for grants to rural school systems to increase participation and achievement in AP STEM courses: \$600,000.
- For Pre-K, increase to implement pay and benefit increases and a new compensation model for Pre-Kindergarten teachers: \$36.5 million.
- Uses existing surplus funds to provide a \$300 one-time materials grant to all Pre-K classrooms.

LEGISLATION CREATING 2016 STUDY COMMITTEES, COUNCILS, COMMISSIONS

JOINT STUDY COMMITTEES

SR 876, Joint High-Speed Broadband Communications Access for All Georgians Study Committee

SR 883, Industry Incentives for Financial Technologies and the Payment Processing Industry

SR 1027, Joint Music Economic Development Study Committee

SR 1038, Joint Alternative Fuels Infrastructure and Vehicles Study Committee

HR 395, Joint Georgia-Alabama Study Committee (continued from 2015)

COUNCILS, COMMISSIONS, BOARDS

HB 509, Georgia Palliative Care and Quality of Life Advisory Council

HB 779, Georgia Unmanned Vehicle Systems Commission (Vetoed)

HB 1036, State Commission on Petroleum Pipelines

SENATE STUDY COMMITTEES

SR 360, Senate Data Security and Privacy Study Committee

SR 412, Senate Cyber Challenge Study Committee

SR 467, Senate Higher Education Access and Success for Homeless and Foster Youth Study Committee

SR 842, Senate Study Committee on Legislative Process

SR 974, Senate Surprise Billing Practices Study Committee

SR 1001, Senate Study Committee on Higher Education Affordability

SR 1032, Senate Sexual Offender Registry Study Committee

SR 1056, Senate Study Committee on Premium Assistance Program

SR 1059, Senate Study Committee on Nonembryonic and Nonfetal Cell Therapy

SR 1085, Senate Regional Transit Solutions Study Committee

SR 1091, Senate Study Committee on Hearing Aids for Children

SR 1098, Senate Crime Study Committee

SR 1131, Senate Affordability of Death Study Committee

SR 1132, Senate Study Committee on Venture Capital Investments

SR 1154, Senate Emergency Cardiac Care Centers Study Committee

SR 1159, Senate Camden County Spaceport Study Committee

SR 1165, Senate Opioid Abuse Study Committee

SR 1166, Senate State Sponsored Self-Insured Group Health Insurance Plan Study Committee

SR 1171, Senate Judicial Qualifications Commission Study Committee

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