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2011 UPCOMING SESSION ISSUES

This document is a report of selected issues that are likely to be addressed during the 2011 Session of the Georgia General Assembly, and is solely intended to provide a general overview. If more information on a particular area of interest is needed, please contact the Senate Research Office.

The following issues are found on the corresponding page numbers:

2011 UPCOMING ISSUES

BANKING AND FINANCIAL INSTITUTIONS

Georgia Foreclosure Process/MERS

The conveyance of real property involves two instruments in Georgia: the mortgage and the Deed to Secure Debt or Security Deed (Deed). The Deed conveys title from the borrower (mortgagor) to the lender (mortgagee) and is a promise to repay the debt. The Deed contains the terms of the debt obligation, including the terms of default. The mortgage is the security for the debt which creates a lien on the property and allows the holder of the mortgage to initiate foreclosure upon default.

All mortgages can be foreclosed judicially; nonjudicial foreclosures are allowed only when specifically permitted by the security deed or mortgage. Because judicial foreclosures are costly and time consuming, most lenders in Georgia use the Fannie Mae/Freddie Mac Uniform Security Deed Instrument which provides for nonjudicial foreclosures. The majority of foreclosures in Georgia are nonjudicial foreclosures.

I. Nonjudicial Foreclosure

Once the borrower defaults, the secured creditor[1] must advertise the foreclosure sale notice in the local legal organ for four consecutive weeks. The secured creditor must mail notice of the foreclosure sale to the borrower 30 days before the sale is to take place. The borrower is not required to receive actual notice of the sale. The notice mailed to the borrower must contain the contact information of the entity that has the authority to negotiate the terms of the mortgage with the borrower; however, such negotiation is not required. The law does not establish a specific remedy when the notice does not contain this information. Subprime borrowers are entitled to additional notice of the right to cure and the intent to foreclose.

Foreclosure sales are conducted on the county courthouse steps on the first Tuesday of each month. If the sale price does not cover the cost of the borrower's debt, the lender may seek a deficiency judgment by reporting the sale to the superior court within 30 days of the sale. The judge will hold a hearing, which the borrower may attend, to determine whether the house was sold for its true market value. The judge will also determine whether the notice, advertisement, and the sale followed state law. If the lender does not seek a deficiency judgment, the sale is complete and the foreclosure is recorded with the clerk of the superior court.

II. Borrower's Remedies in a Nonjudicial Foreclosure

The borrower has limited remedies available in nonjudicial foreclosure proceedings. Prior to the foreclosure sale, the borrower can redeem the property by curing the default. Alternatively, the borrower may file an injunctive suit to stop the foreclosure process before the sale has taken place. After the foreclosure sale, the borrower may file a wrongful foreclosure suit. There is no statutory right of redemption which would allow the borrower to redeem their property after the foreclosure sale.

III. Judicial Foreclosure

Lenders may foreclose upon the mortgage by filing a petition for foreclosure with the superior court. Once a petition has been filed, the court issues a rule nisi (an order to show cause) that requires the principal, interest, and costs of the mortgage to be paid to the court. The rule nisi must be published twice a month for two months or served on the borrower at least 30 days before the money must be paid to the court.

[1] Georgia statutes do not specifically define secured creditor. O.C.G.A. §44-16-162 indicates a secured creditor is a creditor who holds title to the security instrument.

After the rule nisi is published or served on the borrower, the borrower may file objections and claim any defenses.

If the borrower files objections or presents a defense, the issue is tried by a jury. If the borrower fails to pay the money into the court as required by the rule nisi, and also fails to maintain a defense against the foreclosure, there is no issue for trial by jury, and the court may render judgment for the amount due on the mortgage and may order the mortgage property sold.

IV. Mortgage Electronic Registration System and Foreclosures

Mortgage Electronic Recording System (MERS), which operates nationwide, was created by mortgage bankers in the 1990s to reduce the paperwork involved in transferring mortgages. Approximately 60 percent of the nation's residential mortgages are recorded in the name of MERS, Inc. According to legal scholars, the MERS results in unpaid recording fees, lack of clarity in land title records, and improper foreclosures.

MERS has no employees and its parent company, MERSCORP, has approximately 50 employees. Despite having no employees, MERS has "thousands" of assistant secretaries and vice presidents. These secretaries and vice presidents are actually employees of financial institutions that register loans with MERS. MERS permits these non-employees to register as officers of MERS and sign and record loan documents as officers of MERS.

MERS does not systematically track beneficial ownership rights of the mortgages registered on its system. Individual members have the responsibility of maintaining records of ownership on MERS. MERS does not keep digital or hard copies of documents. Additionally, MERS members are not legally bound to update the information on the database[2].

According to critics, MERS allows non-employees to identify as officers in order to avoid paying recording fees after the mortgage is assigned to a trust or other business entity. The loan originator should pay a recording fee to assign the mortgage to the trust or business entity, but instead, they pay a fee to MERS to record the mortgage in MERS's name. From that point on, no additional mortgage assignments will be recorded because MERS will remain the mortgagee of record throughout the life of the loan, although in reality, the mortgage may change hands several times.

Critics question whether MERS has a meaningful economic interest in the repayment of mortgages recorded under their registration system and whether they have the authority to initiate foreclosure proceedings. It is unclear whether MERS is an agent or the actual mortgagee. The company claims to be both; however, a company cannot be both an agent and a principal with respect to the same right. If they are the mortgagee, then the mortgage has been separated from the Deed (promissory note). *Carpenter v. Logan*, an 1872 Supreme Court case, held that a mortgage assigned without the note (Security Deed or Deed to Secure Debt) "is a nullity." When the note and the mortgage are split, only the person holding the mortgage has a legal right to foreclose. However, the mortgage holder will never experience default because the promise to repay is in the note which they do not hold. Likewise, the note holder may experience default as they hold the promise to repay, but they do not hold the mortgage lien which grants them the right to foreclose. If MERS does not hold both the note and the deed, they may lack standing to initiate foreclosure proceedings in Georgia.

In 2008, the Georgia Senate attempted to address the issue of who has authority to initiate foreclosure proceedings. Senate Bill 531 originally contained language which invalidated foreclosure sales not conducted in the name of the individual or entity holding the legal rights of the secured creditor. The House Judiciary removed this language based on concern about the

[2] O.C.G.A. §44-16-64

possible effects on the secondary mortgage market[3]. The Senate agreed to the House substitute bill and it passed into law.

Senate Bill 531, as passed, requires foreclosure notices sent to borrowers to contain the contact information for a party with full authority to modify the terms of the loan, and the security instrument must be recorded with the county clerk's office prior to foreclosure. These requirements simplify matters for borrowers and decrease the confusion over who owns the loan.

ECONOMIC DEVELOPMENT

Preparing the Savannah Port for the Future

The Savannah Port is one of Georgia's major economic engines. Georgia's deepwater ports and inland barge terminals support more than 286,476 jobs throughout the state annually and contribute $14.9 billion in income, $55.8 billion in revenue and $2.8 billion in state and local taxes to Georgia's bustling economy. The port activity accounts for 7 percent of Georgia's total employment, more than $60 billion in sales and nearly $27 billion in gross state product. The port handled more than $46 billion in cargo last year, or nearly 8 percent of all cargo containers shipped to and from the U.S.

According to the Georgia Ports Authority, deepening the harbor approaching the Port of Savannah is essential to ensuring long-term growth for the nation's fourth busiest container port. A 48-foot depth would allow the port to handle the super-sized container vessels that will begin traversing an expanded Panama Canal in 2014. The super-sized container ships are referred to as post-Panamax ships. This project is known as the Savannah Harbor Expansion Project.

About 70 percent of Savannah's container traffic comes through the Panama Canal, mostly from Asia**.** If Savannah, the second busiest East Coast port, is not ready when the larger lanes open in 2014, business would inevitably go elsewhere. Currently, the Port of Norfolk can accommodate post-Panamax ships and certain terminals at the Port of New York can accommodate post-Panamax ships.

The U.S. Army Corps of Engineers has been studying the deepening project for more than a decade. It has now reached the final engineering and design phase and is weighing various plans for increasing the depth from the current 42 feet to 44-48 feet. If the necessary federal funding can be secured, deepening of the Savannah River should begin in 2012. The project, expected to be completed by 2014, will cost an estimated $450 million over time. The Georgia legislature in recent years has provided $150 million for the initial stages project because of the economic importance of the port.

The Success of Georgia Tax Credits for the Film Industry

In 2008, Georgia enacted House Bill 1100, the Entertainment Industry Investment Act. We are now seeing the benefits of this legislation across the state. In Fiscal Year 2010, more than 348 productions were shot in Georgia. Production budgets increased from $647.6 million to $744.3 million during the same time. Altogether, the industry's economic impact in the state in FY10 came in at $1.33 billion, up from $1.1 billion the previous year. According to the Georgia Department of Economic Development, Georgia is now ranked number one in the Southeast, and among the top five states in the nation for film and TV productions.

The foundation of the Act is a 20 percent transferable income tax credit. Production companies that spend a minimum of $500,000 in the state on qualified production and post production

[3] 25 Ga. St. U. L. Rev. 265

expenditures are eligible for this credit. This includes most materials, services and labor. The 20 percent credit applies to both residential and out-of-town hires working in Georgia with a salary cap of $500,000 per person, per production, when the employee is paid by "salary," which is defined as being paid by W2. If the production company uses a 1099 or a personal services contract to hire someone this limit does not apply. The Act also provides an additional 10 percent tax credit if a production company includes a Georgia promotional logo in the qualified finished feature film, TV series, music video or video game project.

EDUCATION AND YOUTH

Education Overview

In the last eight years, Georgia has seen growth in almost every major educational category, including enrollment growth from 1.4 to 1.6 million students. Notably, Georgia's graduation rates have increased from 63 percent to 80 percent, and our dropout rates for 9-12th graders decreased from 5.5 percent to 3.6 percent. Along the way, Georgia has increased school choice options with the Georgia Special Needs Scholarship, created 121 charter schools with almost 70,000 students enrolled, and passed school board governance legislation that addresses district accreditation and establishes codes of conduct for school board members.

Additionally, Georgia was recently awarded $400 million from the federal Race to the Top fund. The monies will be partially dispersed among 25 school systems state-wide who partnered with the Georgia Department of Education to: recruit, prepare, reward and retain effective teachers and principals; adopt standards and assessments that prepare students to succeed in college and the workplace; build data systems that measure student growth and success; and turn around our lowest-achieving schools. These will be evaluated and best practice models will ensue from those that were found to be highly effective.

Georgia continues to struggle state-wide with the SAT. The state-wide average dropped from 980 in the 2002-2003 school year to 976 in the 2008-2009 school year. However, on a positive note, the percentage of African-American seniors in the state taking the test increased from 25 to 30 percent between 2006 and 2009, and Hispanic students also increased their percentages.

Local school governance has been in the papers recently, starting in 2008, when Clayton County Schools saw their accreditation revoked. It was the first in the United States since 1969 to lose accreditation. It should be noted however, that Clayton County has seen their accreditation restored on a probationary basis. Recently, the Southern Association of Colleges and Schools and its parent organization, AdvancED, announced they would be formally reviewing the accreditation of DeKalb County schools and the Atlanta public school system, citing specifically, governance issues within the systems' school boards. If either of these systems have their accreditation revoked, it will trigger provisions found in Senate Bill 84, which passed in the 2010 Legislative Session, allowing the State Board to recommend to the Governor the suspension of all members of the board and the appointment of temporary members to serve in their place.

Charter Schools

In 2008, the General Assembly passed House Bill 881, creating the Georgia Charter Schools Commission (Commission). The Commission, with members appointed by the Governor, Lt. Governor, Speaker of the House, and the State Board of Education Superintendent has the power to approve or deny petitions for Commission charter schools and renew, not renew, or terminate Commission charter school petitions.

In 2009, the Commission approved and provided funding in the amount of $850,000 for Ivy Prep Academy which is a girl's school with about 300 students in Gwinnett County. Ivy Prep had

been previously denied a charter by the local board in June 2007. Gwinnett, joined by six other systems, filed a lawsuit challenging the Commission's authority to divert to charter schools an amount of funding equal to what the local districts spend on students in their traditional schools. The argument is that the law violates the constitution by diverting what they say amounts to local money. Additionally, the transfer of the students and the funds disrupts the districts' plans for covering fixed costs, such as buildings and central-office personnel. Additionally, it was argued that the law was drafted to broaden the definition of "special schools" further than would be allowed in the 1983 Constitution; such definition only applied to schools for the deaf and blind and vocational schools.

Ivy Prep's attorney argued that the local school districts do not like the new law because it ends the windfall of funding the districts receive from the state through the appropriation of funds based on students who had transferred to charter schools. Additionally, it was argued that the term "Special School" was left broad on purpose in the Constitution, allowing the General Assembly to define it in the Code.

Superior Court Judge Wendy Shoob surprised attorneys on both sides by ruling from the bench in favor of the state and charter schools. The case is now before the Georgia State Supreme Court, with a final ruling expected after January.

FINANCE

Georgia Tax Reform Council

Georgia enjoys a AAA credit rating, and is one of just a few states to have received the latest highest rating. This is very important, for it affects Georgia's ability to borrow and provide for bonded projects. Georgia maintains a balanced policy of revenue primarily through sales and income tax, and this portfolio is one of the primary reasons Georgia enjoys the AAA credit rating; it is a highly valued asset.

House Bill 1405 created the 2010 Special Council on Tax Reform and Fairness for Georgians and further creates the Special Joint Committee on Georgia Revenue Structure which will be authorized to stand only during the 2011 Legislative Session

The Tax Reform Council members include:

AD Frazier (Chair): Partner in Affiance, LLC, a Georgia based bank consulting firm, and served as Senior Executive Vice President and Chief Operating Officer of the Atlanta Committee for the Olympic Games.
Governor Sonny Perdue: 81st Governor of Georgia;
Brad Dickson: Maintains a tax practice at Tarpley & Underwood, P.C., an Atlanta based top 25 certified public accounting firm;
Gerry Harkins: Partner of LBG Properties, B&G Properties, and Rager Equity Partners and he is currently serving as Managing Partner of Partnerships;
Jeffrey Humphreys: Director of the Selig Center for Economic Growth at the University of Georgia's Terry College of Business;
Roy Fickling: Owner and President of Fickling & Company in Macon, Georgia;
Skeeter McCorkle: President and CEO of McCorkle Nurseries;
Dr. Christine Ries: Professor in the School of Economics at Georgia Tech;
Suzanne Sitherwood: President of Atlanta Gas Light and 2010 Chair of the Georgia Chamber of Commerce;
David Sjoquis: Professor of Economics, and Director of Domestic Programs and Director of the Fiscal Research Program for the Andrew Young School of Policy Studies, at Georgia State University; and

Roger Tutterow: Professor of Economics at Mercer University. He previously served as Dean of the Mercer's Stetson School of Business.

The Tax Reform Council has convened six meetings in order to receive economic and industry input from a myriad of professionals, business leaders, state officials, and local government representatives. Additionally, the Tax Reform Council has held eight fact-finding sessions across the state.

The Special Joint Committee on Georgia Revenue Structure will consist of:

- the President Pro Tempore of the Senate;
- the House Speaker Pro Tempore;
- Majority and Minority Leaders of the House and Senate;
- Chairpersons of the Senate Finance and the House Ways & Means Committees (who will serve as Co-Chairpersons); and
- Two members each from the Senate and the House representing both the majority and minority parties in each chamber.

Legislation stemming from the Special Council will be introduced in the House and referred to the Special Joint Committee; legislation receiving do pass and substitute recommendations will be sent directly to the House for an up-or-down vote with no amendments.

The legislation passed by the House will be reported directly to the Senate Floor, where it will receive an up or down vote.

Legislation must be read by each chamber three times on three separate days.

HEALTH AND HUMAN SERVICES

Implementing Federal Health Care Reform in Georgia

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (PPACA), one of the most sweeping developments in U.S. domestic policy in recent times and a law that is likely to have a profound effect on state policymaking for years to come. According to proponents, the PPACA will extend health care coverage to an additional 32 million Americans. This is to be accomplished through reforms such as an expansion of Medicaid eligibility to individuals under the age of 65 with incomes up to 133 percent of the federal poverty line (FPL) and the establishment of health care exchanges that are intended to make the purchasing of insurance more affordable for individuals (who may qualify for subsidies) and small businesses. Both of these reforms take effect in 2014, as does a mandate that most Americans obtain health insurance or face an annual financial penalty. While the new law does not technically have an employer mandate, it does establish a "pay or play" system beginning in 2014 in which employers with more than 50 employees must offer coverage to their employees or pay fees for employees who receive federal subsidies for health insurance. The PPACA also imposes several new requirements on private insurers, several of which have already gone into effect, including, but not limited to, the following: a ban on lifetime limits on coverage (effective September 23, 2010); a ban on annual limits on coverage (effective in 2014); bans on denying coverage based on preexisting conditions (effective on September 23, 2010, for children and effective for all other persons in 2014); and a requirement that plans allow adult children to remain on their parent's policy up to their 26th birthday (effective September 23, 2010). The mammoth new law includes numerous other provisions that touch on a wide range of health policy areas, such as numerous provisions related to Medicare (including a plan to close the Medicare "donut" hole by 2020), the establishment of a national insurance program for long-term care in 2011, and even a mandate that chain restaurants and vending machines display nutritional information (proposed regulation due next year). To pay for itself, the PPACA

provides for approximately $500 billion in Medicare cuts over the next ten years, including cuts to the Medicare Advantage program, as well as several new taxes and cuts to current tax deductions.

There is no question that the PPACA will drive many important policy decisions made in Georgia in the near future, from readying our Medicaid program for the expansion of eligibility to insuring that the State Health Benefit Plan complies with the law's insurance provisions. Among the most pressing issues that the new Governor and lawmakers will have to contend with is the establishment of a health insurance exchange, an online marketplace that will allow Georgians to purchase insurance coverage based on qualitative rankings of plans. The exchanges are to open in 2014, and Georgia must decide how, if at all, it will operate an exchange of its own. By January 2013, states that plan on operating an exchange must be able to demonstrate to the U.S. Department of Health and Human Services that their exchange is "functional" and will be ready to be up and running by 2014. States have the option of operating their own exchange or joining with other states to establish a regional exchange. States also have the option of doing nothing at all, in which case the U.S. Department of Health and Human Services will operate an exchange in the state. Assuming Georgia wishes to operate its own exchange, key decisions that must be made soon include, but are not limited to, the following:

- What agency within state government or non-profit entity is to oversee the administration of the exchange;
- Whether to operate a single exchange for the individual and small group markets or to operate separate exchanges for individuals (the American Health Benefit Exchange) and for small businesses (the Small Business Health Options Program (SHOP) Exchange);
- Whether to operate a Basic Health Plan. The PPACA gives states the option to create a Basic Health Plan for uninsured individuals with incomes between 133 percent and 200 percent of the Federal Poverty Line (FPL) who would otherwise be eligible to receive premium subsidies in the Exchange. The Basic Health Plan must provide at least the essential health benefits and must meet certain requirements for premiums and cost-sharing. If Georgia chooses to operate a Basic Health Plan, individuals with incomes between 133 percent and 200 percent of the FPL will not be eligible for subsidies in the exchange; and
- Whether to allow the exchange to selectively contract with health insurance plans, limiting the number of plans selling insurance within the exchange, or to accept all plans that seek to do business within the exchange.

Whatever course Georgia's policy makers choose, implementing the provisions of the PPACA will have a substantial effect on the state's budget. Especially of concern to observers is the mandatory expansion of Medicaid eligibility at a time when most states are struggling to maintain their current obligations. The federal government will provide 100 percent funding for the costs of newly eligible individuals for the three years, after which federal funding will gradually decline to 90 percent for 2020 and subsequent years. To provide for the nearly 774,000 Georgians[4] who will be newly eligible for Medicaid, the state will have to make significant new investments in administrative capacity. Although the state has not yet released an official estimate of the fiscal impact of the PPACA on the Georgia Medicaid Program, a report by the Urban Institute for the Kaiser Commission on Medicaid and the Uninsured estimates that Georgia will spend an additional amount in the range of $714 million to $1.2 billion on Medicaid between 2014 to 2019 as a result of federal health care reform.

In the immediate future, the PPACA will have a significant effect on the budget for the State Health Benefit Plan (SHBP) as it seeks to comply with the new requirements imposed on insurance plans. The requirement that insurance plans cover dependents until the age of 26 will likely cost the state $54.4 million in FY2011 and $113 million in FY2012, though some of this

[4] As estimated by the Urban Institute.

cost will be borne by higher premiums.[5] The PPACA also calls for insurance plans to cover 100 percent of preventative care costs. Although the SHBP already covers preventative care for members with little or no out-of-pocket cost, this new requirement is projected to cost the state nearly $5 million in FY2011 and $10.3 million in FY2012.[6]

As Georgia and other states grapple with implementing the many provisions of the PPACA, they are also mounting challenges to the law's constitutionality. At the heart of most of the litigation is whether Congress has the constitutional authority to require individuals to purchase health insurance. Georgia is one of 21 states currently suing the federal government over the PPACA. Other states pursuing lawsuits include: Alabama; Alaska; Arizona; Colorado; Florida; Idaho; Indiana; Louisiana; Michigan; Mississippi; Nebraska; Nevada; North Dakota; Pennsylvania; South Carolina; South Dakota; Texas; Utah; Virginia; and Washington.[7] In addition to court challenges, at least 40 state legislatures have considered or are considering legislation to limit, alter, or oppose certain state or federal actions to implement the provisions of the PPACA.

HIGHER EDUCATION

Board of Regents' New Policy on Nondocumented Students

Beginning in Fall 2011, applications to University System of Georgia (USG) institutions will include language that outlines the legal penalties for "false swearing," or knowingly providing incorrect information on the forms. The applications will also require applicants to state whether they are seeking in-state tuition. All USG institutions will be required to verify whether admitted applicants are lawfully present in the United States. Students who are not lawfully present in the United States are ineligible for admission to any institution which did not admit all academically qualified applicants for the two most recent academic years. Five of the 61 USG institutions currently meet that definition: the University of Georgia, Georgia State University, Georgia College & State University, Georgia Institute of Technology, and the Medical College of Georgia.

Board of Regents Announces Search for New Chancellor

On October 7, 2010, Chancellor Erroll B. Davis announced his plans to retire at the end of his current contract year, June 30, 2011. On November 4, Willis Potts, chair of the Board of Regents announced the appointment of a 20 member Search Committee chaired by Regent Sterling. The Committee will develop a job description and list of preferred qualifications for the new chancellor. An executive search firm will assist the Committee's national search. Candidates can be nominated on the website established by the regents for the search, and the Committee will be responsible for narrowing the national field of candidates down to a maximum of five unranked candidates. The credentials of the five unranked candidates will be presented to the full Board of Regents, from which the board will likely select a replacement for Chancellor Erroll B. Davis. At this time, the Committee's first meeting has not been set and a timeframe for the selection process has not been established. Several other universities and university systems are also conducting national searches for new chancellors or presidents, including the Arkansas State University System and University Massachusetts System.

Helping Outstanding Pupils Educationally (HOPE)

Since its creation, HOPE has served over 1.2 million students, providing more than $5 billion in benefits through the HOPE Scholarship, Grant and GED programs. Recently, the Georgia Student Finance Commission (Finance Commission), which oversees the HOPE program, testified before members of the state Senate and House Higher Education Committees that the

[5] As reported by the Georgia Senate Budget and Evaluation Office on November 16, 2010.
[6] Ibid.
[7] As reported by the National Conference of State Legislatures as of September 2010.

HOPE program is facing a financial crisis. According to the Finance Commission, HOPE expenditures will exceed lottery funds by $243 million in 2011 and by $317 million in 2012. While HOPE does maintain a reserve account for shortfalls, projections indicate a depletion of the reserve account by 2012.

Under Georgia law, the lottery proceeds are the property of the Lottery Corporation[8]. The State of Georgia takes ownership of any net proceeds which are transferred into the general fund by the Lottery Corporation. State law mandates net proceeds contributed to education must equal 35 percent of the lottery proceeds. However, the law also grants the Lottery Corporation discretion to give a lower amount by specifying the 35 percent should be contributed "as practical." The Lottery Corporation has sole discretion over what amount is "practical."

Since 1994, the Lottery Corporation has remitted an average of 29.3 percent of lottery funds to the state per year, and the dollar amount remitted to the HOPE program has increased every year except 1998. In 1998, the Lottery Corporation experimented with decreasing the prize-payouts in an effort to remit more money to the HOPE program. According to the Lottery Corporation, granting the Lottery Corporation flexibility over remittance percentages allows them to meet their mission of maximizing revenues for the HOPE Scholarship and Pre-Kindergarten Programs.

INSURANCE AND LABOR

Insurance Coverage for Orally Administered Anticancer Medication

During the 2009-2010 legislative session, Senator Don Thomas introduced Senate Bill 245 which would have required individual and group health benefit plans that provide coverage for cancer chemotherapy treatment to provide coverage for a prescribed, orally administered anticancer medication used to destroy or slow the growth of cancerous cells on a basis identical to intravenously administered or injected cancer medications that are covered as medical benefits. Although the bill was never addressed in committee, similar legislation is expected to be introduced in 2011.

Many believe this legislation is necessary because the economics and practice of cancer medicine have not caught up with the convenience of oral drugs. The oral drugs can free patients from frequent trips to a clinic for IV chemotherapy treatment. Fewer visits might save the health system money as well as time. Moreover, the pills represent an early step toward making cancer a manageable chronic condition, like diabetes.

However, drugs that are infused at a clinic are typically paid for as a medical benefit, like surgery. Pills, though, are usually covered by prescription drug plans, which are typically much less generous; for expensive cancer pills, patients might face huge co-payments or quickly exceed an annual coverage limit. Although sometimes a single insurer is involved, many times, a separate company — a pharmacy benefit manager (PBM) — provides the prescription drug coverage. PBMs continue to treat orally administered anticancer medication as a prescription drug, and thus reject coverage for such pills.

Although Oregon was the first state to pass legislation requiring insurance companies to provide equivalent coverage of oral and intravenous cancer drugs, several other states have followed, and many more states have introduced similar legislation.

[8] O.C.G.A. §50-21-13

Unemployment Insurance Program

Unemployment insurance (UI) pays temporary cash benefits to workers who have lost jobs through no fault of their own. The UI system is administered as a federal-state partnership. To finance the program, the State levies and collects payroll taxes from employers. The State undertakes most UI administrative activities related to both paying benefits and collecting from employers the payroll taxes that support the program. The funds collected are managed in a trust fund administered by the federal government.

Although Georgia has the lowest unemployment insurance tax rates in the Southeast, the fund has been kept solvent through an influx of federal stimulus funding as well as loans from the federal government. The fund's balance stands at $431 million, although $407 million of that are from federal loans. To put this into perspective, the fund's balance stood at $1.1 billion with no outstanding loans only five years ago. Clearly, the current economic downturn has shown that the trust fund's solvency is fleeting and can become very unstable during periods of high unemployment. Some of the specific questions that may be addressed by the 2011 legislature concerning the unemployment insurance program include:

- The UI system operates counter-cyclically, paying out benefits during recessionary times and collecting revenue during recovery times. Is there a better alternative to this pattern which would provide for a more stable trust fund balance in times of recession and recovery periods?

- How many months' worth of benefit payments should Georgia's UI trust fund maintain to provide an adequate reserve of money available to be paid as benefits?

- What is the ratio of Georgia's UI trust fund balance to Georgia's annual total wages in covered employment that would fund an adequate reserve?

- Is Georgia's UI experience rating system and benefit financing model sound and sustainable? Should the system and the model be amended or revamped?

JUDICIARY

Evidence Code Revision

The current Georgia Evidence Code, which governs the admissibility of evidence in civil and criminal trials, has not been substantially updated since its adoption by the General Assembly in 1863. Because trial practice has changed significantly in that time, judges have had to adjust the rules via case law rather than by statute. This common law approach has been essentially effective, but can lead to confusion and uneven results since the rules that are actually in use are not necessarily those found in the code.

The Federal Rules of Evidence, approved by the United States Supreme Court in 1972 and officially enacted by the United States Congress in 1975, are the result of years of study by law professors, attorneys and judges. Today, the Federal Rules of Evidence have been adopted by 42 states, including every state surrounding Georgia. All courts in these states use the same set of evidence laws when the federal rules have been implemented. By contrast, Georgia lawyers must abide by one set of rules in state court, and different rules in federal court.

The State Bar of Georgia has been studying the issue of updating the evidence code off and on since 1986, and there were several unsuccessful attempts to pass legislation in the early 1990s. For the most part, the Federal Rules of Evidence have been praised as being well-organized, clear, specific and easily accessible. A current legislative proposal before the General Assembly

would adopt the Federal Rules of Evidence almost in their entirety, while retaining a few of the most well-liked Georgia rules.

Opposition to these changes has come mainly from prosecuting attorneys. Their two chief concerns are: the legislation has not been subjected to sufficient debate and discussion from all interested parties; and such major changes to the law will render all prior case law inapplicable, leading to a lack of guidance in using the new laws. Proponents of the Federal Rules of Evidence insist that the changes have been circulating in the legal community for years, despite having been reduced to actual legislation only recently. As to the second argument, having a concise and widely used set of rules will be beneficial to lawyers, because the Georgia case law that exists is often contradictory. In fact, there is abundant federal case law concerning the Federal Rules of Evidence due to its decades of use.

Below is a brief explanation of a few of the major differences between current Georgia evidence law and the changes proposed by the State Bar of Georgia Evidence Study Committee, also known as House Bill 24 from the 2009-10 legislative sessions:

- Hearsay[9]: Georgia is the only state that maintains hearsay evidence as inadmissible in all instances, even if there is no objection at trial. The new law would allow a court to base a decision on hearsay if there is no objection.
- Expert Opinion Testimony: The federal rules regarding expert testimony were adopted in Georgia in 2005 for civil court; the new law would extend it to criminal court, as well.[10]
- Best Evidence Rule[11]: Georgia's version of the rule has not been updated to include photographs, recordings, etc.; the proposed rule applies to all types of recordings, not merely writings.
- Preliminary Question on Admissibility: There are still a few areas of Georgia law that require a jury to decide on the admissibility of evidence; this is an outdated practice. The new rule leaves all admissibility questions to the trial judge; however, the jury remains the final authority of the weight given to admitted evidence.

There are several other sections where Georgia evidence law would be amended in favor of the more modern Federal Rules of Evidence. The proposed changes are widespread and would benefit from further debate to avoid unexpected consequences in our state courts. Overall, however, bringing the Georgia evidence code in line with the federal rules would likely promote consistency with the federal courts and allow Georgia lawyers to become well-versed in only one set of rules.

Juvenile Code Revision

There has been a movement over the past several years to substantially revise the current Georgia Juvenile Code, found in Chapter 11 of Title 15 of the O.C.G.A. The original focus of criminal punishment for juveniles was on rehabilitation. However, an increase in juvenile crime during the 1980s and early 1990s led most states to pass much stricter laws that, in many cases, treated juveniles as adults for sentencing purposes.

[9] According to Federal Rule 801(c), hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

[10] Code Section 24-9-67.1 governs the use of expert testimony in civil court; the pertinent section closely mimics Federal Rule 703: If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case."

[11] The best evidence rule generally means that a party must produce the original writing, recording or photograph in order to prove its contents, unless it is unavailable. In that case, secondary evidence *may* be admitted.

Here in Georgia, the Juvenile Justice Reform Act of 1994 placed jurisdiction over juveniles aged 13 to 17 who commit one of the "seven deadly sins" in superior court, rather than juvenile court. The seven deadly sins are: murder, rape, armed robbery (with a firearm), aggravated child molestation, aggravated sodomy, aggravated sexual battery and voluntary manslaughter. Juveniles can be sentenced to life without the possibility of parole under this law. The stated goal of the bill was retribution and deterrence, as opposed to rehabilitation.

Many believe these reforms have led to unjust results, including high rates of recidivism in children who do obtain parole, and a disproportionate effect on minority juveniles. African American and Latino juveniles are 45% of Georgia's youth population, but comprise 77.2% of those arrested under current law. There is growing research to suggest that the adolescent brain is not sufficiently developed for mature decision-making, therefore making prosecution as an adult unfair.

A recent study released by the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice found that a third of children aged 11 through 13, and a fifth of those aged 14 or 15, understood the justice system at a similar level as mentally ill adults who have been found incompetent to stand trial. Also, placing teenagers in adult prisons raises serious safety concerns. According to studies by the U.S. Justice Department, juveniles imprisoned with adults are five times more likely to report being sexually assaulted, and eight times more likely to commit suicide than those held in juvenile facilities.

Beginning in 2004, stakeholders from across the state, including prosecutors, public defenders, juvenile court judges, law professors and the State Bar of Georgia, collaborated to create a proposed model code. The model code became the foundation for Senate Bill 292, introduced by Senator Bill Hamrick at the end of the 2009 legislative session. SB 292 did not move forward during the 2010 legislative session.

The juvenile code is a comprehensive set of laws that governs how our state responds to abuse and neglect of children, violations of criminal law by children, and other issues that require court involvement. Under the current statutory scheme, these issues are improperly commingled. One of the main goals of the juvenile code revision is to create a new organizational structure that separates different types of cases, therefore allowing greater flexibility and fairness. The different juvenile court case types include:

- Deprivation cases involve children who are abused or neglected by their caregivers;
  - Some deprivation cases will lead to Termination of Parental Rights;
  - Foster children nearing age 18 will need Independent Living Services;
- Children in Need of Services are those who commit minor juvenile infractions, such as truancy, disobedience, and running away from home;
- Delinquency cases involve acts that would be crimes if committed by an adult;
  - Notably, SB 292 would have eliminated exclusive jurisdiction in superior court for a juvenile who has committed one of the seven deadly sins; instead, superior court retains original jurisdiction, but the bill would have allowed such cases to be remanded to juvenile court.
  - Due process requires that courts determine whether a juvenile in a delinquency case is Competent to participate;
- Access to Records and Hearings is an issue in juvenile court;
- Emancipation cases, which release parents and caregivers from their obligations to a child, and allow juveniles to take on adult responsibilities.

One major purpose of the juvenile code revision was to ensure that our juvenile court system continues to receive federal funding. States must meet certain federal requirements, and the law as it stands today places that revenue stream at risk. SB 292 would have brought Georgia into compliance with these federal requirements, with such changes as:

- When a child is placed in out-of-home care, the court must ensure the use of case plans and periodic reviews of the case and the placement;
    - Courts cannot place a child in long-term custody without creating a legal guardianship;
- In delinquency cases, the circumstances and amount of time for which a child can be held in an adult detention facility are strictly limited;
    - Children who are in these facilities must be kept completely separated from the adult residents;
    - A child in need of services can be held in secure detention no more than 24 hours before a court hearing and 24 hours after, unless certain exceptions apply.

NATURAL RESOURCES

Water Issues

On July 17th, 2009, U.S. District Judge Paul Magnuson ruled that water supply, in the form of withdrawals from Lake Lanier, was not a Congressionally-authorized purpose of Lake Lanier. Authorized purposes were hydropower, navigation, and flood control – water supply was only an "incidental benefit." Additionally, the Judge determined that the U.S. Army Corps of Engineers (Corps) in its operation of Lake Lanier for water supply exceeded its authority under the Water Supply Act of 1958. The Judge delayed enforcement of the ruling for three years to allow the states to negotiate an allocation agreement or to allow Congress to reauthorize Lake Lanier to be used for water supply. By mid-July 2012, if there is no resolution, the operation of Buford Dam on Lake Lanier will return to 1970s baseline levels. That is, except for certain limited withdrawals that predate construction of the reservoir (namely for the cities of Gainesville and Buford), all withdrawals directly from Lake Lanier will be prohibited, and releases from Buford Dam on Lake Lanier will be severely curtailed.

Governor Perdue outlined a four-pronged strategy to address the Judge's ruling which consisted of: (1) Appealing the ruling in court[12]; (2) Negotiating a mutually-agreeable water allocation scheme with Florida and Alabama; (3) Pursuing Congressional reauthorization of Lake Lanier for water supply; and (4) Developing a contingency plan, to be implemented if the Judge's ruling were to take effect. The Water Contingency Task Force was created to evaluate various options for a contingency plan and to make recommendations to the Governor.

In its December 2009 recommendations, the Task Force concluded that it did not foresee the ability of the metro region to meet the potential water shortfall in 2012, even with aggressive mandated conservation measures. Within this timeframe, no new supply options could offer a significant increase in water supply. By 2015, there is a potential contingency solution; however, it requires significant upfront capital of approximately $890 per million gallons of water. By 2020, a broader set of more cost-effective options exists, as reservoirs could be built or expanded.

The Task Force recommended significant conservation policies regardless of the outcome of lawsuit. In response to this recommendation, the General Assembly passed the Water Stewardship Act of 2010 that creates a "culture of conservation." It curtails outdoor watering, directs several state agencies to develop incentives for voluntary water conservation, requires the establishment of best management practices for public water supply systems, and requires builders and apartment building owners to more efficiently manage water usage. Additionally in 2010, the General Assembly passed Senate Bill 380, the Water System Interconnection, Redundancy and Reliability Act. This legislation requires the Georgia Environmental Facilities

[12] On October 5th, 2009, Judge Magnuson issued an order asserting that "no injunctive relief was ordered or intended by the court's July 17, 2009, order." He stated that an appeal "will only delay and further complicate the resolution of the important claims at issue."

Authority to complete a thorough and detailed engineering study that develops an emergency water supply plan for all qualified water systems within the Metropolitan North Georgia Water Planning District.

Georgia is also continuing to develop and expand reservoirs within the state as directed by Senate Bill 342, the Georgia Water Supply Act of 2008. A Joint Water Supply Study Committee was created in the Water Stewardship Act which is charged with studying the current status of our state's reservoir system and its needs for additional water supply, including the identification of creative financing options for water reservoirs. Currently, 94 reservoirs are permitted in the state – 78 were permitted and constructed before 2000, 11 have been constructed since 2000, and five have been permitted, but are not in use. There are seven applications for reservoirs, and 25 other potential reservoirs exist, but have not been evaluated for reservoir development. A report is expected to be completed by December of this year.

As of January 2011, no Congressional actions have been adopted to reauthorize Lake Lanier for water supply purposes. Furthermore, there is no public knowledge as to an allocation agreement among Georgia, Alabama, and Florida.

Georgia began taking the necessary steps to manage its current and future water resources years ago by developing a Statewide Water Management Plan (Water Plan).The purpose of the Water Plan, as stated in its enabling legislation, the 2004 Comprehensive Statewide Water Management Planning Act, is to guide Georgia in managing water resources in a sustainable manner to support the state's economy, to protect public health and natural systems, and to enhance the quality of life for all citizens.

The Water Plan provides for: (1) Development of regional resource assessments to determine the quantity of surface and groundwater available to support current and future water uses; (2) Ten, 20, 30, and 40-year forecasts of future population expectations, water demands, wastewater returns, and employment characteristics; and (3) Regional planning – each of the 10 regional water planning councils, with the Metropolitan North Georgia Regional Water Planning District acting as a separate water planning entity, are preparing Water Development and Conservation Plans which will identify the steps and practices to be taken to ensure that the forecasted water needs can be met. The plans are to be finalized and adopted by June 30, 2011.

Over a decade ago, the Atlanta Regional Commission (ARC) realized that the solution to metro Atlanta's water shortage was an interbasin water transfer from the Tennessee River. When ARC (ARC) approached Chattanooga's water supplier about purchasing water, the State of Tennessee responded by unanimously passing its InterBasin Water Transfer Act of 2000, for the admitted purpose of blocking any water transfers to Georgia. Tennessee believes that it can restrict these transfers because Georgia is not riparian to, or located on, the Tennessee River. However, history has shown us that the true boundary line between Georgia and Tennessee is actually north of its current location, at the true 35th parallel in the center of the Tennessee River at Nickajack Lake.

In 1802, Georgia ceded the Mississippi Territory to the United States, under an express agreement providing that Georgia's border would reach and cross the Tennessee River at Nickajack Lake. In 1818, Georgia and Tennessee commissioned a joint survey of their border, its mission was to find the 35th parallel and mark it on the ground. Due to poor equipment and outdated astronomical charts, the survey party mistakenly placed the line a mile south of its actual location at Nickajack Lake. Tennessee subsequently claimed this faulty survey line to be the border; however, Georgia has never officially accepted it, and instead has repeatedly tried to get Tennessee to correct the mistake. As recently as 2008, the General Assembly passed a resolution urging the Governor of Georgia to initiate negotiations with the Governor of

Tennessee for the purpose of correcting the flawed 1818 survey. If this boundary line is corrected, Tennessee will have no basis for its interbasin transfer ban because Georgia will be riparian to the river.

The resolution also urged the Attorney General to pursue the matter in the U.S. Supreme Court because the Tennessee Valley Authority, which built the reservoir at Nickajack Lake in the 1960s, as a federal entity, must use its own federal water rights in the Tennessee River to satisfy the federal government's promise, in the 1802 Cession Agreement, that Georgia's original riparian access to the Tennessee River would be reserved at Nickajack Lake.

PUBLIC SAFETY

Immigration

Background

Despite a temporary federal injunction, the recent passage of Senate Bill 1070 (and subsequently amended by House Bill 2162), Arizona has strengthened what most observers have already recognized as the strictest immigration enforcement laws in the nation.

However, a July 28th injunction blocked the most controversial provisions just hours before it was to take effect, in the first stage of a legal battle expected to end up in the U.S. Supreme Court. U.S. District Court Judge Susan Bolton in Phoenix issued a temporary injunction against parts of the law that would require police to determine the status of people they lawfully stopped and suspected were in the country illegally. Bolton also forbade Arizona from making it a state crime to not carry immigration documents.

On July 29th, Arizona Governor Jan Brewer asked the 9th Circuit Court of Appeals to lift the judge's order and allow the law to take effect. If the state loses before the 9th Circuit, it is almost sure to appeal to the Supreme Court.

The U.S. Department of Homeland Security (DHS) estimates that Georgia has an illegal immigrant population of 480,000. This population places a financial and logistical burden on State and local government agencies as well as posing public safety issues. In response, the Georgia General Assembly is expected to introduce legislation similar to Arizona's.

The Arizona law was born of understandable frustration over the failure at the federal level to secure the southern border. Illegal immigration, and crime spawned by it, has surged in the state. While Georgia itself has a very comprehensive anti-illegal immigration law, it falls short of Arizona's current laws. At the heart of the new Arizona law, illegal immigration is treated as a state crime, and legal immigrants are required to carry proof of their immigration status. But its most controversial and publicized provision directs local and state police to check the immigration status of anyone whom they reasonably suspect of being in the country illegally and who they have already stopped or arrested for a separate crime. Although critics argue that this will lead to rampant profiling, the law does prohibit law enforcement agencies from considering "race, color, or national origin in implementing" these provisions. Legal analysts disagree whether this language will, in practice, rule out profiling. Critics also argue that this kind of immigration law enforcement is normally left to federal authorities. However, federal law actually allows states to enforce certain aspects of immigration control. In fact, this is something Georgia and Arizona are already doing under the Section 287(g) program.

Section 287(g) Program

The 287(g) program was established by the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* and authorizes the Secretary of the Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies. Under these agreements, designated state and local officers perform immigration law enforcement functions, provided that the officers receive appropriate training and function under the supervision of Immigration and Customs Enforcement (ICE) officers.

Currently, the Georgia Department of Public Safety, and the Sheriff's offices of Cobb, Gwinnett, Hall, and Whitfield counties participate in the 287(g) program. Arizona's Department of Public Safety, Correction's Department, as well as several local agencies also participate in the program. The difference between the 287(g) program and Arizona's new law is that the 287(g) program carries out this task once the inmate has been charged, booked, and admitted into a local jail. Arizona, however, will require the law enforcement officer to make a reasonable attempt, when practicable, to determine the immigration status of a person involved in a stop, detention, or arrest in the enforcement of any other state or local law or ordinance where reasonable suspicion exists that the person is an alien and is unlawfully present.

A stopped person is presumed to be lawfully present if that person provides any of the following:

- A valid Arizona driver's license or ID card;
- A valid tribal enrollment card; or
- A valid federal, state, or local government issued identification, if the issuing entity requires proof of legal presence before issuance.

If it is discovered that the individual is unlawfully present in the U.S., the law enforcement agency will securely transport the alien to a federal facility or to any other point of transfer into federal custody.

Willful Failure to Complete or Carry an Alien Registration Document

Aside from being transferred to federal officials, the penalty provision for violating Arizona's law is tied to the person's "willful failure to complete or carry an alien registration document" in violation of federal statutes 8 U.S.C. § 1304(e) or 1306(a). These federal statutes require aliens to be registered and, if 18 years of age or older, to carry, at all times, any certificate of alien registration or alien registration receipt card issued to them by the federal government. A first-time violation of these provisions will result in a misdemeanor conviction, a fine of up to $100, and up to 20 days in jail. Second and subsequent violations are punished by a similar fine and up to 30 days in jail. In addition to these penalties and fines, the incarcerated person is required to pay all jail costs.

Employee Verification and Employer Sanctions

As mentioned earlier, even prior to the passage of SB 1070, Arizona already had the strictest immigration laws in the nation that imposed severe sanctions on employers who hire illegal aliens. When much of these employer sanction laws were enacted in 2007, most critics at the time believed they would be overturned since this should be a federal rather than a state responsibility. Despite several legal challenges, federal courts have twice upheld Arizona law in 2008.

What happened in 2008 is instructive. Current federal law penalizes employers who knowingly hire illegal immigrants with monetary fines. But illegal immigration opponents were dissatisfied with the federal law because the fines are nominal and because employers are not truly required to verify that a worker is in the country legally.

In response to lax federal enforcement, Arizona enacted a law that penalizes any employer who hires illegal workers with something far more severe – a suspension of their business license. It

also requires that employers use a voluntary federal online program known as "E-Verify" to determine whether prospective workers are in the country legally. E-Verify is an alternative to the I-9 system. After an employer submits a verification request for an employee, E-Verify either issues a confirmation or a tentative non-confirmation of work-authorization status. If a tentative non-confirmation is issued, the employer must notify the employee, who has eight days to challenge the finding. The employer cannot take any adverse action against the employee during that time. If an employee does challenge the tentative non-confirmation, the employer will be informed of the employee's final work-authorization status.

In 2006, Georgia enacted a similar law ahead of Arizona, but Georgia's law only applies to state and local government, and businesses that contract or subcontract with those governments.

Critics argued that Arizona had no right to pass its own employer sanctions law because immigration is regulated by the federal government and federal law tacitly preempted states from doing so. Moreover, since E-Verify is a voluntary program, the state was exceeding its authority to mandate that E-Verify be used in Arizona.

But two federal courts, including the 9th Circuit Court of Appeals, ruled in favor of Arizona. According to the court, the 1986 *Immigration Reform and Control Act*, while specifically preempting state laws that would fine businesses, had not extended that preemption to licensing, since, as the court noted, states, not the federal government, typically have responsibility for this area.[13] The 9th Circuit Court also defended Arizona's use of E-Verify, noting that while Congress never mandated its use, "that does not, in and of itself, indicate that Congress intended to prevent states from making participation mandatory." In other words, unless Congress explicitly preempted it, Arizona could tailor E-Verify to suit its own needs. The legal battle over the employer-sanction law is not over; the Supreme Court will hear a challenge to it late this year and the outcome could shape the battle over the newer law.

Conclusion and a Look Ahead

In any event, Arizona's new immigration enforcement law, like its employer sanctions law, is based, in part, on current federal law. As previously noted, Arizona already has an agreement with ICE under the 287(g) program. This raises the same question seen earlier with employer sanctions: if Arizona's role in routine immigration law enforcement is already federally mandated, how can the federal government move to pre-empt that role now? Arizona will argue that it cannot. However, the U.S. Department of Justice will argue that Arizona is exceeding federal authority by defining an illegal alien's "unlawful presence" as a state crime. Under current federal law, unlawful presence is a civil violation, not a crime – federal or otherwise. Civil violations are not punishable with criminal sanctions, such as jail time. Those caught are simply deported. Nevertheless, it is debatable whether this is unconstitutional. Federal law may define "unlawful presence" as a civil violation, but paradoxically, it also defines the prior act of "illegal entry" as a crime, not a civil violation. Arizona may simply argue that the distinction between the two is meaningless. Moreover, Congress has never expressly forbidden states from imposing their own criminal sanctions on aliens.

Note: Please see the following chart at the end of the document: A Comparison of Select Arizona, Georgia, and Federal Immigration Control Statutes.

[13] Chicanos por la Causa Inc. v. Napolitano, 9th Cir., No. 07-17272 [Sept. 17, 2008]

REAPPORTIONMENT AND REDISTRICTING

Census/Redistricting

Population data collection is mandated by the U.S. Constitution to ensure fair and equal representation in the state legislatures and Congress.

A decennial census is required by the Constitution for the primary purpose of the federal government allocating congressional seats to the states (the process referred to as reapportionment).

The count of the population is used to apportion the number of seats in Congress among the states and provides the state and local governments with the population counts necessary to redraw their legislative districts.

The number of members of the U.S. House of Representatives is prescribed by law and has been set at 435 members since 1912. Each state is entitled to at least one representative and the remaining members are apportioned among the states in accordance to their relative populations.

So the number of congressional seats to be apportioned among the states based on population is that number-- 385.

Over the years, four different apportionment formulas have been used to apportion seats to the states on the basis of population:

- From 1790 to 1840, Congress used a method proposed by Thomas Jefferson, sometimes called the "method of greatest divisors." This method divided the total population by the number of seats and assigned each state its quota, disregarding any fractional remainder. The number of members was adjusted so that every state was awarded exactly the number of seats it was entitled to on the basis of its quota.
- From 1842 to 1850, Congress used a formula proposed by Daniel Webster, sometimes called the "method of major fractions." This method gave an additional member to any state whose quota included a fraction greater than one-half. The number of members was adjusted accordingly.
- From 1850 to 1910, Congress used a formula that had originally been proposed by Alexander Hamilton for the apportionment of 1790. Under that formula, members were first apportioned according to each state's quota, disregarding any fractional remainders, and then any leftover seats were assigned to the states with the largest fractional remainders.
- Between 1911 and 1930, Congress reverted to using the Webster method.
- After the 1930 census, Congress adopted the "method of equal proportions." The formula uses the state's population divided by the geometric mean of that state's current number of seats and the next seat; this formula allocates the remainders among the states in a way that provides the smallest relative difference between any pair of states in the population of a district and in the number of people per representative.

Several significant United States Supreme Court decisions were made during the 1960s:

--In 1962, the U.S. Supreme Court ruled in *Baker v. Carr* that “malapportioned” legislatures are “justiciable issues.”

--In 1963, in *Gray v. Sanders*, the Court struck down a redistricting plan with districts that were not equal in population.

--In 1964, in *Wesberry v. Sanders*, the court held that Article 1, Section 2 of the Constitution required that "....as nearly as is practicable one person's vote in a congressional district is to be worth as much as another's." Again, in 1964, the court held in *Reynolds v. Simms* that state legislative districts must be "....as nearly of equal population as is practicable."

Following the enactment of the 1965 Voting Rights Act, the courts ruled that the use of racial criteria in drawing districts was constitutional.

By 1966, state officials had approached the Census Bureau to express their need for small-area data. As state and local officials began to use the 1970 census data, they found that the data often did not match the maps or vice-versa.

In 1975, Congress passed a law that requires the Census Bureau to provide state legislatures with the small area census population tabulations necessary for legislative redistricting. The law also specifies:

- The states choosing to participate in this voluntary program will define the small areas for which specific data tabulations are desired and submit these areas following timelines established by the Census Bureau. These small areas include census block boundaries, voting districts, and state legislative districts.
- The Census Bureau must transmit the total population tabulations to the states by April 1, 2011.

Election Data Services (EDS) recently released a preliminary report of its reapportionment estimates.

Ahead of the release of U.S. Census data collected earlier this year, the EDS used population estimates from July 2009 to conclude that 11 states could lose at least one seat in the U.S. House after reapportionment:

- Illinois;
- Iowa;
- Louisiana;
- Massachusetts;
- Michigan;
- New Jersey;
- New York; and
- Pennsylvania.

Ohio will likely lose two seats. Rhode Island, Missouri, and Nebraska may also lose a seat, depending on the final results of the census data.

Arizona, Florida, Georgia, Nevada, South Carolina, Utah and Washington are all set to gain a seat. Texas could gain as many as four seats.

For the first time since it became a state in 1845, California will not add a new congressional seat.

Consider that the State of Utah missed an extra seat in Congress following the 2000 Census by about 850 people; North Carolina received that extra congressional seat instead.

In 2000, the average population of a congressional district was 646,952; in 1990, the average population was 572,466. In 1900, the average population of a congressional district was 193,167.

Georgia should have a total of 14 seats in the House of Representatives, and each district, following the Census results, should have approximately 703,000 people.

It is expected for Georgia to show up to 11 million residents—almost doubling the state's population since the 1980 Census (somewhere between 10.5 million and 10.85 million is the educated guess).

Georgia had approximately 8.422 million people in 2002 and grew by almost 150,000 people per year during this decade (14.5% from the 2000 Census).

If Georgia tops out near 11 million residents-- that means each of Georgia's State Senators will represent just fewer than 200 thousand people, and each State House seat will cover about 61 thousand persons.

That means that South Georgia's representation under the Gold Dome will decrease because of larger districts while metro Atlanta's districts contract in size and increase in number.

It is possible that South Georgia will lose up to two Senate seats and six or more House seats.

UPDATED INFORMATION:
New Congressional Apportionment:

Georgia picks up one House seat along with South Carolina (+1), Florida (+2), Texas (+4), Utah (+1), Nevada (+1), Arizona (+1), and Washington (+1).

Losing House seats are Louisiana (-1) , Missouri (-1) , Illinois (-1) , Iowa (-1) , Ohio (-2) , Michigan (-1) , New York (-2) , New Jersey (-1) , Pennsylvania (-1) , and Massachusetts (-1) .

http://2010.census.gov/news/img/apport_chart4_appttot.jpg

http://2010.census.gov/news/img/apport_chart3_appt.jpg

Georgia grew by 18.3% during the 2000s (the US rate of growth was 9.7%).

2010 Georgia: 9,687,653

Each of Georgia's 14 congressional seats will have about 692,000.

That means each state senate seat will comprise 172,994, and each state house seat 53,820.

http://2010.census.gov/news/pdf/apport2010_map1.pdf

RETIREMENT

The Legislative Process for Retirement Bills
Retirement bills face a unique and often lengthy process prior to enactment because of requirements contained in the Georgia Constitution, which requires that retirement bills be treated differently from other legislation.

Retirement legislation that has a fiscal impact can only be introduced during the first year of a two-year session and can only be acted on during the second year; therefore, any retirement bills with fiscal impact introduced during the 2011 legislative session will not be acted on until the 2012 session. The earliest effective date of any such legislation would be July 1, 2012.

In Georgia, each bill having a fiscal impact on any public retirement system must be funded in the year of its enactment. This requirement ensures that future benefits are already paid for and do not depend on future appropriations. Thus, any bill that increases the liability of the retirement system must be funded at the time of enactment. This process ensures the financial stability of the state's retirement systems.
In compliance with the Georgia Constitution, the General Assembly in 1983 enacted the Public Retirement Systems Standards Law, Chapter 20 of Title 47 of the Official Code of Georgia Annotated. The "Standards Law" as it is commonly known, establishes the procedures required for the consideration and enactment of retirement legislation.

After Legislative Counsel drafts a retirement bill, it is sent to the State Auditor for a certificate stating whether the bill is a fiscal or a non-fiscal bill. According to the Office of Legislative Counsel, a "fiscal retirement bill": (1) increases a retirement benefit, (2) increases the actuarial accrued liability of a retirement system, or (3) increases the normal cost of the retirement system. These definitions are outlined at O.C.G.A. § 47-20-30.

The certificate of the State Auditor must be attached to the bill when it is introduced, whether or not it is a fiscal bill. If no certificate is attached when a bill is introduced, it should not receive further consideration. The certificate of the State Auditor is yellow analysis typically placed behind the copy of the bill.

If the State Auditor determines that a retirement bill is a non-fiscal retirement bill, the bill becomes similar to other legislation; however, non-fiscal retirement bills must be introduced in the first 20 days of either year of the biennium.

If the State Auditor certifies that the bill is a fiscal retirement bill, its treatment becomes more complex. A fiscal retirement bill may be introduced during the first year of the biennium at any time. No fiscal retirement bill may be introduced during the second year and no committee action will take place in either chamber during the first year of the biennium.

Because of the requirement that fiscal retirement bills be funded concurrently with their enactment, it is necessary for an actuary to conduct a study to determine how much must be appropriated to the retirement system to pay the benefits granted by the legislation. An actuarial study costs approximately $5,000 per fiscal bill. The House and Senate Retirement Committees meet individually during the interim to determine which bills from their respective chambers should move forward for an actuarial study. If a fiscal bill does not receive approval for an actuarial study, it cannot move forward in the legislative process.

For all fiscal bills that receive approval for an actuarial study, by November 1, the State Auditor provides the respective chairpersons with copies of each bill's actuarial study showing the cost amortized over 20 years. A copy of the study is commonly stapled to the back of the retirement bill and travels with the bill through the remainder of the legislative process. After the actuarial study is completed, the bill may be amended only in such a manner as to reduce the cost of the bill. Any substitute or amendment must be accompanied by a certificate from the State Auditor certifying whether the substitute or amendment changes the cost reflected in the actuarial study. If there is an increase in costs, a new actuarial study is required.

It is the responsibility of the sponsor of any fiscal retirement bill to ensure that a funding provision appears in the Appropriations Act for the bill. Upon final passage of the Appropriations Act, the State Auditor provides a certificate stating whether funding provisions exist for each fiscal retirement bill enacted. Any bill that does not have a funding provision is automatically repealed as required by the Standards Law.

The Status of Georgia's Pension Funds

Over the past few years, public pension funds have received a great deal of attention in the media because many states will not be able to cover the costs of the future payment of benefits to their retirees. However, there is good news in Georgia regarding our largest state retirement systems known as the Employees' Retirement System (ERS) and the Teachers' Retirement System (TRS). They each have an actuarial rate of over 80 percent. When looking at the health of pension systems, most experts agree that an actuarial baseline for a safe and secure funding level is 80 percent.

As of June 30, 2009, ERS had an actuarial funding ratio of over 89.4 percent and TRS had an actuarial funding ratio of 91.9 percent. According to the Pew Center on the States, which monitors pension systems nationwide, Georgia is a consistently solid performer. The chart below shows how we compare to other southern states.

Plan Name	Actuarial Funding Ratio	Actuarial Assets	Actuarial Liabilities	Unfunded Liability (Surplus)	Actuarial Valuation Date	For FY ending
Alabama Teachers	77.6	$20,812,477	$26,804,117	$5,991,640	9/30/2007	9/30/2008
Alabama ERS	75.7	$9,905,766	$13,078,687	$3,172,921	9/30/2008	9/30/2008
Arkansas Teachers	84.9	$11,319,000	$13,334,000	$2,015,000	6/30/2008	6/30/2008
Arkansas PERS	78.0	$5,413,000	$6,938,000	$1,525,000	6/30/2009	6/30/2009
Florida RS	87.1	$118,764,692	$136,375,597	$17,610,905	7/1/2009	6/30/2009
Georgia ERS	89.4	$14,017,346	$15,680,857	$1,663,511	6/30/2008	6/30/2008
Georgia Teachers	91.9	$54,354,284	$59,133,777	$4,779,493	6/30/2008	6/30/2009
Kentucky ERS	54.2	$5,820,925	$10,747,701	$4,926,776	6/30/2008	6/30/2008
Kentucky Teachers	63.6	$14,885,981	$23,400,426	$8,514,445	6/30/2009	6/30/2009
Louisiana Teachers	59.1	$13,500,766	$22,839,411	$9,338,645	6/30/2009	6/30/2009
Louisiana SERS	60.8	$8,499,662	$13,986,847	$5,487,185	6/30/2009	6/30/2009
Missouri Teachers	79.9	$28,826,075	$36,060,121	$7,234,046	6/30/2009	6/30/2009
Missouri State Employees	83.0	$7,876,079	$9,494,807	$1,618,728	6/30/2009	6/30/2009
Mississippi PERS	67.3	$20,597,581	$30,594,546	$9,996,965	6/30/2009	6/30/2009
North Carolina Teachers & State Employees	99.3	$55,127,658	$55,518,745	$391,087	12/31/2008	6/30/2009
South Carolina RS	69.3	$24,699,678	$35,663,419	$10,963,741	7/1/2008	6/30/2009
TN State and Teachers	96.2	$26,214,995	$27,240,151	$1,025,156	7/1/2007	6/30/2009
Texas Teachers	83.1	$106,384,000	$128,030,000	$21,646,000	8/31/2009	8/31/2009
Texas ERS	87.4	$23,509,622	$26,907,779	$3,398,157	8/31/2009	8/31/2009
Virginia Retirement System	84.0	$52,548,000	$62,554,000	$10,006,000	6/30/2008	6/30/2009

SPECIAL JUDICIARY

Summary of Recently Enacted Georgia Firearms Legislation

House Bill 89: Business Security and Employee Privacy Act (2008)

- House Bill 89 makes it a felony for any person to solicit or encourage any firearms dealer to transfer or convey a firearm other than to the actual buyer. Law enforcement officers are exempt.
- Any person who has been issued a license to carry a weapon may do so in all parks, historic sites, or recreational areas under the control and custody of the Department of Natural Resources, all wildlife management areas, and on public transportation, except where prohibited by federal law.
- "Public gathering" includes establishments where alcoholic beverages are sold for consumption and which derive less than 50 percent of their total annual gross food and beverage sales from the sale of prepared meals.
- All law enforcement officers may carry pistols in publicly owned buildings, except as may be provided in a courthouse security plan.
- Probate judges must begin the firearms license application process within two business days of receipt, and the judge will only have 10 days, instead of 60, to issue the license unless facts establishing ineligibility have been reported.
- When an eligible applicant who is a United States citizen fails to receive his or her license and the application was properly filed, such applicant may bring action in mandamus or other legal proceeding in order to obtain the license.
- No private or public employer may enforce any policy or rule that allows such employer to search the locked privately-owned vehicles of employees, and no private or public employer may condition employment upon any agreement that prohibits an employee from entering the parking lot when the employee's car contains a firearm that is locked out of sight, provided the employee possesses a valid Georgia firearms license;
    - The law provides limited civil liability for the employer;
    - Nothing restricts the rights of private property owners to control access to their property.

Senate Bill 308: Common Sense Lawful Carry Act (2010)

- Any person who is not legally prohibited from possessing a handgun or long gun may carry a weapon[14]:
    - on his or her property and inside his/her home, motor vehicle or place of business without a carry license;
    - He/she may also carry a long gun on his/her person without a carry license, but if the long gun is loaded, it must be carried in an open and exposed manner;
    - He/she may carry any handgun or long gun without a carry license if it is enclosed in a case and unloaded; and
    - He/she may transport a handgun or long gun in any private passenger vehicle, except on private property if the owner or lessor forbids it.
- Allows a person licensed to carry in another state to also carry a handgun in this state, *if* that state recognizes the Georgia carry license. Licensees from other states must comply with Georgia's laws when carrying here.
- Persons with a valid hunting or fishing license, or anyone not legally required to have such licenses, who are legally hunting, fishing or sport shooting with the landowner's permission may have or carry a handgun or long gun without a carry license.

[14] 16-11-125.1: 'Weapon' means a knife or a handgun.

- In general, no one without a valid carry license may carry a weapon unless in an open and fully exposed manner. The offense of carrying a weapon without a license is a misdemeanor the first time and a felony for a second or subsequent offense within 5 years.
- "Public gatherings" is changed to "unauthorized location." A person is guilty of a misdemeanor carrying a weapon in an unauthorized location if he/she carries a weapon in a:
    1) government building;
    2) courthouse;
    3) jail or prison;
    4) place of worship;
    5) state mental health facility;
    6) bar[15], unless permitted by the owner;
    7) on the premises of a nuclear power facility; or
    8) within 150 feet of any polling place.
- The criminal penalty for carrying in unauthorized locations will not apply to:
    - weapons used as exhibits in a legal proceeding, if the weapons are secured and handled as directed by courthouse security;
    - license holders who approach and notify security personnel of the weapon and follow instructions for removing and storing it; nor
    - a licensee's weapon under the licensee's control in a motor vehicle, in a locked compartment of a vehicle, or in a locked container or locked firearms rack on a motor vehicle parked in a government parking facility.
- The prohibition against carrying a weapon within 1000 feet of any real property owned by or leased to any public or private elementary or secondary school, public or private college or university campus is repealed. Instead, "school safety zone" means carrying a weapon actually on or in any real property owned by or leased to schools. Any person who is not a license holder and violates this statute will be guilty of a felony; license holders who violate the statute will be guilty of a misdemeanor.
- Weapons carry licenses will *not* be issued to any person:
    A. under 21 years old;
    B. who has been convicted of a felony anywhere and who has not been officially pardoned;
    C. against whom felony proceedings are pending;
    D. who is a fugitive from justice;
    E. prohibited from possessing a firearm under 18 U.S.C. § 922(g) and (n);
    F. convicted of an offense related to the unlawful manufacture or distribution of a controlled substance or dangerous drug;
        a. if the person successfully completed first offender treatment and has not had any other conviction for at least 5 years, he/she will be eligible for a carry license;
    G. who has had his/her carry license revoked;
    H. who has been convicted of pointing a gun at another person, carrying a weapon without a carry license, or carrying a weapon in an unauthorized location, and who has not been free from conviction for at least 5 years;
    I. convicted of any misdemeanor involving the use or possession of a controlled substance who has not been free from *any* conviction for at least 5 years;
        a. if the person successfully completed first offender treatment and has not had any other conviction for at least 5 years, he/she will be eligible for a carry license; or

[15] 16-11-127: 'Bar' means an establishment devoted to serving alcoholic beverages for guest consumption on the premises, and where serving food is incidental to the alcoholic beverages.

J. who has been hospitalized as an inpatient at any mental hospital or alcohol or drug treatment center within 5 years of the license application.

- On or after January 1, 2012, all new or renewed weapons carry licenses must have overt and covert security features to prevent imitation, replication or duplication, including a color photograph on both sides of the license.

TRANSPORTATION

Transportation Issues

Over the past few decades, Georgia's population and economy have grown rapidly. However, Georgia has been under-investing in its transportation infrastructure. Today, our state invests less than the national average as a share of its Gross Domestic Product (GDP) and devotes fewer resources per capita to transportation than any U.S. state except Tennessee. This lack of investment and improvement has eroded our state's transportation performance and its resulting ability to remain economically competitive. This is clearly evident from the traffic congestion issues facing the Atlanta region.

Last June, Governor Perdue and the State Transportation Board officially adopted Georgia's first Statewide Strategic Transportation Plan (Plan) which evaluates the return on investment from funding various transportation methods or modes. The process of developing goals and objectives for the Plan began in 2008, with the launch of Governor Perdue's initiative: Investing in Tomorrow's Transportation Today (IT3). IT3 used a collaborative, inclusive, and data-driven process to develop a set of transportation goals and objectives**.** Senate Bill 200, which passed in the 2008 Legislative Session, charged the Department of Transportation (DOT) with development of the Plan. The Plan concluded that a new investment strategy supported by additional resources could transform our transportation network and create over $480 billion in GDP growth for Georgia over the next 30 years and generate up to 425,000 new jobs. These new resources should be invested across three broad categories: (1) Statewide freight and logistics – new, limited-access bypasses and rail capability improvements; (2) People mobility in metro Atlanta – managed lanes and rail transit; and (3) People mobility in the rest of the state – coordinating transportation services.

The legislature has debated ways to fund transportation investments over the last few years. The Joint Study Committee on Transportation Funding was created by Senate Resolution 365 during the 2007 Legislative Session to examine the state's transportation funding needs, recommend any actions or legislation necessary for alternative funding mechanisms, and to improve the state's transportation systems and infrastructure. The idea of a regional transportation tax in some form was proposed and considered in the following years until last year when the General Assembly passed House Bill 277[16] which, if approved by the voters in a referendum in the 2012 election, provides for a 1 percent regional transportation sales and use tax to be imposed for a period of ten years in 12 newly created special districts, the geographical boundary of each corresponds with and is coterminous with the geographical boundary of the 12 regional commissions. As of November 2010, the DOT's Director of Planning has submitted the recommended investment criteria for each district. The first meeting of each roundtable has since been held.

Georgia is using other innovative financing methods to invest in our transportation infrastructure. The DOT solicited its first public-private partnership (P3) in March of this year to develop 39 miles of tolled highway lanes, or "managed lanes," in the northwest metro area of Atlanta. P3s allow the state to leverage limited funds by partnering with a private sector partner to finance and develop the project. The managed lanes will be new, separate roadways where drivers pay

[16] See 2010 Session Highlights document for more information on House Bill 277.

tolls that rise and fall according to the level of traffic. The idea is to keep traffic moving at a steady pace, thereby easing congestion. The managed lanes would also be reversible, meaning that they could be used for inbound traffic in the morning and then reversed to let commuters use them for their trips back home later in the day. This concept is also being addressed with a federal Congestion Reduction Demonstration Program grant to convert HOV lanes on I-85 to managed lanes. Other P3s currently being pursued by DOT include the development of a multimodal passenger terminal in downtown Atlanta which will serve as a hub for rail and bus services, as well as a project to develop a rest area advertising program.

Georgia is also continuing to develop and improve transit services. During the fall of 2010, U.S. Transportation Secretary Ray LaHood announced that our state will receive a $4.1 million grant for a new high-speed rail system that would connect Atlanta to Charlotte, North Carolina. This announcement is in addition to an award of a federal grant totaling $47 million for a streetcar system in Atlanta. Federal grants are imperative for the development of transit because the Constitution prohibits DOT from spending money on anything but roads and bridges. DOT is studying other high speed rail corridors as well, including one from Atlanta to Chattanooga. A passenger service train from Macon to Atlanta is also being developed by DOT.

The metro Atlanta region has spent the last several years working to improve and expand its existing transit services. In 2006, metro Atlanta's major transportation entities created a new special-purpose agency known as the Transit Planning Board (TPB). A key task of the TPB was the development of a long-range regional transit system, known as Concept 3, which was completed in 2008. The TPB also recommended establishing a permanent, legally-constituted transit governance structure. To address this issue, the Joint Transit Governance Study Commission was created in House Bill 277. The Commission released a preliminary report on the feasibility of combining all of the regional public transportation entities into an integrated regional transit body in December 2010.

The ability of DOT to finance and construct projects that take multiple years became a significant issue in the 2010 Legislative Session. The Constitution prohibits any agency from budgeting funds for projects more than one year out. However, major transportation improvements and projects require several years to construct. Senate Resolution 821 sought to amend the Constitution to allow DOT to budget for one project over several years rather than just one year. However, this amendment was not approved by the voters and it is unclear whether or not this issue will be addressed in the 2011 Legislative Session.

VETERANS, MILITARY, AND HOMELAND SECURITY

Delayed Foreclosure Proceedings for Certain Service Members

Foreclosures have impacted Americans regardless of their profession or income. But it is a much more difficult and stressful issue for active duty military personnel stationed overseas to manage and work through. In response to this, states are enacting legislation to delay or extend the time it takes for lenders to carry out foreclosure proceedings anywhere from 90 to 120 days.

Such legislation would put Georgia's foreclosure law in parallel with federal regulations. Although new legislation would not prevent lenders from foreclosing on military personnel properties, it would help slow the process which could give the owner more time to find ways to solve the problem. Moreover, legislation recently enacted in North Carolina requires a service member's property under foreclosure to be handled by a judge, which entails a longer process than a foreclosure put in front of a court clerk.

A COMPARISON OF SELECT ARIZONA, GEORGIA, AND FEDERAL IMMIGRATION CONTROL STATUTES

ISSUE	ARIZONA	GEORGIA	FEDERAL
Employee Verification	Arizona requires every public and private employer to participate in the E-verify program. **Penalties** For a first violation of knowingly or intentionally hiring an unauthorized alien, the court: ▪ Orders the employer to terminate the employment of all unauthorized aliens; ▪ Subjects the employer to a three year probationary period for the business location where the unauthorized alien performed work; ▪ Orders the employer to file a signed sworn affidavit within three business days after the order is issued that states that the employer has terminated the employment of all unauthorized aliens in the state and that the employer will not intentionally or knowingly employ an unauthorized alien. The court will order the appropriate agencies to suspend all licenses that are held by the employer if the employer fails to file the affidavit within three business days. ▪ May order the appropriate agencies to suspend all licenses that are held by the employer for up to ten business days. For a second violation, the court will order the appropriate agencies to permanently revoke all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location, but a license is necessary to operate the employer's business in general, the court will order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business. The violation is considered: ▪ A first violation by an employer at a business location if the violation did not occur during a probationary period for that employer's business location. ▪ A second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court. Proof of verifying the employment authorization of an employee through the e-verify program creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien. *(Article 2 of Title 23)*	Georgia requires public employers and all contractors and subcontractors wishing to do work for public employers to participate in the E-verify program to verify employment eligibility of all newly hired employees. Before a bid for any such service is considered by a public employer, the bid must include a signed, notarized affidavit. *(O.C.G.A. 13-10-91 et seq.)* **Penalties** Contractors and subcontractors convicted for false statements based on a violation of this subsection shall be prohibited from bidding on or entering into any public contract for 12 months following such conviction. *(O.C.G.A. 13-10-91(b)(5))*	Under the Immigration and Nationality Act (INA), employers may hire only persons who may legally work in the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). Employers must keep each I-9 on file for at least three years, or one year after employment ends, whichever is longer. I-9s are not filed with the federal government but must be retained by the employer. **Civil Penalties** Requires the employer to cease and desist from such violations and to pay a civil penalty in an amount of: 1st Offense: From $250 to $2,000 for each unauthorized alien; 2nd Offense: From $2,000 to $5,000 for each unauthorized alien: or 3rd and Subsequent Offense: From $3,000 to $10,000 for each unauthorized alien. **Criminal Penalties** Any person or entity which engages in a pattern or practice of violations will be fined up to $3,000 for each unauthorized alien, imprisoned for up to six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels. Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral, the A.G. may bring a civil action requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity. *(8 USC 1324a)*
Payroll Tax Reporting	None, but may be prosecuted under the state's tax evasion statutes as well as its employee verification laws.	No payment or compensation paid for labor services to an individual totaling $600.00 or more in a taxable year, may be claimed and allowed as a deductible business expense for state income tax purposes unless such individual is an	Tax Evasion: Any person who willfully attempts in any manner to evade or defeat any tax will, in addition to other penalties provided by law, be guilty of a felony and, upon conviction, fined up to $100,000 ($500,000 in the case of a corporation),

ISSUE	ARIZONA	GEORGIA	FEDERAL
		authorized employee. This provision applies whether or not an IRS Form 1099 or W-2 is issued in conjunction with such payments. However, this provision does not apply: ▪ To any business that has enrolled and participates in E-verify program; or is exempt from compliance with federal employment verification procedures; ▪ To any individual hired prior to January 1, 2008; ▪ To any taxpayer where the individual being paid is not directly compensated or employed by the taxpayer. ▪ To payments, compensation, or other remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the Georgia Department of Driver Services. *(O.C.G.A. 48-7-21.1)* **Penalties** None specific to provision, however, a violation would fall under current state tax evasion laws (felony if over $3,000) and failure to supply proper information (misdemeanor). *(O.C.G.A. 48-7-2 and 48-7-5)*	or imprisoned up to 5 years, or both, together with the costs of prosecution. *(26 USC 7201)* Perjury: Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter will be guilty of a felony and, upon conviction, will be fined up to $100,000 ($500,000 in the case of a corporation), or imprisoned up to 3 years, or both, together with the costs of prosecution. *(26 USC 7206)*
Anti-Sanctuary Policies	Arizona law prohibits state or local officials or agencies from limiting or restricting the enforcement of federal immigration laws. It also allows Arizona residents to bring an action to challenge any official or agency that adopts or implements a policy that limits or restrict the enforcement of federal immigration law. **Penalties** Violations are subject to civil penalties of $500 to $5,000 for each day the policy remains in effect after the action is filed. The money collected from these penalties is deposited in the Gang and Immigration Intelligence Team Enforcement Mission Fund. The fund is for: (1) gang and immigration enforcement; and (2) county jail reimbursement costs relating to illegal immigration. The law does allow recovery of court costs and reasonable attorney's fees by a: (1) person, including state or local officials; or (2) state or local agency, that prevails on the merits in a proceeding. It also indemnifies law enforcement officers against reasonable costs and expenses, including attorney's fees, incurred in any proceeding against them, unless the officer acted in bad faith. *(11-1051)*	Prohibits local governments, whether acting through its governing body or by an initiative, referendum, or any other process, from enacting, adopting, implementing, or enforcing any sanctuary policy. A "sanctuary policy" is defined as any regulation, rule, policy, or practice which prevents local officials or employees from reporting a person's immigration status or otherwise providing immigration status information while such local official or employee is acting within the scope of his or her official duties. **Penalties** Local governments that violate this provision will be subject to the withholding of state funding or state administered federal funding. DCA, DOT, or any other state agency that provides funding to local governing bodies may require certification of compliance with this legislation as	None.

ISSUE	ARIZONA	GEORGIA	FEDERAL
		a condition of funding. *(O.C.G.A. 36-80-23)*	
Determination of Person's Immigration Status Due to Reasonable Suspicion and Arrests	During a lawful stop, detention, or arrest in the enforcement of another state or local law, law enforcement are required to make a reasonable attempt to determine the person's immigration status where reasonable suspicion exists that the person is unlawfully present in the country. Law enforcement should only make this attempt when practicable and when doing so would not hinder or obstruct an investigation. Anyone arrested cannot be released until his or her immigration status is determined and verified with the federal government. Law enforcement may not consider race, color, or national origin when implementing this provision. A person is presumed to be lawfully present if the person provides to law enforcement: (1) a valid Arizona driver's license or identification card; (2) a valid tribal identification; or (3) a valid United States, state, or local government-issued identification that requires lawful presence before issuance. Immigration status may be determined by: (1) a law enforcement officer authorized by the federal government to do so; or (2) U.S. Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) pursuant to federal law. **Penalties** Requires ICE or CBP to be immediately notified when someone unlawfully present is convicted of a violation of state or local law, discharged from prison, or assessed a fine. If a law enforcement agency verifies that someone in its custody is unlawfully present, the agency may transport the person to federal custody. *(11-1051)*	Although Georgia law does not authorize a law enforcement officer to confirm lawful presence prior to an arrest, state law, in compliance with Article 36 of the Vienna Convention on Consular Relations, does require jailers to make a reasonable effort to determine the nationality of any incarcerated person. If the prisoner is a foreign national charged with a felony, DUI, driving without a license, or with a misdemeanor of a high and aggravated nature, the jailer must make a reasonable effort to verify that the prisoner has been lawfully admitted into the U.S. *(O.C.G.A. 42-4-14)* Arizona and Georgia laws do overlap somewhat with the Section 287(g) program as well (See Below).	This is not addressed by federal law in the same detail as in Arizona's. However, federal law does authorize law enforcement officers to make an arrest for violating immigration laws. *(8 USC 1324(c))* Another existing federal statute related to falls under *Willful Failure To Register* and *Personal Possession of Registration. (8 USC 1306(a)) –* (See Below)
Willful Failure to Complete or Carry Immigrant Registration	A person commits the offense of the willful failure to complete or carry an immigrant registration document if the person violates certain federal requirements for noncitizens to register and carry registration paperwork. Immigration status may be determined by: (1) a law enforcement officer authorized by the federal government to do so; or (2) ICE or CBP pursuant to federal law. Law enforcement may not consider race, color, or national origin when implementing this provision **Penalties** The offense is a misdemeanor with a maximum fine of $100 and maximum imprisonment of: (1) 20 days for a first violation; or (2) 30 days for a subsequent violation. The individual must also pay jail costs. Violators are ineligible for a suspended sentence, probation, pardon, commutation of sentence, or early release, with exceptions. Records relating to a person's immigration status are automatically admissible without further foundation or testimony if the government agency responsible for maintaining the records certifies their authenticity.	None.	Personal possession of registration: Every alien, eighteen years of age and over, must at all times carry and have in his or her personal possession any certificate of alien registration or alien registration receipt card issued to them. Any alien who fails to comply with this provision will be guilty of a misdemeanor and be fined up to $100 or be imprisoned up to thirty days, or both. *(8 USC 1304(e))* Willful failure to register: Any alien required to apply for registration and to be fingerprinted in the U.S. who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien will be guilty of a misdemeanor and be

ISSUE	ARIZONA	GEORGIA	FEDERAL
	The law provides that this offense does not apply to persons who maintain authorization from the federal government to remain in the country. *(13-1509)*		fined up to $1,000 or be imprisoned up to six months, or both. *(8 USC 1306(a))*
Section 287g Program	Arizona's Department of Public Safety, Correction's Department, as well as several local agencies participate in the Section 287(g) program. The difference between the Section 287(g) program and Arizona's new law is that the Section 287(g) program carries out this task once the inmate has been charged, booked, and admitted into a local jail. The Arizona law, however, requires the law enforcement officer to make a reasonable attempt, when practicable, to determine the immigration status of a person involved in a stop, detention, or arrest in the enforcement of any other state or local law or ordinance where reasonable suspicion exists that the person is an alien and is unlawfully present.	Currently, the Georgia Department of Public Safety, and the Sheriff's offices of Cobb, Gwinnett, Hall, and Whitfield counties participate in the Section 287(g) program.	The 287(g) program was established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and authorizes the Secretary of DHS to enter into agreements with state and local law enforcement agencies. Under these agreements, designated state and local officers perform immigration law enforcement functions, provided that the officers receive appropriate training and function under the supervision of ICE officers.
Removal of Criminal Aliens from Prisons and Jails	In 1996, Arizona implemented Release to Detainers/Deportation Orders from the Arizona Department of Corrections (ADC). This form of unsupervised release authorizes the deportation of foreign-born inmates upon completion of one-half of the imposed sentence(s) pursuant to the Arizona Revised Statutes. This release is granted solely for deportation purposes to all foreign-born inmates who do not have any previous felony or sexually based convictions and have a final order of removal. The ICE field office in Phoenix has removed a total of 2,678 criminal aliens through this program since 2005. *(41-1604.14)*	On October 3, 2008, ICE and Georgia signed an agreement to implement the Rapid REPAT program, similar to the program Georgia has had in place since 1995. Through the Rapid REPAT program and its predecessor, the state of Georgia has removed 3,612 criminal aliens for an estimated cost savings of $204 million as of August 2009. *(O.C.G.A. 42-1-11.1)*	The ICE Rapid REPAT (Removal of Eligible Parolees Accepted for Transfer) program is designed to expedite the process of removing non-violent criminal aliens by allowing selected criminal aliens incarcerated in U.S. prisons and jails to accept early release in exchange for voluntarily returning to their country of origin. Eligible aliens agree to waive appeal rights associated with their state conviction(s) and must have final removal orders. If aliens re-enter the United States, state statutes must provide for revocation of parole and confinement for the remainder of the alien's original sentence. Additionally, aliens may be prosecuted under federal statutes that provide for up to 20 years in prison for illegally reentering the United States. *(8 USC 1231)*
Gang and Immigration Intelligence Team Fund	Arizona has established a Gang and Immigration Intelligence Team Enforcement Mission Fund to be used for gang and immigration enforcement and for county jail reimbursement costs relating to illegal immigration. It is funded through fines levied against public entities with sanctuary policies and monies appropriated by the legislature. *(41-1724)*	Georgia does have a "Georgia Street Gang Terrorism and Prevention Act," but the act does not have a funding mechanism similar to Arizona's. *(O.C.G.A. 16-15-1 et. Seq.)*	N/A
Human Smuggling[17]	It is unlawful for a person to intentionally engage in the smuggling of human beings for profit or commercial purpose. A violation is a: ▪ Class 4 felony (1.5 to 3 years in prison for first time offender); ▪ Class 2 felony (4 to 10 years in prison for first time offender) if the human being who is smuggled is under eighteen years of age and is not accompanied by a family member over eighteen years of age or the offense involved the use of a deadly weapon or dangerous instrument; or	None.	It is a violation to transport or attempt to transport unauthorized aliens to or into the U.S., transport them within the U.S., harbor unlawful aliens, encourage entry of illegal aliens, or conspire to commit these violations, knowingly or in reckless disregard of illegal status.

[17] Human smuggling is the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries laws, either clandestinely or through deception, such as the use of fraudulent documents. Unlike human trafficking, human smuggling is generally with the consent of the person(s) being smuggled, who often pay large sums of money. Unlike smuggling, which is often a criminal commercial transaction between two willing parties who go their separate ways once their business is complete, human trafficking specifically targets the trafficked person as an object of criminal exploitation. This document only addresses human smuggling and not the more complex and more serious issue of human trafficking. Please note, however, that Georgia does have an anti-trafficking law found under O.C.G.A. 16-5-46.

ISSUE	ARIZONA	GEORGIA	FEDERAL
	▪ Class 3 felony (2.5 to 7 years in prison for first time offender) if the offense involves the use or threatened use of deadly physical force. Notwithstanding any other law, in the enforcement of this provision a peace officer may lawfully stop any person who is operating a motor vehicle if the officer has reasonable suspicion to believe the person is in violation of any civil traffic law. "Smuggling of human beings" means the transportation, procurement of transportation, or use of property or real property by a person or an entity that knows or has reason to know that the person or persons transported or to be transported are not U.S. citizens, permanent resident aliens, or persons otherwise lawfully in this country or have attempted to enter, entered, or remained in the U.S. in violation of law. *(13-2319)*		**Penalties** Penalties vary widely, but can be as high as 30 years, depending on circumstances, or even life in prison or a death sentence if death results from this crime. There are also provisions for seizure and forfeiture of property including any vessel, vehicle, or aircraft that has been used in the commission of the crime. *(8 USC 1324)*
Unlawfully Stopping to Hire and Pick Up Passengers for Work and Unlawfully Applying for or Soliciting Work	It is a misdemeanor for an occupant of a motor vehicle stopped on a street, roadway, or highway to hire or attempt to hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes traffic. The passengers who enter such a motor vehicle to be hired and transported for work commit a misdemeanor. It is also a misdemeanor for an unlawfully present and unauthorized person to knowingly apply for work, solicit work in a public place, or perform work in Arizona. Law enforcement may not consider race, color, or national origin when implementing this provision. An alien's immigration status may be determined by: ▪ A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status. ▪ The United States immigration and customs enforcement or the United States customs and border protection pursuant to 8 USC 1373(c). **Penalties** Violators can face up to six months' imprisonment for a first offense. *(13-2928)*	None.	None.
Unlawfully Transporting, Concealing, or Encouraging	It is unlawful for a person who is in violation of a criminal offense to: ▪ Transport or attempt to transport an illegal immigrant in Arizona in furtherance of the immigrant's illegal presence in the country if the person knows or recklessly disregards that the immigrant is in the U.S. unlawfully; ▪ Conceal, harbor, or shield an illegal immigrant from detection (or attempt to do so) in any place in Arizona, including a building or means of transportation, if the person knows or recklessly disregards that the immigrant is in the U.S. unlawfully; or ▪ Encourage or induce an illegal immigrant to enter or reside in Arizona if the person knows or recklessly disregards the fact that such entering or residing would violate law. Immigration status may be determined by: (1) a law enforcement officer authorized by the federal government to do so; or (2) ICE or CBP pursuant to federal law.	None.	It is illegal for any person to: ▪ Know or in reckless disregard of the fact that an alien has come to, entered, or remains in the U.S. in violation of law, transports or moves, or attempts to transport or move such alien within the U.S.; ▪ Know or in reckless disregard of the fact that an alien has come to, entered, or remains in the U.S. in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; ▪ Encourage or induce an alien to come to, enter, or reside in the U.S., knowing or in

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	These provisions do not apply to: (1) child protective services workers acting in their official capacity; or (2) first responders, ambulance attendants, or emergency medical technicians who are transporting an illegal immigrant pursuant to law. **Penalties** Violations are misdemeanors subject to a maximum of six months' imprisonment for a first offense. Violators are also subject to a fine of at least $1,000. However, a violation that involves 10 or more illegal immigrants is a felony subject to a maximum of one and a half years' imprisonment for a first offense and a fine of at least $ 1,000 for each illegal immigrant involved. Any means of transportation used in committing such a violation is subject to mandatory immobilization or impoundment. *(13-2929)*		reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; ▪ Engage in any conspiracy to commit any of the preceding acts; or ▪ Aid or abet the commission of any of the preceding acts. **Penalties** Penalties range from fines to up to 20 years in prison, depending on the circumstances and numbers of illegal aliens involved. A life imprisonment or death sentence may be handed down if any of the above violations result in a death. *(8 USC 1324)*
Arrests Without a Warrant	Under Arizona law, a peace officer may arrest someone without a warrant if he or she has probable cause to believe that the person has committed a public offense that makes the person removable from the United States. *(13-3883)*	None.	N/A
Immobilization or Impoundment of Vehicles	A peace officer must cause the removal of and either immobilize or impound a vehicle if the officer determines that it is used by someone to: ▪ Transport or attempt to transport an illegal immigrant in Arizona to further an illegal immigrant's illegal presence in the U.S. in violation of a criminal offense when the person knows or recklessly disregards the fact that the illegal immigrant has come to, entered, or remains in the U.S. in violation of law; or ▪ Conceal, harbor, shield from detection, or attempt to do so, an illegal immigrant in Arizona in a vehicle if the person knows or recklessly disregards the fact that the illegal immigrant has come to, entered, or remains in the U.S. as a violation of law. *(28-3511 and 13-2929)*	None. However, in 2008, House Bill 978 would have required law enforcement officers to impound any motor vehicle whose driver is not licensed to drive. The vehicle can only be released to the owner or the owner's spouse, child, or parent upon proof of relationship and upon displaying an unexpired driver's license. This legislation was VETOED.	This would fall under *8 USC 1324* as noted above. It is a violation to transport or attempt to transport unauthorized aliens to or into the U.S., transport them within the U.S., harbor unlawful aliens, encourage entry of illegal aliens, or conspire to commit these violations, knowingly or in reckless disregard of illegal status. This statute includes provisions for seizure and forfeiture of property including any vessel, vehicle, or aircraft that has been or is being used in the commission of the crime. *(8 USC 1324)*
Public Benefits	Except where exempted by federal and any other state law, legal residents of the U.S. or otherwise lawfully present in the U.S. must submit at least one of eleven approved identification documents to the entity that administers a federal, state, or local public benefit demonstrating lawful presence in the U.S. Any person who applies for public benefits must sign a sworn affidavit stating that the document presented is true under penalty of perjury. Failure to report discovered violations of federal immigration law by an employee of a public agency that administers any public benefit is a class 2 misdemeanor. If that employee's supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor. For the purposes of this section, "public benefit" has the same meaning prescribed in 8 USC 1611 and 1621. *(1-501 and 1-502)*	Except where exempted by federal and any other state law, every agency or political subdivision must verify the lawful presence in the U.S. of any applicant for public benefits. For any applicant who has executed an affidavit that he or she is lawfully present, eligibility for public benefits will be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by DHS. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence. *(O.C.G.A. 50-36-1)*	Georgia's law essentially mirrors federal law. *(8 USC 1611, 1621, or 1623)*
Post Secondary	Arizona law denies in-state college tuition and other state-funded financial aid to illegal immigrants.	Georgia law mirrors federal law and prohibits illegal immigrants from receiving state-funded	Illegal immigrants are prohibited from receiving federally- and state-funded student financial aid as

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Education	In addition, every college must report on December 31 and June 30 of each year to the joint legislative budget committee the total number of students who were not entitled to classification as an in-state student and the total number of students who did not qualify for state-funded financial aid because the student was not a citizen or legal resident of the U.S. or is without lawful immigration status. *(15-1802, 15-1803, and 15-1825)*	student financial aid. *(O.C.G.A. 50-36-1)* Under a Board of Regents' directive, illegal immigrants do not qualify for in-state tuition. The Board also approved policy 4.1.6 that prohibits illegal immigrants from attending any public college that does not have the space to admit all academically qualified applicants	they fall under the definition of a "Federal public benefit" and "State public benefit." *(8 USC 1611 and 18 USC 1621)*