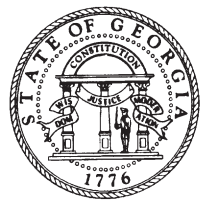
OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

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and
The Editorial Staff of LexisNexis®



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Chapters 13-40

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and the Georgia Appeals Reports

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THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 1st day of July, in the year of our Lord Two Thousand and Twenty-one and of the Independence of the United States of America the Two Hundred and Forty-Fifth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

Preface

This volume replaces the 2013 edition of Volume 38A of the Official Code of Georgia Annotated, as supplemented by the 2020 Cumulative Supplement. The 2013 Volume 38A and its 2020 supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 50 (Chapters 13-40) by the General Assembly through the 2021 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 14, 2021. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice Forms, American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2019, 2020, and 2021 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2019 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Cross references. — Institution and prosecution of criminal proceedings involving property of Department of Transportation, § 32-1-4 et seq. Transportation of trash, refuse, and garbage across state boundaries for dumping without permission, § 36-1-16. Competition for public work bids, T. 36, C. 84.

Law reviews. — For article, "State-Created Property and Due Process of Law: Filling the Void Left by Engquist v. Oregon Department of Agriculture," see 44 Ga. L. Rev. 161 (2009).

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Cross references. — Monthly meetings of county boards of education, § 20-2-58. Administrative procedure before Department of Human Services and county boards of health, § 31-5-1 et seq. Conducting of hearings by Commissioner of Insurance, § 33-2-17 et seq. Administrative proceedings before Department of Human Services and county boards of health pursuant to enforcement of mental health laws, § 37-1-50 et seq. Uniform property tax administration and equalization, § 48-5-260 et seq.

Law reviews. — For survey of Eleventh Circuit decisions covering law applicable to administrative agencies, see 35 Mercer L. Rev. 1029 (1984). For annual survey of administrative law, see 36 Mercer L. Rev. 393 (1984). For article surveying recent developments in administrative law, see 37 Mercer L. Rev. 503 (1985). For article, "The Office of Legislative Counsel," see 23 Ga. St. B.J. 114 (1987). For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For article surveying recent developments in administrative law, see 39 Mercer L. Rev. 33 (1987). For article, "State Administrative Agency Contested Case Hearings," see 24 Ga. St. B.J. 193 (1988). For survey article on administrative law for the period from June 1, 1997 through May 31, 1999, see 51 Mercer L. Rev. 103 (1999). For survey article on administrative law for the period June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 35 (2003). For survey article on appellate practice and procedure, see 60 Mercer L. Rev. 21 (2008). For article, "Administrative Law in and Era of Partisan Volatility," see 69 Emory L.J. 1 (2019). For annual survey on administrative law, see 71 Mercer L. Rev. 1 (2019).

For note, "If Established by Law, Then an Administrative Judge is an Officer," see 53 Ga. L. Rev. 311 (2018).

JUDICIAL DECISIONS

Proceedings of city's board of zoning adjustment. — O.C.G.A. T. 50, C. 13 does not apply to proceedings of city's board of zoning adjustment (BZA) because the Georgia Administrative Procedure Act applies only to state agencies, and the BZA is a creature of local law. LaFave v. City of Atlanta, 258 Ga. 631, 373 S.E.2d 212 (1988).

State Personnel Board decision. — When the plaintiff, who was demoted by the plaintiff's employer, Georgia Retardation Center, a division of the Department of Human Resources (DHR), pursued the plaintiff's administrative remedies, culminating in the denial of the plaintiff's appeal by the State Personnel Board, and then petitioned the superior court for judicial review, it was held that the plaintiff's employer was governed by the Georgia Administrative Procedure Act (APA), O.C.G.A. § 50-13-1 et seq., but the decision of which plaintiff sought review was one made not by DHR but by the State Personnel Board, which is not governed by the APA, but by the provisions of O.C.G.A. § 45-20-1 et seq. relating to the State Personnel Board. Duval v. Department of Human Resources, 183 Ga. App. 726, 359 S.E.2d 756 (1987).

Due process required at hearings. — Georgia Administrative Procedure Act, § 50-13-1 et seq., requires one holding a hearing (anything beyond a "preliminary investigation") to afford notice, right to counsel, right to present evidence, power of subpoena, and other elements of due process with an opportunity for final judi-

cial review. Caldwell v. Bateman, 252 Ga. 144, 312 S.E.2d 320 (1984).

Motor carrier's certificate of convenience and necessity. — Administrative procedure applicable on an application for, or a proceeding to amend, a motor carrier's certificate of convenience and necessity is not that prescribed by the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., in view of Ga. L. 1975, p. 404, which made the Public Service Commission otherwise subject to O.C.G.A. T. 50, C. 13 except as to any rate, charge, classification, service hearing, procedure, or matter pertaining to any motor contract carrier, motor common carrier, or railroad. The applicable procedure is that established by O.C.G.A. § 46-2-51. RTC Transp., Inc. v. Georgia Pub. Serv. Comm'n, 165 Ga. App. 539, 301 S.E.2d 896 (1983).

OPINIONS OF THE ATTORNEY GENERAL

State Ethics Commission. — There is no statutory provision in O.C.G.A. T. 50, C. 13 or in O.C.G.A. § 50-14-3 which would authorize the State Ethics Commission to deliberate in closed session after hearing evidence in a contested case. 1989 Op. Att'y Gen. No. 89-6.

Georgia Fire Academy is not an agency for purposes of Ga. L. 1964, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C.13) and, as a result, is not required to follow the procedure for adoption of rules as set forth in that law in developing a course of instruction. 1980 Op. Att'y Gen. No. U80-52.

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007).

50-13-1. Short title; purpose.

This chapter shall be known and may be cited as the "Georgia Administrative Procedure Act." It is not intended that this chapter create or diminish any substantive rights or delegated authority, but this chapter is meant to provide a procedure for administrative determination and regulation where expressly authorized by law or otherwise required by the Constitution or a statute of this state.

History. — Ga. L. 1964, p. 338, § 1; Ga. L. 1965, p. 283, § 1.

Law reviews. — For article advocating consistency in statutory provisions governing review of administrative conduct in Georgia, prior to the enactment of O.C.G.A. Ch. 13, T. 50, see 15 Ga. B.J. 153 (1952). For article discussing procedural problems with judicial review of administrative conduct in Georgia prior to the enactment of O.C.G.A. Ch. 13, T. 50, see 15 Ga. B.J. 297 (1953). For article, "The Georgia Uniform Procedure Act," see 1 Ga. St. B.J. 269 (1964). For article discussing Georgia administrative law during 1975 to 1977, see 29 Mercer L. Rev. 1 (1977). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015).

For note discussing application of procedural due process requirements to hearings by administrative tribunals, see 32 Mercer L. Rev. 359 (1980).

JUDICIAL DECISIONS

Exhaustion of administrative remedies. — Intent of the legislature was to provide by Ga. L. 1964, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50) an administrative procedure to resolve conflicts within the authority vested in administrative agencies and boards by statute without resort to courts of record in the first instance. Georgia State Bd. of Dental Exmrs. v. Daniels, 137 Ga. App. 706, 224 S.E.2d 820 (1976).

Alternative remedy available. — Trial court properly denied the defendant's amended motion for a new trial holding that the administration of breath tests pursuant to Ga. Comp. R. & Regs. 92-3-.06(12)(b) did not violate the due process clause under both U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. I given that: (1) the claim was raised for the first time in the new trial motion, and was thus untimely; (2) the defendant had an alternative remedy under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq.; (3) the defendant failed to show that the Division of Forensic Sciences (DFS) eliminated meaningful procedures for conducting breath tests when the division promulgated the rule; and (4) the techniques and methods approved by DFS were sufficient to ensure fair and accurate testing. Palmaka v. State, 280 Ga. App. 761, 634 S.E.2d 883 (2006).

Civil Practice Act was inapplicable to proceedings under the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 et seq. Georgia State Bd. of Dental Exmrs. v. Daniels, 137 Ga. App. 706, 224 S.E.2d 820 (1976).

Provisions strictly construed. — Ga. L. 1937, p. 806 (see O.C.G.A. § 34-8-222) and the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 et seq., are in derogation of common law and must be strictly construed. Caldwell v. Corbin, 152 Ga. App. 153, 262 S.E.2d 516 (1979).

Administrative review precludes equitable relief. — When a statute provides a party with a means of review by an administrative agency, such procedure is generally an adequate remedy at law so as to preclude the grant of equitable relief. Brogdon v. State Bd. of Veterinary Medicine, 244 Ga. 780, 262 S.E.2d 56 (1979).

Hearings on suspension of driver's license for refusal to submit to breath test. — See Hardison v. Fayssoux, 168 Ga. App. 398, 309 S.E.2d 397 (1983).

Reversing agency decision on ground not raised before agency. — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. Ga. Peace Officer Standards and Training Council v. Hodges, 330 Ga. App. 145, 767 S.E.2d 286 (2014).

Compliance with appeal procedures of administrative decision required. — In a case involving a white supremacist organization being denied a permit for the Adopt-A-Highway program administered by the Georgia Department of Transportation (Department), the court dismissed the Department's appeal for lack of jurisdiction because the Department sought review of a decision of a state administrative agency and was required under O.C.G.A. § 5-6-35(a)(1) to bring the Department's appeal by way of an application for discretionary review, but failed to do so. State of Ga. v. International Keystone Knights of the Ku Klux Klan, Inc., 299 Ga. 392, 788 S.E.2d 455 (2016).

Cited in Hood v. Rice, 120 Ga. App. 691, 172 S.E.2d 170 (1969); Department of Pub. Safety v. Byars, 127 Ga. App. 190, 192 S.E.2d 926 (1972); O'Neal v. Georgia Real Estate Comm'n, 129 Ga. App. 211, 199 S.E.2d 362 (1973); Sumter County Bd. of Educ. v. Mosley, 147 Ga. App. 478, 249 S.E.2d 284 (1978); Keramidas v. Department of Human Resources, 147 Ga. App. 820, 250 S.E.2d 560 (1978); Hicks v. Georgia State Bd. of Pharmacy, 553 F. Supp. 314 (N.D. Ga. 1982); Johnsen v. Collins, 875 F. Supp. 1571 (S.D. Ga. 1994); Brown v. Barrow, 512 F.3d 1304 (11th Cir. 2008); Atmos Energy Corp. v. Ga. PSC, 290 Ga. App. 243, 659 S.E.2d 385 (2008); Atmos Energy Corp. v. Ga. PSC, 290 Ga. App.

243, 659 S.E.2d 385 (2008); Carolina Tobacco Co. v. Baker, 295 Ga. App. 115, 670 S.E.2d 811 (2008); Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009); Scarborough v. Hunter, 293 Ga. 431, 746 S.E.2d 119 (2013); DeKalb County Sch. Dist. v. Ga. State Bd. of Educ., 294 Ga. 349, 751 S.E.2d 827 (2013); Ga. Dep't of Human Servs. v. Addison, 304 Ga. 425, 819 S.E.2d 20 (2018); Amusement Leasing, Inc. v. Ga. Lottery Corp., 352 Ga. App. 243, 834 S.E.2d 330 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Purpose and intent of the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1, is not to create additional substantive requirements in what is cause for revocations of a license by an administrative agency; rather, the purpose and intent of that law is to provide uniform, minimum procedural requirements to be followed by an administrative agency in determining the legal rights, duties, or privileges of a party in a matter in which the particular agency regulates and to which the law applies. 1965-66 Op. Att'y Gen. No. 65-73.

Licensee momentarily complying but with history of noncompliance. — Administrative agency may proceed to revoke license of licensee in conformity with the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 and the fact that the licensee shows at the agency's proceedings that the licensee is momentarily complying with all lawful requirements for the retention of the license would be immaterial; the real question to be resolved by the agency's proceedings would be whether the licensee had been in noncompliance with all lawful requirements for the retention of the license at the time that the licensee is alleged to have been in noncompliance with such requirements. 1965-66 Op. Att'y Gen. No. 65-73.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 1A Am. Jur. Pleading and Practice Forms, Administrative Law, § 1 et seq.

50-13-2. Definitions.

As used in this chapter, the term:

(1) "Agency" means each state board, bureau, commission, department, activity, or officer authorized by law expressly to make rules and regulations or to determine contested cases, except the General Assembly; the judiciary; the Governor; the State Board of Pardons and Paroles; the State Financing and Investment Commission; the State Properties Commission; the Board of Bar Examiners; the Board of Corrections and its penal institutions; the State Board of Workers' Compensation; all public authorities except as otherwise expressly provided by law; the State Personnel Board; the Department of Administrative Services or commissioner of administrative services; the Board of Regents of the University System of Georgia; the Technical College System of Georgia; the Nonpublic Postsecondary Education Commission; the Department of Labor when conducting hearings related to unemployment benefits or overpayments of unemployment benefits; the Department of Revenue when conducting

hearings relating to alcoholic beverages, tobacco, or bona fide coin operated amusement machines or any violations relating thereto; the Georgia Higher Education Savings Plan; the Georgia ABLE Program Corporation; any school, college, hospital, or other such educational, eleemosynary, or charitable institution; or any agency when its action is concerned with the military or naval affairs of this state. Such term shall include the State Board of Education and Department of Education, subject to the following qualifications:

(A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid rules adopted by the State Board of Education and Department of Education prior to January 1, 1990, are ratified and validated and shall be effective until January 1, 1991, whether or not such rules were adopted in compliance with the requirements of this chapter; and

(B) Effective January 1, 1991, any rule of the State Board of Education or Department of Education which has not been proposed, submitted, and adopted in accordance with the requirements of this chapter shall be void and of no effect.

(2) "Contested case" means a proceeding, including, but not restricted to, rate making, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(2.1) "Electronic" means, without limitation, analog, digital, electronic, magnetic, mechanical, optical, chemical, electromagnetic, electromechanical, electrochemical, or other similar means.

(3) "License" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(3.1) "Mailed" includes electronic means of communication.

(3.2) "Mailing list" includes electronic means of distribution.

(4) "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(5.1) "Record" means information created, transmitted, received, or stored either in human perceivable form or in a form that is retrievable in human perceivable form.

(6) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include the following:

(A) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(B) Declaratory rulings issued pursuant to Code Section 50-13-11;

(C) Intra-agency memoranda;

(D) Statements of policy or interpretations that are made in the decision of a contested case;

(E) Rules concerning the use or creation of public roads or facilities, which rules are communicated to the public by use of signs or symbols;

(F) Rules which relate to the acquiring, sale, development, and management of the property, both real and personal, of the state or of an agency;

(G) Rules which relate to contracts for the purchases and sales of goods and services by the state or of an agency;

(H) Rules which relate to the employment, compensation, tenure, terms, retirement, or regulation of the employees of the state or of an agency;

(I) Rules relating to loans, grants, and benefits by the state or of an agency; or

(J) The approval or prescription for the future of rates or prices.

History. — Ga. L. 1964, p. 338, § 2; Ga. L. 1965, p. 283, §§ 2-4; Ga. L. 1975, p. 404, § 3; Ga. L. 1980, p. 1573, § 2; Ga. L. 1982, p. 3, § 50; Ga. L. 1982, p. 1463, §§ 6, 13; Ga. L. 1985, p. 283, § 1; Ga. L. 1990, p. 794, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 97, § 50; Ga. L. 1997, p. 404, § 1; Ga. L. 1997, p. 695, § 1; Ga. L. 1999, p. 721, § 2; Ga. L. 2000, p. 1619, § 1; Ga. L. 2001, p. 76, § 4; Ga. L. 2005, p. 175, § 3/HB 98; Ga. L. 2008, p. 335, § 10/SB 435; Ga. L. 2010, p. 470, § 8/SB 454; Ga. L. 2012, p. 446, § 2-105/HB 642; Ga. L. 2012, p. 831, § 14/HB 1071; Ga. L. 2014, p. 730, § 10/HB 714; Ga. L. 2015, p. 83, § 10/HB 353; Ga. L. 2016, p. 588, § 3/HB 768; Ga. L. 2018, p. 762, § 1/HB 790; Ga. L. 2019, p. 919, § 2-4/HB 553.

The 2019 amendment, effective July 1, 2019, deleted "the Georgia Tobacco Community Development Board;" preceding "the Georgia Higher Education Savings Plan" near the end of the first sentence of paragraph (1).

Cross references. — Georgia Achieving a Better Life Experience (ABLE) Act, § 30-9-1 et seq.

Editor's notes. — Ga. L. 1975, p. 404, § 9, not codified by the General Assembly, provides that nothing contained within that Act shall apply to any rate, charge, classification, service, hearing, procedure,

or matter which shall pertain to any motor contract carrier, motor common carrier, or railroad.

Ga. L. 2005, p. 175, § 1/HB 98, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Land Conservation Act.'"

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Ga. L. 2019, p. 919, § 2-2/HB 553, not codified by the General Assembly, provides: "Any assets of the Georgia Tobacco Community Development Board existing as of June 30, 2019, shall devolve by operation of law and without further action to the State of Georgia on July 1, 2019. Any liabilities and obligations of the Georgia Tobacco Community Development Board existing as of June 30, 2019, shall be transferred to and assumed by the State of Georgia, by such instruments as may be required to maintain the same."

Law reviews. — For article, "Administrative Law," see 53 Mercer L. Rev. 81 (2001). For article on 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 185 (2005). For article, "The Status of Administrative Agencies under the Georgia Constitution," see 40 Ga. L. Rev. 1109 (2006). For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010). For article, "Administrative Law," see 63 Mercer L. Rev. 47 (2011). For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 137 (2014). For article, "Researching Georgia Law," see 34 Ga. St. U. L. Rev. 741 (2015). For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 193 (2016).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 84 (2001).

JUDICIAL DECISIONS

Analysis

General Consideration
Agency
1. Included
2. Excluded
Contested Case
Benefits

General Consideration

Ga. L. 1965, p. 283, § 10 (see O.C.G.A. § 50-13-10) must be construed in conjunction with Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2). Irvin v. Woodliff, 125 Ga. App. 214, 186 S.E.2d 792 (1971).

Successful intervenor retains status as mere "intervenor." — One who successfully seeks to intervene in an agency proceeding pursuant to the general provisions of O.C.G.A. T. 50, C. 13 retains status of a mere "intervenor" throughout. Campaign for a Prosperous Georgia v. Georgia Power Co., 174 Ga. App. 263, 329 S.E.2d 570, aff'd, 255 Ga. 253, 336 S.E.2d 790 (1985).

Department manual not "rule" subject to review in declaratory judgment action. — Department of Medical Assistance (now Department of Community Health) manual, which contained "the terms and conditions for receipt of medical assistance reimbursement in Georgia," was not a "rule" and therefore could not be reviewed in a declaratory

General Consideration (Cont'd)

judgment action. Georgia Dep't of Medical Assistance v. Beverly Enters., Inc., 261 Ga. 59, 401 S.E.2d 499 (1991).

Commissioner's requirement not rule. — Insurance commissioner's requirement that an insurer include an interest assumption in calculating the insurers' loss projections, when applying for a rate increase, was a statement of policy or an interpretation made in the context of a contested case, which was an exception to the definition of a rule under O.C.G.A. § 50-13-2(6)(D). United Am. Ins. Co. v. Ins. Dep't of Ga., 258 Ga. App. 735, 574 S.E.2d 830 (2002).

Challenged practice was not a rule. — Trial court erred in granting summary judgment to the two associations on the associations' declaratory judgment action and finding that the state revenue department's prohibition of the practice of "split deliveries" was improper as the challenged practice was not a rule under the Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and was not subject to a declaratory judgment action. Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

Notice requirements. — Healthcare provider did not show that the state community health department committed an error of law in issuing a cease and desist letter directing the healthcare provider to stop operating the provider's diagnostic imaging center until the healthcare provider obtained a certificate of need; the letter of nonreviewability the healthcare provider cited was not a form of permission required by law and, thus, the revocation of the letter, which triggered the need for the certificate of need, was not subject to the notice requirements of O.C.G.A. § 50-13-18(c). N. Atlanta Scan Assocs. v. Dep't of Cmty. Health, 277 Ga. App. 583, 627 S.E.2d 67 (2006).

Judicial Council of Georgia and Board of Court Reporting were part of the judiciary and therefore excluded from coverage. — Judicial Council of Georgia and the Board of Court Reporting of the Judicial Council of Georgia fell within "the judiciary," as that term was used in O.C.G.A. § 50-13-2(1) of the Administrative Procedure Act, and therefore were exempt from the coverage of the Act and immune from a suit challenging a court reporter ethics rule the board adopted. Judicial Council v. Brown & Gallo, LLC, 288 Ga. 294, 702 S.E.2d 894 (2010).

Cited in Orkin Exterminating Co. v. Blackmon, 229 Ga. 146, 190 S.E.2d 43 (1972); Georgia State Bd. of Pharmacy v. Bennett, 126 Ga. App. 307, 190 S.E.2d 788 (1972); Pope v. Cokinos, 231 Ga. 79, 200 S.E.2d 275 (1973); Wall v. American Optometric Ass'n, 379 F. Supp. 175 (N.D. Ga. 1974); Cantrell v. Board of Trustees of Employees' Retirement Sys., 135 Ga. App. 445, 218 S.E.2d 97 (1975); Kirton v. Biggers, 135 Ga. App. 416, 218 S.E.2d 113 (1975); Georgia State Bd. of Dental Exmrs. v. Daniels, 137 Ga. App. 706, 224 S.E.2d 820 (1976); Allen v. State Personnel Bd., 140 Ga. App. 747, 231 S.E.2d 826 (1976); Department of Pub. Safety v. Murphy, 145 Ga. App. 824, 245 S.E.2d 169 (1978); Keramidas v. Department of Human Resources, 147 Ga. App. 820, 250 S.E.2d 560 (1978); Metropolitan Atlanta Rapid Transit Auth. v. Wallace, 243 Ga. 491, 254 S.E.2d 822 (1979); Bradford v. Davidson, 150 Ga. App. 625, 258 S.E.2d 235 (1979); Dix v. State, 156 Ga. App. 868, 275 S.E.2d 807 (1981); Bituminous Cas. Corp. v. United Servs. Auto. Ass'n, 158 Ga. App. 739, 282 S.E.2d 198 (1981); Caldwell v. Liberty Mut. Ins. Co., 248 Ga. 282, 282 S.E.2d 885 (1981); North Fulton Community Hosp. v. State Health Planning & Dev. Agency, 168 Ga. App. 801, 310 S.E.2d 764 (1983); Schieffelin & Co. v. Strickland, 253 Ga. 385, 320 S.E.2d 358 (1984); State v. Strickman, 173 Ga. App. 1, 325 S.E.2d 775 (1984); Georgia Power Co. v. Georgia Pub. Serv. Comm'n, 196 Ga. App. 572, 396 S.E.2d 562 (1990); Tompkins v. Board of Regents of Univ. Sys., 262 Ga. 208, 417 S.E.2d 153 (1992); Scarborough v. Hunter, 293 Ga. 431, 746 S.E.2d 119 (2013); State of Ga. v. International Keystone Knights of the Ku Klux Klan, Inc., 299 Ga. 392, 788 S.E.2d 455 (2016).

Agency

1. Included

Applicability of judicial review. — Manner of judicial review provided by the

Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13) is made applicable to the "several public entities" as defined by Ga. L. 1973, p. 512, § 2 (see O.C.G.A. § 22-4-2) as well as to those entities defined as an "agency" by Ga. L. 1975, p. 404, § 3 (see O.C.G.A. § 50-13-2). Wirt v. Metropolitan Atlanta Rapid Transit Auth., 139 Ga. App. 592, 229 S.E.2d 100 (1976).

Required judicial notice. — Neither the Department of Motor Vehicle Safety (DMVS) nor the Public Service Commission (PSC) fall within the group of government entities explicitly excluded by O.C.G.A. § 50-13-2(1) from the Administrative Procedure Act's (APA) provisions; thus, the rules and the regulations promulgated pursuant to the APA by DMVS or the PSC and thereafter properly adopted by DMVS are required to be judicially noticed by the courts. State v. Ponce, 279 Ga. 651, 619 S.E.2d 682 (2005).

Changes in definition of "agency." — "Several public entities" and the "agency" being alternative categories, amendments to the definition of "agency" will not influence the applicability of the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13) to an entity which falls within the "several public entities" category. Wirt v. Metropolitan Atlanta Rapid Transit Auth., 139 Ga. App. 592, 229 S.E.2d 100 (1976).

Department of Human Resources is "agency" within meaning of this section. Department of Human Resources v. Williams, 130 Ga. App. 149, 202 S.E.2d 504 (1973).

Methods of chemical analysis of person arrested for DUI. — In light of O.C.G.A. § 40-5-55(a), implementation of O.C.G.A. § 40-6-392(a)(1) concerns and affects both the internal management of the Division of Forensic Sciences and private rights and procedures available to the public, despite the apparent exemption from coverage by the Administrative Procedure Act pursuant to O.C.G.A. § 50-13-2(6)(A). State v. Holton, 173 Ga. App. 241, 326 S.E.2d 235 (1984).

Educational administrative bodies. — Exclusion of "any school, college, hospital, or other such educational, eleemosynary, or charitable institution" from the definition of "agency" was intended to apply only to those institutions which provide educational or charitable services directly and not to the administrative bodies through which they are regulated. Department of Educ. v. Kitchens, 193 Ga. App. 229, 387 S.E.2d 579 (1989) (decided prior to 1990 amendment).

Georgia Institute of Technology as a "school or college," is an agency within the meaning of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-2(1). Bd. of Regents of the Univ. Sys. of Ga. v. Houston, 282 Ga. App. 412, 638 S.E.2d 750 (2006).

State Board of Education and Department of Education are included within the definition of "agency" and are not included within the list of exclusions. Department of Educ. v. Kitchens, 193 Ga. App. 229, 387 S.E.2d 579 (1989) (decided prior to 1990 amendment).

Decision of state university dismissing tenured professor. — Trial court properly dismissed a tenured professor's petition for writ of certiorari challenging the professor's dismissal from a state university because the hearing committee process resulting in the professor's dismissal was administrative, not judicial in nature; therefore, the trial court lacked jurisdiction over the matter. Laskar v. Bd. of Regents of the Univ. Sys. of Ga., 320 Ga. App. 414, 740 S.E.2d 179 (2013).

2. Excluded

School appeals do not fall within the ambit of O.C.G.A. T. 50, C. 13. Rabon v. Bryan County Bd. of Educ., 173 Ga. App. 507, 326 S.E.2d 577, cert. denied, 474 U.S. 855, 106 S. Ct. 160, 88 L. Ed. 2d 133 (1985) (decided prior to 1990 amendment).

Inapplicability when State Board of Education sits as appellate body. — Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 et seq., does not apply to the State Board of Education when the board sits as an appellate body and does not decide the controversy de novo but bases its appellate decision on the evidence heard by the local board. Palmer v. State Bd. of Educ., 143 Ga. App. 315, 238 S.E.2d 255 (1977), cert. dis-

Agency (Cont'd)
2. Excluded (Cont'd)

missed, 240 Ga. 591, 241 S.E.2d 837 (1978) (decided prior to 1990 amendment).

Local board of education is not included within any of the definitions of "agency" contained in the Administrative Procedure Act, O.C.G.A. T. 50, C. 13, and is thus outside its scope. Lansford v. Cook, 252 Ga. 414, 314 S.E.2d 103 (1984).

City board of education is not included within any definition of "agency" contained in this section. Hood v. Rice, 120 Ga. App. 691, 172 S.E.2d 170 (1969), cert. denied, 397 U.S. 1070, 90 S. Ct. 1514, 25 L. Ed. 2d 693 (1970).

Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13), does not apply to State Personnel Board and it appears that no other statute, rule, or regulation requires the Personnel Board to make specific findings and conclusions. Department of Cors. v. Hemphill, 134 Ga. App. 65, 213 S.E.2d 169 (1975).

Regulation of alcoholic beverages. — Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13), is apparently not applicable to regulation of liquor and alcoholic beverages. Blackmon v. Alexander, 233 Ga. 832, 213 S.E.2d 842 (1975).

County boards of health. — Administrative Procedure Act, O.C.G.A. T. 50, C. 13, does not apply to county boards of health as these boards are not included within the definition of "agency." Aldridge v. Georgia Hospitality & Travel Ass'n, 251 Ga. 234, 304 S.E.2d 708 (1983).

Decisions by Georgia Board of Pardons and Paroles. — In a case in which the appropriate way to challenge a decision by the Georgia Board of Pardons and Paroles (Board) denying parole was to file a writ of mandamus because, under O.C.G.A. § 50-13-2(1), the Board was explicitly exempted from the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1, and appellant inmate's state mandamus petition was filed after the one-year limitations period in the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996), had run, the inmate's 28 U.S.C. § 2254 petition was untimely. Brown v. Barrow, 512 F.3d 1304 (11th Cir. 2008).

Contested Case

"Standing to challenge" and judicial review in "contested case." — "Standing to challenge" an administrative decision is what is intended to be established by the requirement in Ga. L. 1980, p. 820, § 1 (see O.C.G.A. § 50-13-19) that the judicial review be of a "contested case"; and that is what is meant to be described by the language of Ga. L. 1980, p. 1573, § 2 (see O.C.G.A. § 50-13-2). National Council on Comp. Ins. v. Caldwell, 154 Ga. App. 528, 268 S.E.2d 793 (1980).

Trial court did not err in dismissing a retailer's petition for judicial review of the orders entered on an investigatory docket proceeding by the Georgia Public Service Commission as it was not a contested case permitting review under O.C.G.A. § 50-13-19(a); further, this disposition did not prevent the retailer in pursuing a remedy in the retailer's rate case against the Georgia Power Company. Federated Dep't Stores, Inc. v. Ga. PSC, 278 Ga. App. 239, 628 S.E.2d 658 (2006).

Adoption agency's choice of adoptive parents by child's foster parents is not a "contested case" within the meaning of this section as the choice is entirely discretionary in nature. Drummond v. Fulton County Dep't of Family & Children Servs., 237 Ga. 449, 228 S.E.2d 839 (1976), cert. denied, 432 U.S. 905, 97 S. Ct. 2949, 53 L. Ed. 2d 1077 (1977).

Landowners not entitled to a hearing regarding neighbors' planned dock. — Landowners' claims against the state for declaratory judgment, mandamus, an unconstitutional taking, and due process and equal protection violations, all arising out of the issuance of a license to their neighbors to build a private dock in a coastal marshland area, all failed. The Coastal Marshlands Protection Act did not apply to a private dock, pursuant to O.C.G.A. § 12-5-295(7); therefore, the landowners were not entitled to a hearing under the Act pursuant to O.C.G.A. § 12-5-283(b) and the Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq.. Hitch v. Vasarhelyi, 302 Ga. App. 381, 691 S.E.2d 286 (2010).

Benefits

Rules relating to loans, grants, and benefits are excluded from certain sections of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13) by Ga. L. 1975, p. 404, § 3 (see O.C.G.A. § 50-13-2). Turner v. Harden, 136 Ga. App. 842, 222 S.E.2d 621 (1975).

Unemployment benefits. — Under the Georgia Administrative Procedure Act, O.C.G.A. T. 50, C. 13, the adoption of rules relating to benefits by the state or of an agency is expressly exempted by O.C.G.A. § 50-13-2(6)(I) from the strict rule-making procedural requirements of O.C.G.A. § 50-13-4. This includes the promulgation of policies determining eligibility for entitlement and rules for granting unemployment benefits. Caldwell v. Amoco Fabrics Co., 165 Ga. App. 674, 302 S.E.2d 596 (1983).

Indemnities. — Making of a payment pursuant to O.C.G.A. § 4-4-72 (indemnification of owners of livestock destroyed in eradication of diseases) must be classified as a "benefit"— and the rule therefore is within the exception made by O.C.G.A. § 50-13-2, and as to which no permission to sue the state is given under the provisions of O.C.G.A. T. 50, C. 13. Irvin v. Woodliff, 125 Ga. App. 214, 186 S.E.2d 792 (1971).

Order by the Commissioner of Agriculture as to payment for destroyed herds of swine pursuant to O.C.G.A. § 4-4-72 is a benefit under O.C.G.A. § 50-13-2. Irvin v. Woodliff, 125 Ga. App. 214, 186 S.E.2d 792 (1971).

While every benefit is not indemnity, necessarily, every indemnity is a benefit. Irvin v. Woodliff, 125 Ga. App. 214, 186 S.E.2d 792 (1971).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

General Consideration
Agency
1. Included
2. Excluded
Rules
1. In General
2. Excluded

General Consideration

Purpose and intent of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13), is not to create additional substantive requirements in what is cause for revocation of a license by an administrative agency; rather, the purpose and intent of the Act is to provide uniform, minimum procedural requirements to be followed by an administrative agency in determining the legal rights, duties, or privileges of a party in a matter in which the particular agency regulates and to which the Act applies. 1965-66 Op. Att'y Gen. No. 65-73.

Licensee momentarily complying but with history of noncompliance. — Administrative agency may proceed to revoke license of licensee in conformity with the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13), and the fact that the licensee shows at the agency's proceedings that the licensee is momentarily complying with all lawful requirements for the retention of a license would be immaterial; the real question to be resolved by the agency's proceedings would be whether the licensee had been in noncompliance with all lawful requirements for the retention of the license at the time that the licensee is alleged to have been in noncompliance with such requirements. 1965-66 Op. Att'y Gen. No. 65-73.

Decision not to "grant" a teaching certificate by officials in the certification division of the Department of Education based upon the failure of an applicant to meet certain required criteria is not a "contested case" within the meaning of O.C.G.A. § 50-13-2(2). 1991 Op. Att'y Gen. No. 91-10.

Agency

1. Included

Department of Mines, Mining, and Geology (now Department of Natural Resources) is subject to the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13). 1963-65 Op. Att'y Gen. p. 784.

Superior Court Clerks' Retirement Fund is within definition of "agency". 1963-65 Op. Att'y Gen. p. 661.

Proceedings of Public Service Commission. — Public Service Commission, being bound by the commission's own regulations, is required by law to afford a hearing on an application for the approval of a loan; such a proceeding is accurately characterized as one in which "the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing," and is, therefore, a contested case within the meaning of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13). 1975 Op. Att'y Gen. No. 75-139.

2. Excluded

Board of Pardons and Paroles. — Board of Pardons and Paroles is not "agency" within the meaning of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13), and therefore is not subject to the hearing requirements of Ga. L. 1965, p. 283, § 13 (see O.C.G.A. § 50-13-13). 1978 Op. Att'y Gen. No. 78-44.

Georgia Firemen's Pension Fund. — Georgia Firemen's Pension Fund is not state agency or board within purview of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13); neither is the Peace Officers Annuity and Benefit Fund. 1974 Op. Att'y Gen. No. U74-72.

Commissioner of Agriculture. — Commissioner of Agriculture has neither a statutory nor a constitutional obligation to provide a formal means of administratively appealing a decision to bar a person from a state-owned and regulated farmers' market. 1965-66 Op. Att'y Gen. No. 66-217.

Rules

1. In General

Rules must be properly adopted to be valid. — Any rule, regulation, resolution, etc., by whatever name called, which falls under the definition of a "rule," as defined by Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2) must be adopted pursuant to the procedure for adoption of rules, i.e., Ga. L. 1965, p. 283, §§ 6, 7 and 8, and Ga. L. 1964, p. 338, § 6 (see O.C.G.A. §§ 50-13-4 through 50-13-7), if it is to be valid against any person or party. Op. Att'y Gen. No. 71-158.

2. Excluded

Rules and regulations of Superior Court Clerk's Retirement Fund do not come under provisions of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13), because of the specific exclusion relating to rules dealing with retirement. 1963-65 Op. Att'y Gen. p. 661.

Certain rules of Department of Human Resources. — Rules and regulations promulgated by the Department of Human Resources in connection with its operation and administration of public assistance programs are expressly excluded from the general filing requirements of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13). 1965-66 Op. Att'y Gen. No. 65-8.

Rules or regulations of University System. — Any rules or regulations adopted by any school, college, or hospital, or other educational institution within the University System of Georgia would not be subject to the provisions of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13). 1963-65 Op. Att'y Gen. p. 622.

Rules adopted by Board of Regents. — Any rules, regulations, or statements of policy adopted by the Board of Regents of the University System of Georgia pursuant to the Board's duties, responsibilities, and functions as defined by the Constitution and by statute, and in the exercise of powers granted to the Board would relate to the regulation of a school, a college, or a

hospital, or other educational, eleemosynary, or charitable institution, and would, thereby, be excepted from the definition of "agency," or would fall within the exclusions of the definitions of "rule" listed in this section. 1963-65 Op. Att'y Gen. p. 622.

Rules by Department of Audits and Accounts. — Rules and regulations, procedures, forms, and standards that are issued or prescribed by the Department of Audits and Accounts or the state auditor fall within the exclusions itemized in this section in dealing with the internal fiscal activities of the various state agencies of the state government, and do not come under the provisions of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13). 1963-65 Op. Att'y Gen. p. 637.

Rules of Office of Planning and Budget. — Rules and regulations, procedures, and standards that are issued or prescribed by the Office of Planning and Budget affect only the internal management of the office and the various agencies of state government, and fall within the exclusion of the definition of "rule"; for these reasons, the office is not subject to the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13). 1963-65 Op. Att'y Gen. p. 631.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 31.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 1 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 1-102.

ALR. — Propriety of hospital's conditioning physician's staff privileges on his carrying professional liability or malpractice insurance, 7 A.L.R.4th 1238.

50-13-3. Adoption of rules of organization and practice; public inspection and validity of rules, policies, orders, decisions, and opinions.

(a) In addition to other rule-making requirements imposed by law, each agency shall:

(1) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(3) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions; and

(4) Make available for public inspection all final orders, decisions, and opinions except those expressly made confidential or privileged by statute.

(b) No agency rule, order, or decision shall be valid or effective against any person or party nor may it be invoked by the agency for any

purpose until it has been published or made available for public inspection as required in this Code section. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

History. — Ga. L. 1964, p. 338, § 3; Ga. L. 1965, p. 283, § 5.

Law reviews. — For article, "Researching Georgia Law," see 34 Ga. St. U. L. Rev. 741 (2015).

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WIC vendor handbook. — Although Women, Infants, and Children Program vendor handbook was subject to the publication and inspection requirements of O.C.G.A. § 50-13-3(a), as defendants all had actual knowledge of the rules and regulations in question, these rules and regulations were valid and effective against the defendants, despite the lack of required publication by the Department of Human Resources. So v. Ledbetter, 209 Ga. App. 666, 434 S.E.2d 517 (1993).

Georgia Bureau of Investigation's rules. — Forensic Sciences Division of the Georgia Bureau of Investigation is exempt under O.C.G.A. § 35-3-155 from the requirement of O.C.G.A. § 50-13-3(b) that it publish its rules for granting permits for the administration of breath, blood, and urine tests. State v. Bowen, 274 Ga. 1, 547 S.E.2d 286 (2001).

Forensic testing procedures. — Standard Operating Procedures for urinalysis testing of the Division of Forensic Sciences of the Georgia Bureau of Investigation satisfied the requirements regarding adoption and publication of rules under O.C.G.A. § 50-13-3. State v. Cooper, 229 Ga. App. 97, 493 S.E.2d 1 (1997).

Cited in Cullers v. Home Credit Co., 130 Ga. App. 441, 203 S.E.2d 544 (1973); Georgia State Bd. of Dental Exmrs. v. Daniels, 137 Ga. App. 706, 224 S.E.2d 820 (1976); Mowery v. State, 234 Ga. App. 801, 507 S.E.2d 821 (1998); Olvera v. Univ. Sys. of Georgia's Bd. of Regents, 298 Ga. 425, 782 S.E.2d 436 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 193.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 161 et seq., 192, 196, 204.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 3-101 et seq.

ALR. — What constitutes preliminary drafts or notes provided by or for state or local governmental agency, or intra-agency memorandums, exempt from disclosure or inspection under state freedom of information acts, 26 A.L.R.4th 639.

50-13-4. Procedural requirements for adoption, amendment, or repeal of rules; emergency rules; limitation on action to contest rule; legislative override.

(a) Prior to the adoption, amendment, or repeal of any rule, other than interpretive rules or general statements of policy, the agency shall:

(1) Give at least 30 days' notice of its intended action. The notice shall include an exact copy of the proposed rule and a synopsis of the proposed rule. The synopsis shall be distributed with and in the same manner as the proposed rule. The synopsis shall contain a statement of the purpose and the main features of the proposed rule, and, in the

case of a proposed amendatory rule, the synopsis also shall indicate the differences between the existing rule and the proposed rule. The notice shall also include the exact date on which the agency shall consider the adoption of the rule and shall include the time and place in order that interested persons may present their views thereon. The notice shall also contain a citation of the authority pursuant to which the rule is proposed for adoption and, if the proposal is an amendment or repeal of an existing rule, the rule shall be clearly identified. The notice shall be mailed to all persons who have requested in writing that they be placed upon a mailing list which shall be maintained by the agency for advance notice of its rule-making proceedings and who have tendered the actual cost of such mailing as from time to time estimated by the agency;

(2) Afford to all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing must be granted if requested by 25 persons who will be directly affected by the proposed rule, by a governmental subdivision, or by an association having not less than 25 members. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption;

(3) In the formulation and adoption of any rule which will have an economic impact on businesses in the state, reduce the economic impact of the rule on small businesses which are independently owned and operated, are not dominant in their field, and employ 100 employees or less by implementing one or more of the following actions when it is legal and feasible in meeting the stated objectives of the statutes which are the basis of the proposed rule:

(A) Establish differing compliance or reporting requirements or timetables for small businesses;

(B) Clarify, consolidate, or simplify the compliance and reporting requirements under the rule for small businesses;

(C) Establish performance rather than design standards for small businesses; or

(D) Exempt small businesses from any or all requirements of the rules; and

(4) In the formulation and adoption of any rule, an agency shall choose an alternative that does not impose excessive regulatory costs

on any regulated person or entity which costs could be reduced by a less expensive alternative that fully accomplishes the stated objectives of the statutes which are the basis of the proposed rule.

(b) If any agency finds that an imminent peril to the public health, safety, or welfare, including but not limited to, summary processes such as quarantines, contrabands, seizures, and the like authorized by law without notice, requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. Any such rule adopted relative to a public health emergency shall be submitted as promptly as reasonably practicable to the House of Representatives and Senate Committees on Judiciary, provided that any such rule adopted relative to a state of emergency by the State Election Board shall be submitted as soon as practicable but not later than 20 days prior to the rule taking effect. Any emergency rule adopted by the State Election Board pursuant to the provisions of this subsection may be suspended upon the majority vote of the House of Representatives or Senate Committees on Judiciary within ten days of the receipt of such rule by the committees. The rule may be effective for a period of not longer than 120 days but the adoption of an identical rule under paragraphs (1) and (2) of subsection (a) of this Code section is not precluded; provided, however, that such a rule adopted pursuant to discharge of responsibility under an executive order declaring a state of emergency or disaster exists as a result of a public health emergency, as defined in Code Section 38-3-3, shall be effective for the duration of the emergency or disaster and for a period of not more than 120 days thereafter.

(c) It is the intent of this Code section to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for emergency rules which are provided for in subsection (b) of this Code section, the provisions of this Code section are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Code section repeals or diminishes additional requirements imposed by law or diminishes or repeals any summary power granted by law to the state or any agency thereof.

(d) No rule adopted after April 3, 1978, shall be valid unless adopted in exact compliance with subsections (a) and (e) of this Code section and in substantial compliance with the remainder of this Code section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this Code section must be commenced within two years from the effective date of the rule.

(e) The agency shall transmit the notice provided for in paragraph (1) of subsection (a) of this Code section to the legislative counsel. The notice shall be transmitted at least 30 days prior to the date of the

agency's intended action. Within three days after receipt of the notice, if possible, the legislative counsel shall furnish the presiding officers of each house with a copy of the notice, and the presiding officers shall assign the notice to the chairperson of the appropriate standing committee in each house for review and any member thereof who makes a standing written request. In the event a presiding officer is unavailable for the purpose of making the assignment within the time limitations, the legislative counsel shall assign the notice to the chairperson of the appropriate standing committee. The legislative counsel shall also transmit within the time limitations provided in this subsection a notice of the assignment to the chairperson of the appropriate standing committee. Each standing committee of the Senate and the House of Representatives is granted all the rights provided for interested persons and governmental subdivisions in paragraph (2) of subsection (a) of this Code section.

(f)(1) In the event a standing committee to which a notice is assigned as provided in subsection (e) of this Code section files an objection to a proposed rule prior to its adoption and the agency adopts the proposed rule over the objection, the rule may be considered by the branch of the General Assembly whose committee objected to its adoption by the introduction of a resolution for the purpose of overriding the rule at any time within the first 30 days of the next regular session of the General Assembly. It shall be the duty of any agency which adopts a proposed rule over such objection so to notify the presiding officers of the Senate and the House of Representatives, the chairpersons of the Senate and House committees to which the rule was referred, and the legislative counsel within ten days after the adoption of the rule. In the event the resolution is adopted by such branch of the General Assembly, it shall be immediately transmitted to the other branch of the General Assembly. It shall be the duty of the presiding officer of the other branch of the General Assembly to have such branch, within five days after the receipt of the resolution, to consider the resolution for the purpose of overriding the rule. In the event the resolution is adopted by two-thirds of the votes of each branch of the General Assembly, the rule shall be void on the day after the adoption of the resolution by the second branch of the General Assembly. In the event the resolution is ratified by less than two-thirds of the votes of either branch, the resolution shall be submitted to the Governor for his or her approval or veto. In the event of his or her veto, the rule shall remain in effect. In the event of his or her approval, the rule shall be void on the day after the date of his or her approval.

(2) In the event each standing committee to which a notice is assigned as provided in subsection (e) of this Code section files an objection to a proposed rule prior to its adoption by a two-thirds' vote

of the members of the committee who were voting members on the tenth day of the current session, after having given public notice of the time, place, and purpose of such vote at least 48 hours in advance, as well as the opportunity for members of the public including the promulgating agency, to have a reasonable time to comment on the proposed committee action at the hearing, the effectiveness of such rule shall be stayed until the next legislative session at which time the rule may be considered by the General Assembly by the introduction of a resolution in either branch of the General Assembly for the purpose of overriding the rule at any time within the first 30 days of the next regular session of the General Assembly. In the event the resolution is adopted by the branch of the General Assembly in which it was introduced, it shall be immediately transmitted to the other branch of the General Assembly. It shall be the duty of the presiding officer of the other branch of the General Assembly to have such branch, within five days after the receipt of the resolution, to consider the resolution for the purpose of overriding the rule. In the event the resolution is adopted by two-thirds of the votes of each branch of the General Assembly, the rule shall be void on the day after the adoption of the resolution by the second branch of the General Assembly. In the event the resolution is ratified by less than two-thirds of the votes of either branch, the resolution shall be submitted to the Governor for his or her approval or veto. In the event of his or her veto, the rule shall remain in effect. In the event of his or her approval, the rule shall be void on the day after the date of his or her approval. If after the thirtieth legislative day of the legislative session of which the challenged rule was to be considered the General Assembly has not considered an override of the challenged rule pursuant to this subsection, the rule shall then immediately take effect.

(g)(1) Subsection (f) of this Code section shall not apply to the Environmental Protection Division of the Department of Natural Resources as to any rule for which, as part of the notice required by paragraph (1) of subsection (a) of this Code section, the director of the division certifies that such rule is required for compliance with federal statutes or regulations or to exercise certain powers delegated by the federal government to the state to implement federal statutes or regulations, but paragraph (2) of this subsection shall apply to the Environmental Protection Division of the Department of Natural Resources as to any rule so certified. As part of such certification, the director shall cite the specific section or sections of federal statutes or regulations which the proposed rule is intended to comply with or implement. General references to the name or title of a federal statute or regulation shall not suffice for the purposes of this paragraph. Any proposed rule or rules that are subject to this paragraph shall be noticed separately from any proposed rule or rules that are not subject to this paragraph.

(2) In the event the chairperson of any standing committee to which a proposed rule certified by the director of the division pursuant to paragraph (1) of this subsection is assigned notifies the director that the committee objects to the adoption of the rule or has questions concerning the purpose, nature, or necessity of such rule, it shall be the duty of the director to consult with the committee prior to the adoption of the rule.

(h) The provisions of subsections (e) and (f) of this Code section shall apply to any rule of the Department of Public Health that is promulgated pursuant to Code Section 31-2A-11 or 31-45-10, except that the presiding officer of the Senate is directed to assign the notice of such a rule to the chairperson of the Senate Science and Technology Committee and the presiding officer of the House of Representatives is directed to assign the notice of such a rule to the chairperson of the House Committee on Industry and Labor. As used in this subsection, the term "rule" shall have the same meaning as provided in paragraph (6) of Code Section 50-13-2 and shall include interpretive rules and general statements of policy, notwithstanding any provision of subsection (a) of this Code section to the contrary.

(i) This Code section shall not apply to any comprehensive state-wide water management plan or revision thereof prepared by the Environmental Protection Division of the Department of Natural Resources and proposed, adopted, amended, or repealed pursuant to Article 8 of Chapter 5 of Title 12; provided, however, that this Code section shall apply to any rules or regulations implementing such a plan.

History. — Ga. L. 1964, p. 338, § 4; Ga. L. 1965, p. 283, § 6; Ga. L. 1977, p. 1520, §§ 1-4; Ga. L. 1978, p. 1437, §§ 1-5; Ga. L. 1982, p. 3, § 50; Ga. L. 1984, p. 1219, § 1; Ga. L. 1990, p. 1274, § 1; Ga. L. 1993, p. 1817, § 2; Ga. L. 1994, p. 97, § 50; Ga. L. 1994, p. 503, § 1; Ga. L. 1997, p. 1521, § 1; Ga. L. 2000, p. 549, § 4; Ga. L. 2000, p. 1619, § 2; Ga. L. 2002, p. 1386, § 16; Ga. L. 2004, p. 711, § 3; Ga. L. 2008, p. 7, § 1/SB 352; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 303, §§ 4, 15/HB 117; Ga. L. 2009, p. 453, §§ 1-4, 1-10/HB 228; Ga. L. 2011, p. 705, §§ 3-3, 6-3/HB 214; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2021, p. 14, § 50/SB 202.

The 2021 amendment, effective March 25, 2021, in subsection (b), added the proviso at the end of the second sentence and added the third sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "31-45-10" was substituted for "31-43-10" in the first sentence in subsection (h).

Pursuant to Code Section 28-9-5, in 2002, "of" was substituted for "or" in the third sentence of subsection (b).

Editor's notes. — Ga. L. 2004, p. 711, § 1, not codified by the General Assembly, provides that: "The General Assembly finds and declares that:

"(1) A comprehensive state-wide water management plan for this state is needed and should be developed by the Environmental Protection Division of the Department of Natural Resources;

"(2) Such plan should support a structured, yet flexible, approach to regional water planning and provide guidance and incentives for regional and local water planning efforts; and

"(3) Regional water planning efforts of the Environmental Protection Division should be coordinated with and not sup-

plant the existing efforts of all state agencies."

Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act." Thus, the amendments by Ga. L. 2009, p. 303, §§ 4 and 15 were not given effect due to the conflicting amendment by Ga. L. 2009, p. 8, § 50.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring

that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. Rev. 301 (1997). For article on the 2004 amendment of this Code section, see 21 Ga. St. Rev. 1 (2004). For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For article, "The Status of Administrative Agencies under the Georgia Constitution," see 40 Ga. L. Rev. 1109 (2006). For article on the 2011 amendment of this Code section, see 28 Ga. St. Rev. 147 (2011). For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012). For article, "Researching Georgia Law," see 34 Ga. St. Rev. 741 (2015).

For note on the 2002 amendment of this Code section, see 19 Ga. St. Rev. 1 (2002).

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O.C.G.A. § 50-13-4 mandates full consideration of all written and oral submissions. Outdoor Adv. Ass'n v. DOT, 186 Ga. App. 550, 367 S.E.2d 827, cert. denied, 186 Ga. App. 918, 367 S.E.2d 827 (1988).

Failure to comply with O.C.G.A. § 50-13-4(a)(1) invalidates an amended rule. Outdoor Adv. Ass'n v. DOT, 186 Ga. App. 550, 367 S.E.2d 827, cert. denied, 186 Ga. App. 918, 367 S.E.2d 827 (1988).

Economic impact on businesses. — Mere fact that most of the affected businesses have less than 100 employees is not a sufficient reason to conclude that compliance with O.C.G.A. § 50-13-4(a)(3) is not necessary. Outdoor Adv. Ass'n v. DOT, 186 Ga. App. 550, 367 S.E.2d 827, cert. denied, 186 Ga. App. 918, 367 S.E.2d 827 (1988).

Exemptions from procedural requirements. — Under the Georgia Administrative Procedure Act, O.C.G.A. T. 50, C. 13, the adoption of rules relating to benefits by the state or of an agency is expressly exempted by O.C.G.A. § 50-13-2(6)(I) from the strict rule-making procedural requirements of O.C.G.A. § 50-13-4. This includes the promulgation of policies determining eligibility for entitlement and rules for granting unemployment benefits. Caldwell v. Amoco Fabrics Co., 165 Ga. App. 674, 302 S.E.2d 596 (1983).

Strict compliance with respect to the citation requirement is necessary only when a rule is being adopted, not when the rule is amended or repealed. Corner v. State, 223 Ga. App. 353, 477 S.E.2d 593 (1996).

Cited in Cullers v. Home Credit Co., 130 Ga. App. 441, 203 S.E.2d 544 (1973); Georgia State Bd. of Dental Exmrs. v. Daniels, 137 Ga. App. 706, 224 S.E.2d 820 (1976); State v. Strickman, 173 Ga. App. 1, 325 S.E.2d 775 (1984); Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003); Charles H. Wesley Educ. Found., Inc. v. State Election Bd., 282 Ga. 707, 654 S.E.2d 127 (2007); Olvera v. Univ. Sys. of Georgia's Bd. of Regents, 331 Ga. App. 392, 771 S.E.2d 91 (2015); Olvera v. Univ. Sys. of Georgia's Bd. of Regents, 298 Ga. 425, 782 S.E.2d 436 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Rules must be properly adopted to be valid. — Any rule, regulation, resolution, etc., by whatever name called, which falls under the definition of a "rule," as defined by Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2), must be adopted pursuant to the procedure for adoption of rules, i.e., Ga. L. 1965, p. 283, §§ 6, 7, and 8, and Ga. L. 1964, p. 338, § 6 (see O.C.G.A. §§ 50-13-4 through 50-13-7), if it is to be valid against any person or party. Op. Att'y Gen. No. 71-158.

Agency pronouncements should be promulgated in accordance with O.C.G.A. T. 50, C. 13. — Those pronouncements by which an agency seeks to interpret the agency's rules and regulations by formulating explicit and detailed standards which have substantial impact should be promulgated in accordance with the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13). 1976 Op. Att'y Gen. No. 76-78.

Effective date of emergency rules adopted by agency. — Emergency rules adopted by state agencies may be made effective by the agency on the date of adoption, if the agency so desires; all emergency rules should be accompanied by a statement from the agency indicating the rules' effective date. 1975 Op. Att'y Gen. No. 75-123.

Regulations as stringent as federal regulations authorized. — O.C.G.A. § 50-13-4(a)(4) does not prohibit the Board of Natural Resources and director of the Environmental Protection Division from adopting regulations and taking such actions as are necessary to ensure that the state's regulatory authority is at least as stringent as federal regulatory authority established pursuant to federal environmental laws. 1997 Op. Att'y Gen. No. 97-25.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 190 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 161 et seq., 208, 209. 73A C.J.S., Public Administrative Law and Procedure, § 313 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 3-101 et seq.

ALR. — Retroactive operation of regulation of administrative authority amending a previous regulation, 153 A.L.R. 1188.

50-13-4.1. Agency reporting on required regulation.

Each agency shall prepare annually a report that specifies with detail those federal government mandates that require agency promulgation of rules and regulations rather than enactment of law by the General Assembly. Such report shall also identify state and federal regulatory duplication. A copy of such report shall be submitted to the Governor, Secretary of State, President of the Senate, Speaker of the House of Representatives, Secretary of the Senate, Clerk of the House of Representatives, and legislative counsel.

History. — Code 1981, § 50-13-4.1, enacted by Ga. L. 2012, p. 636, § 1/SB 428.

50-13-5. Filing of previously adopted rules.

(a) Within 20 days after July 1, 1965, each agency shall file with the Secretary of State a certified copy of all rules which were adopted by the agency prior to July 1, 1965, and which are still of full force and effect and a certified copy of all rules which were adopted by the agency prior to July 1, 1965, and which do not become effective until after July 1, 1965.

(b) The copy of each rule shall contain a citation of the authority pursuant to which the rule was adopted.

(c) The Secretary of State shall endorse on each copy the time and date of filing and shall maintain a record of the rules for public inspection.

(d) Any rule made by an agency prior to July 1, 1965, shall be void and of no effect unless filed in accordance with subsections (a) through (c) of this Code section.

History. — Ga. L. 1964, p. 338, § 5; Ga. L. 1965, p. 283, § 7; Ga. L. 2000, p. 1619, § 3.

JUDICIAL DECISIONS

General Assembly intended by language that rules be filed not later than 20 days after the effective date of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50). Wall v. Youmans, 223 Ga. 191, 154 S.E.2d 191 (1967).

Time beyond which performance may not be made. — Words "within 20 days after", as used in this section, do not prescribe both the beginning and the ending of the time during which performance may be rendered, but merely establish the time beyond which performance may not be made. Wall v. Youmans, 223 Ga. 191, 154 S.E.2d 191 (1967) (see O.C.G.A. § 50-13-5).

Early filing permissible. — Filing the rules with the Secretary of State one day ahead of the effective date of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13) did not in any way thwart the intention and purpose of that law. Wall v. Youmans, 223 Ga. 191, 154 S.E.2d 191 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Agencies determine which policies and regulations must be kept on file. — It is the responsibility and decision of any particular agency to say which, if any, of the agency's policies and regulations must be kept on file with the Secretary of State; the responsibility belongs to the agency which promulgates the rule. 1971 Op. Att'y Gen. No. 71-58.

Rules must be properly adopted to be valid. — Any rule, regulation, resolution, etc., by whatever name called, which falls under the definition of a "rule," as defined by Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2), must be adopted pursuant to the procedure for adoption of rules, i.e., Ga. L. 1965, p. 283, §§ 6, 7, and 8 and Ga. L. 1964, p. 338, § 6 (see O.C.G.A. §§ 50-13-4 through 50-13-7), if it is to be valid against any person or party. Op. Att'y Gen. No. 71-158.

Citations of authority and filing endorsements. — Purpose of requiring copies of rules to be accompanied by a citation of authority is to inform interested parties as to the statutory authority relied upon by the rule making agency; the purpose of requiring a filing endorsement on each copy is to fix the date upon which the rule becomes effective; both of these purposes are accomplished by placing a single citation of authority and a single filing endorsement upon a regulatory compilation adopted by an agency under the same statutory authority and filed simultaneously. 1963-65 Op. Att'y Gen. p. 786.

It is permissible for a single citation of authority and a single filing endorsement to be used for a group of paragraphs which is adopted under the same statutory authorization and filed simultaneously. 1963-65 Op. Att'y Gen. p. 786.

Effective date of emergency rules. — Emergency rules adopted by state agencies may be made effective by the agency on the date of adoption, if the agency so desires; all emergency rules should be accompanied by a statement from the agency indicating the rules' effective date. 1975 Op. Att'y Gen. No. 75-123.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d., Administrative Law, § 205.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 204.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 3-101 et seq.

50-13-6. Rules not effective until 20 days after filed with Secretary of State; maintenance of record of the rules; exceptions; rules governing manner and form of filing.

(a) Each rule adopted after July 1, 1965, shall not become effective until the expiration of 20 days after the rule is filed in the office of the Secretary of State. Each rule so filed shall contain a citation of the authority pursuant to which it was adopted and, if an amendment, shall clearly identify the original rule.

(b) The Secretary of State shall endorse on each rule thus filed the time and date of filing and shall maintain a record of the rules for public inspection.

(c) The 20 day filing period is subject to the following exceptions:

(1) Where a statute or the terms of the rule require a date which is later than the 20 day period, then the later date is the effective date; and

(2) Any emergency rule adopted pursuant to subsection (b) of Code Section 50-13-4 may become effective immediately upon adoption or within a period of less than 20 days. The emergency rule, with a copy of the finding as required by subsection (b) of Code Section 50-13-4, shall be filed with the office of the Secretary of State within four working days after its adoption.

(d) The Secretary of State shall prescribe rules governing the manner and form in which regulations shall be prepared for filing. The Secretary may refuse to accept for filing any rule that does not conform to such requirements.

History. — Ga. L. 1964, p. 338, § 6; Ga. L. 1979, p. 1014, § 2; Ga. L. 1982, p. 3, § 50; Ga. L. 2000, p. 1619, § 4.

JUDICIAL DECISIONS

Unfiled and unpublished policy manual not entitled to judicial notice. — Policy manual upon which a state agency relies, if never filed with or published by the Secretary of State pursuant to O.C.G.A. §§ 50-13-6 and 50-13-7, is not entitled to judicial notice, even if the manual's publication is not statutorily required. Commissioner, Dep't of Human Resources v. Haggard, 173 Ga. App. 676, 327 S.E.2d 798 (1985).

Appellate court, on remand from the Supreme Court of Georgia, was unable to take judicial notice of the Public Service Commission's transportation rules as those rules had not been filed with the Secretary of State, so the rules had not become effective under the Georgia Administrative Procedure Act (APA), O.C.G.A. § 50-13-1 et seq., and were not part of the record; since the state was unable to alert the appellate court to any rule or regulation which served as a constitutionally adequate substitute for a warrant, the original decision, that a warrantless search of the defendant's com-

mercial truck was improper, stood. Ponce v. State, 279 Ga. App. 207, 630 S.E.2d 840 (2006).

Cited in Cullers v. Home Credit Co., 130 Ga. App. 441, 203 S.E.2d 544 (1973); Outdoor Adv. Ass'n v. DOT, 186 Ga. App. 550, 367 S.E.2d 827 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Rules must be properly adopted to be valid. — Any rule, regulation, resolution, etc., by whatever name called, which falls under the definition of a "rule," as defined by Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2), must be adopted pursuant to the procedure for adoption of rules, i.e., Ga. L. 1965, p. 283, §§ 6, 7 and 8 and Ga. L. 1964, p. 338, § 6 (see O.C.G.A. §§ 50-13-4 through 50-13-7), if it is to be valid against any person or party. Op. Att'y Gen. No. 71-158.

Decision not to file and withdrawal of rules. — While the language of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338 § 1 et seq. (see O.C.G.A. T. 50, C. 13) is geared to the initial filing of a rule, there is no difference in principle between an initial decision not to file and a subsequent decision to withdraw that which has already been filed; in the context of the purposes for which that chapter was adopted, the statutory requirements and the statutory penalties, both situations would seem to be the same. 1971 Op. Att'y Gen. No. 71-58.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 205.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 204.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 3-101 et seq.

50-13-7. Secretary of State to publish compilation of rules and quarterly bulletin.

(a) The Secretary of State shall compile, index, and publish in print or electronically all rules adopted by each agency and remaining in effect. Compilations shall be supplemented or revised as often as necessary and at least once every two years.

(b) The Secretary of State shall publish in print or electronically a quarterly bulletin in which the Secretary of State shall set forth the text of all rules filed during the preceding quarter.

(c) The Secretary of State, in his or her discretion, may omit rules from the bulletin or compilation if their publication would be unduly cumbersome, expensive, or otherwise inexpedient, provided that the omitted rules are made available in electronic, printed, or processed form on application to the adopting agency and that the bulletin or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(d) The official compilation, Rules and Regulations of the State of Georgia, and bulletins shall be made available upon request free of charge to the heads of all departments, bureaus, agencies, commissions, and boards of this state; members of the General Assembly; Justices of

the Supreme Court, Judges of the Court of Appeals; judges, clerks, and district attorneys of the superior courts. The compilation and bulletins shall be made available upon request to other persons at a price fixed by the Secretary of State to cover publication and mailing costs.

(e) The Secretary of State may engage the services of a privately operated editorial and publication firm experienced in the publication of annotated law books to compile, index, and publish such rules. The compilation shall conform in its arrangement as near as practicable to the Code of this state.

History. — Ga. L. 1964, p. 338, § 7; Ga. L. 1965, p. 283, § 8; Ga. L. 1967, p. 893, § 1; Ga. L. 1968, p. 115, § 1; Ga. L. 2000, p. 1619, § 5.

Law reviews. — For article, "Researching Georgia Law," see 34 Ga. St. U. L. Rev. 741 (2015).

JUDICIAL DECISIONS

Unfiled and unpublished policy manual not entitled to judicial notice. — Policy manual upon which a state agency relies, if never filed with or published by the Secretary of State pursuant to O.C.G.A. §§ 50-13-6 and 50-13-7, is not entitled to judicial notice, even if the manual's publication is not statutorily required. Commissioner, Dep't of Human Resources v. Haggard, 173 Ga. App. 676, 327 S.E.2d 798 (1985).

Cited in State v. Bonini, 236 Ga. 896, 225 S.E.2d 907 (1976); State of Ga. v. International Keystone Knights of the Ku Klux Klan, Inc., 299 Ga. 392, 788 S.E.2d 455 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Rules must be properly adopted to be valid. — Any rule, regulation, resolution, etc., by whatever name called, which falls under the definition of a "rule," as defined by Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2), must be adopted pursuant to the procedure for adoption of rules, i.e., Ga. L. 1965, p. 283, §§ 6, 7, and 8 and Ga. L. 1964, p. 338, § 6 (see O.C.G.A. §§ 50-13-4 through 50-13-7), if it is to be valid against any person or party. 1971 Op. Att'y Gen. No. 71-158.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 193.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 185, 204.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 2-101.

50-13-8. Judicial notice of rules.

The courts shall take judicial notice of any rule which has become effective pursuant to this chapter.

History. — Ga. L. 1964, p. 338, § 8.

Law reviews. — For annual survey of evidence law, see 58 Mercer L. Rev. 151 (2006).

JUDICIAL DECISIONS

Limits on judicial notice. — In the absence of a specific designation of a drug, the courts cannot "notice" whether a certain substance falls within the prohibitive scope of a broad category of drugs. Martin v. State, 135 Ga. App. 4, 217 S.E.2d 312 (1975).

Court cannot take judicial notice of regulation not part of the record. Allen v. State Personnel Bd., 140 Ga. App. 747, 231 S.E.2d 826 (1976).

Only when rules or regulations are adopted pursuant to O.C.G.A. Ch. 13, T. 50 can the rules or regulations be judicially noticed. Dix v. State, 156 Ga. App. 868, 275 S.E.2d 807 (1981).

Defendant was improperly convicted of violating Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98 (2011).

Ultimate responsibility for statutory construction. — Although weight will be given to administrative interpretation in case of doubtful statutes, the ultimate responsibility for statutory construction rests with the courts. Bradford v. Davidson, 150 Ga. App. 625, 258 S.E.2d 235 (1979), rev'd on other grounds, 245 Ga. 8, 262 S.E.2d 780 (1980).

Administrative rulings are adopted only after the court has made an independent determination that the rulings correctly reflect the meaning of the statute. Bradford v. Davidson, 150 Ga. App. 625, 258 S.E.2d 235 (1979), rev'd on other grounds, 245 Ga. 8, 262 S.E.2d 780 (1980).

Methods for blood alcohol breath tests. — Under O.C.G.A. § 50-13-8, the courts take judicial notice of any rule which has become effective pursuant to the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and Ga. Comp. R. & Regs. Rule 92-3-.06 embodies methods for blood alcohol breath tests approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation; a trial court erred in suppressing the results of a blood alcohol content breath test when the test was conducted in accordance with methods adopted by the Division of Forensic Sciences. State v. Palmaka, 266 Ga. App. 595, 597 S.E.2d 630 (2004).

Required judicial notice. — Neither the Department of Motor Vehicle Safety (DMVS) nor the Public Service Commission (PSC) fall within the group of government entities explicitly excluded by O.C.G.A. § 50-13-2(1) from the Administrative Procedure Act's (APA) provisions; thus, the rules and the regulations promulgated pursuant to the APA by DMVS or the PSC and thereafter properly adopted by DMVS are required to be judicially noticed by the courts. State v. Ponce, 279 Ga. 651, 619 S.E.2d 682 (2005).

To the extent that language in Lemon v. Martin, 232 Ga. App. 579 (1998), or cases such as Joel Properties v. Reed, 203 Ga. App. 257 (1992), can be read as authority for the proposition that the courts cannot take judicial notice of the rules and the regulations of those state agencies that promulgate rules and regulations pursuant to the Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., that language is disapproved by the Supreme Court of Georgia. State v. Ponce, 279 Ga. 651, 619 S.E.2d 682 (2005).

Judicial notice of public transportation commission's transportation rules was unavailable. — Appellate court, on remand from the Supreme Court of Georgia, was unable to take judicial notice of the Public Service Commission's transportation rules, as those rules had not been filed with the Secretary of State, so the rules had not become effective under the Georgia Administrative Procedure Act (APA), O.C.G.A. § 50-13-1 et seq., and were not part of the record; since the state

was unable to alert the appellate court to any rule or regulation which served as a constitutionally adequate substitute for a warrant, the original decision, that a warrantless search of the defendant's commercial truck was improper, stood. Ponce v. State, 279 Ga. App. 207, 630 S.E.2d 840 (2006).

Denial of judicial notice motion proper. — Trial court did not err in denying the buyers' motion asking the court to take judicial notice of Rule 110-11-1-.11 of the Georgia Department of Community Affairs (DCA), which related to the applicable building code for one- and two-family dwellings, because the trial court correctly found that the DCA exceeded the DCA's authority in adopting the International Residential Code for One and Two Family Dwellings (IRC) as a later edition of the Council of American Building Officials One- and Two-Family Dwelling Code (CABO); by its own terms, the IRC was not a subsequent or new edition of the CABO but an entirely new code based upon a study of a number of existing building codes. Lumsden v. Williams, 307 Ga. App. 163, 704 S.E.2d 458 (2010).

Cited in Weil Bros. Cotton v. Harrold Bros., 118 Ga. App. 8, 162 S.E.2d 309 (1968); Employers Com. Union Cos. v. Waldrop, 124 Ga. App. 746, 186 S.E.2d 134 (1971); Cullers v. Home Credit Co., 130 Ga. App. 441, 203 S.E.2d 544 (1973); Tischmak v. State, 133 Ga. App. 534, 211 S.E.2d 587 (1974); Wielgorecki v. White, 133 Ga. App. 834, 212 S.E.2d 480 (1975); Department of Human Resources v. Sims, 137 Ga. App. 72, 222 S.E.2d 832 (1975); Blossman Gas Co. v. Williams, 189 Ga. App. 195, 375 S.E.2d 117 (1988); Owens v. Georgia Underwriting Ass'n, 223 Ga. App. 29, 476 S.E.2d 810 (1996); Enchanted Valley RV Resort, Ltd. v. Weese, 241 Ga. App. 415, 526 S.E.2d 124 (1999); Scara v. State, 259 Ga. App. 510, 577 S.E.2d 796 (2003).

RESEARCH REFERENCES

ALR. — Judicial notice of banking customs or other matters relating to banks or trust companies, 89 A.L.R. 1336; 94 A.L.R. 1352; 96 A.L.R. 853; 97 A.L.R. 1123; 104 A.L.R. 375.

50-13-9. Petition for promulgation, amendment, or repeal of rule; agency response.

An interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rule-making proceedings in accordance with Code Section 50-13-4.

History. — Ga. L. 1964, p. 338, § 9.

Law reviews. — For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008).

JUDICIAL DECISIONS

Service of notice of appeal. — In an appeal of the Georgia Public Service Commission's decision imposing a fine for severing a telephone cable, the trial court did not err when the court denied the Commission's motion to dismiss the appeal because notice of the motion was not personally served on the Commission as the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., did not specify how service of the notice was to be perfected on the Commission, and there was

no express statutory requirement for personal service. Douglas Asphalt Co. v. Ga. PSC, 263 Ga. App. 711, 589 S.E.2d 292 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 190 et seq., 214, 217.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 182 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 297 et seq.

U.L.A. — Model State Administrative Procedure Acts (1961 and 1981), 15 U.L.A.

50-13-9.1. Variances or waivers to rules.

(a) The General Assembly finds and declares that the strict application of rules can lead to unreasonable, uneconomical, and unintended results in particular instances. The General Assembly further declares that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.

(b) As used in this Code section, the term:

(1) "Substantial hardship" means a significant, unique, and demonstrable economic, technological, legal, or other type of hardship to the person requesting a variance or waiver which impairs the ability of the person to continue to function in the regulated practice or business.

(2) "Variance" means a decision by an agency to grant a modification to all or part of the literal requirements of a rule to a person who is subject to the rule.

(3) "Waiver" means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule.

(c) Except as provided in subsection (h) of this Code section, an agency is authorized to grant a variance or waiver to a rule when a person subject to that rule demonstrates that the purpose of the underlying statute upon which the rule is based can be or has been achieved by other specific means which are agreeable to the person seeking the variance or waiver and that strict application of the rule would create a substantial hardship to such person. A register of all pending requests for variances and waivers and all approved variances and waivers shall be maintained by the department granting the waiver or variance and shall be updated upon each grant of waiver or variance and be made available, upon request, to members of the public. The register and each entry on the register shall be posted on the GeorgiaNet. Any member of the public, including interested parties, shall have the opportunity to submit written comments concerning proposed variances or waivers prior to the approval of a variance or waiver pursuant to this Code section.

(d) Except as provided in subsection (h) of this Code section, a person who is subject to regulation by an agency rule may file a petition with that agency requesting a variance or waiver from the agency's rule. In addition to any other requirements which may be imposed by the agency, each petition shall specify:

(1) The rule from which a variance or waiver is requested;

(2) The type of action requested;

(3) The specific facts of substantial hardship which would justify a variance or waiver for the petitioner, including the alternative standards which the person seeking the variance or waiver agrees to meet and a showing that such alternative standards will afford adequate protection for the public health, safety, and welfare; and

(4) The reason why the variance or waiver requested would serve the purpose of the underlying statute.

(e) The agency subject to the provisions of subsections (c) and (d) of this Code section shall grant or deny a petition for variance or waiver in writing no earlier than 15 days after the posting of the petition on the register and no more than 60 days after the receipt of the petition. The agency's decision to grant or deny the petition shall be in writing and shall contain a statement of the relevant facts and the reasons supporting the agency's action.

(f) The agency's decision to deny a petition for variance or waiver shall be subject to judicial review in accordance with Code Section 50-13-19. The validity of any variance or waiver which is granted by an agency may be determined in an action for declaratory judgment in accordance with Code Section 50-13-10.

(g) Nothing in this Code section shall authorize an agency to grant variances or waivers to any statutes or to the agency itself or any other agency. This Code section does not supersede and is cumulative of any other variance or waiver provisions in other statutes or rules.

(h) This Code section shall not apply, and no variance or waiver shall be sought or authorized, when:

(1) Any agency rule or regulation has been adopted or promulgated in order to implement or promote a federally delegated program;

(2) Any rule or regulation is promulgated or adopted by the Department of Corrections concerning any institutional operations or inmate activities;

(3) Any rule or regulation is promulgated or adopted by the Department of Community Health;

(4) Any rule or regulation is promulgated or adopted by the Department of Agriculture;

(5) Any rules, regulations, standards, or procedures are adopted or promulgated by the Department of Natural Resources for the protection of the natural resources, environment, or vital areas of this state; or

(6) The granting of a waiver or variance would be harmful to the public health, safety, or welfare.

(i) All waivers granted pursuant to this Code section shall be reported to the General Assembly within the first ten days of the next session. Such information shall contain the name, address, and telephone number of the person or corporation obtaining such waiver; the name, address, and telephone number of any representative or attorney who represented such person or corporation requesting the waiver; and a description of the waiver granted including a detail of the variance from any rule or regulation.

History. — Code 1981, § 50-13-9.1, enacted by Ga. L. 1997, p. 1521, § 2; Ga. L. 1998, p. 128, § 50; Ga. L. 1999, p. 296, § 22; Ga. L. 2015, p. 207, § 8/HB 71.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Ga. St. U.L. Rev. 301 (1997). For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "agency" was substituted for "department" and "agency's" was substituted for "department's" in subsections (d), (e), (f), and (g), and "State" was deleted preceding "Department of Community Health" in paragraph (h)(4) (now paragraph (h)(3)).

JUDICIAL DECISIONS

Substantial hardship not shown. — Georgia Board of Examiners of Psychologists did not err in denying the applicant's request for a waiver of the residence requirement as the record contained no evidence the Board granted a waiver to other graduates of the on-line program who began the program when the applicant did, only those who started earlier, and the applicant could not show that the applicant would suffer a substantial hardship. Welcker v. Ga. Bd. of Examiners of Psychologists, 340 Ga. App. 853, 798 S.E.2d 368 (2017).

50-13-10. Declaratory judgment on validity of rules; venue for actions.

(a) The validity of any rule, waiver, or variance may be determined in an action for declaratory judgment when it is alleged that the rule, waiver, or variance or its threatened application interferes with or impairs the legal rights of the petitioner. A declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule, waiver, or variance in question.

(b) The agency shall be made a party to the action and a copy of the petition shall be served on the Attorney General. The action shall be brought in the Superior Court of Fulton County or in the superior court of the county of residence of the petitioner. When the petitioner is a

corporation, the action may be brought in the Superior Court of Fulton County or in the superior court of the county where the petitioner maintains its principal place of doing business in this state. All actions for declaratory judgment, however, with respect to any rule, waiver, or variance of the Public Service Commission must be brought in the Superior Court of Fulton County.

(c) Actions for declaratory judgment provided for in this Code section shall be in accordance with Chapter 4 of Title 9, relating to declaratory judgments.

History. — Ga. L. 1964, p. 338, § 11; Ga. L. 1965, p. 283, § 10; Ga. L. 1975, p. 404, § 4; Ga. L. 1992, p. 6, § 50; Ga. L. 1997, p. 1521, § 3.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 301 (1997). For article, "Administrative Law," see 53 Mercer L. Rev. 81 (2001). For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007).

For note discussing the denial of social security benefits to dependent children pursuant to substitute father provisions as violative of due process, prior to the 1967 amendments to the Georgia Public Assistance Act (O.C.G.A. Art. 1, Ch. 4, T. 49), see 15 J. of Pub. L. 349 (1966).

JUDICIAL DECISIONS

Ga. L. 1965, p. 283, § 10 (see O.C.G.A. § 50-13-10) must be construed in conjunction with Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2). Irvin v. Woodliff, 125 Ga. App. 214, 186 S.E.2d 792 (1971).

Construction with O.C.G.A. § 9-4-7(c). — Georgia Court of Appeals disagreed that the "may be determined" language in O.C.G.A. § 50-13-10(a) was evidence that the statute was but one of several methods by which to challenge the validity of an agency rule and that O.C.G.A. § 9-4-7(c), as well as case authority, impliedly contemplated the legitimacy of challenges to agency rules outside the purview of the Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq. Live Oak Consulting, Inc. v. Dep't of Cmty. Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006).

Applicability when statute under which rule promulgated attacked. — When complaint seeking declaratory judgment attacks the constitutionality of the statute under which the challenged rule was promulgated as well as the rule itself, O.C.G.A. § 50-13-10 is inapplicable. Ledford v. Department of Transp., 253 Ga. 717, 324 S.E.2d 470 (1985).

Hazardous waste rules. — O.C.G.A. § 50-13-10 did not authorize plaintiffs to obtain declaratory judgment as to the validity of rules enacted pursuant to the Hazardous Waste Management Act, O.C.G.A. § 12-8-60 et seq., when the plaintiffs were contending that the Act and rules promulgated thereunder were unconstitutional. George v. Department of Natural Resources, 250 Ga. 491, 299 S.E.2d 556 (1983).

Standing to challenge commissioner's rules and regulations. — Trial court did not err in concluding that the plaintiff had standing to bring the declaratory judgment action as the plaintiff made a sufficient showing that the facts were complete and that its interest was not merely academic, hypothetical, or colorable, but actual because, as a Vidalia onion grower, the plaintiff was an interested party claiming a right to ship onions pursuant to the shipping statute — a right the plaintiff claimed was impeded by a newly enacted regulation; and because, if the plaintiff failed to comply with the new regulation, the Georgia Commissioner of Agriculture had that statutory authority to impose civil and criminal penalties. Black v. Bland Farms, LLC, 332 Ga. App.

653, 774 S.E.2d 722 (2015), cert. denied, No. S15C1669, 2015 Ga. LEXIS 713 (Ga. 2015).

Standing. — County lacked standing to challenge the state's rules restricting emissions of volatile compounds; while the county presented evidence that the rules might deter some investment in the county, there was no evidence that the rules had actually done so, and whether any economic harm to its own emission sources would be caused by the rules was speculative. Bd. of Natural Res. of Ga. v. Monroe County, 252 Ga. App. 555, 556 S.E.2d 834 (2001).

No case or controversy. — Trial court's order granting a declaratory judgment to a developer was reversed because a case or controversy was lacking, surrounding the validity of Ga. Comp. R. & Regs. 672-9-.05, as no controversy existed after the rule's adoption and a developer filed an amended petition seeking the same, the rights of the parties accrued, and the parties' positions regarding the constitutionality and the applicability of the Department of Transportation's rule were firmly established. DOT v. Peach Hill Props., 280 Ga. 624, 631 S.E.2d 660 (2006).

Permit requirement. — Trial court erred in dismissing claim for injunctive relief because the issuance of letters of permission by the Department of Natural Resources or activities that required a permit under the Shore Protection Act, O.C.G.A. § 12-5-237, were subject to challenge under O.C.G.A. § 12-5-245 the center's claim for declaratory relief from letters already issued was properly dismissed because a justiciable controversy no longer existed for which a declaratory judgement would have been appropriate. Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

Corporation registration form not "rule." — An "ST-1 form," which corporations are required by the Department of Revenue to use when applying for a certificate of registration, was not a "rule" within the purview of O.C.G.A. § 50-13-10. Roy E. Davis & Co. v. Department of Revenue, 256 Ga. 709, 353 S.E.2d 195 (1987).

Department manual not "rule." — Department of Medical Assistance (now Department of Community Health) manual, which contained "the terms and conditions for receipt of medical assistance reimbursement in Georgia," was not a "rule" and therefore could not be reviewed in a declaratory judgment action. Georgia Dep't of Medical Assistance v. Beverly Enters., Inc., 261 Ga. 59, 401 S.E.2d 499 (1991).

Appeal from driver's license suspension dismissed. — Appeal from a ruling on a declaratory judgment action that was essentially an appeal from an administrative decision to suspend a driver's license was dismissed since the driver was required to proceed by application for discretionary appeal. Miller v. Georgia Dep't of Pub. Safety, 265 Ga. 62, 453 S.E.2d 725 (1995).

Failure to pursue remedy. — Plaintiff teachers denied renewable teaching certificates mistakenly failed to pursue the available remedy under O.C.G.A. § 50-13-10 when the teachers instead waited until after the education board's rules had already been declared invalid to bring an action seeking damages as the state had not "consented" to be sued for damages based upon the alleged invalidity or unconstitutionality of the rules and regulations promulgated and implemented by the state's departments and agencies. State Bd. of Educ. v. Drury, 263 Ga. 429, 437 S.E.2d 290 (1993).

Trial court properly denied the defendant's amended motion for a new trial holding that the administration of breath tests pursuant to Ga. Comp. R. & Regs. 92-3-.06(12)(b) did not violate the due process clause under both U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. I given that: (1) the claim was raised for the first time in the new trial motion, and was thus untimely; (2) the defendant had an alternative remedy under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., by filing an action for a declaratory judgment; (3) the defendant failed to show that the Division of Forensic Sciences (DFS) eliminated meaningful procedures for conducting breath tests when the division promulgated the rule; and (4) the techniques and

methods approved by DFS were sufficient to ensure fair and accurate testing. Palmaka v. State, 280 Ga. App. 761, 634 S.E.2d 883 (2006).

Georgia Industrial Loan Commissioners' authority to investigate. — Trial court properly dismissed a declaratory judgment action brought by a bank and a cash advance lender, which was operating as an agent for the bank, to stop the Georgia Industrial Loan Commissioner from conducting an investigation of their lending activities because the Commissioner was authorized to conduct an investigation of the two entities' loan activities, in spite of the lender's claim that the bank and the lender were operating under the authority of federal banking law. BankWest, Inc. v. Oxendine, 266 Ga. App. 771, 598 S.E.2d 343 (2004).

Application of sovereign immunity. — Trial court did not err in finding that the APA governed a declaratory judgment action filed against a state agency, and that sovereign immunity barred any further discovery, pursuant to O.C.G.A. § 50-13-10; hence, as a result, when plaintiff consultant failed to comply with § 50-13-10, the trial court could do no more than grant the agency a protective order, and could not take any action beyond that, including declaring that the department's rules regarding health benefits could not be challenged. Live Oak Consulting, Inc. v. Dep't of Cmty. Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006).

Trial court did not err in finding that sovereign immunity barred the declaratory action because the court correctly treated the policies of the board of regents regarding non-citizen eligibility for in-state tuition as falling outside the waiver of sovereign immunity found in O.C.G.A. § 50-13-10, thus, the students did not meet the students' burden of showing that the policies at issue were agency rules adopted pursuant § 50-13-10's waiver, rather than interpretive rules exempt from § 50-13-10. Olvera v. Univ. Sys. of Georgia's Bd. of Regents, 331 Ga. App. 392, 771 S.E.2d 91 (2015).

Cited in Pope v. Cokinos, 231 Ga. 79, 200 S.E.2d 275 (1973); Caldwell v. Liberty Mut. Ins. Co., 248 Ga. 282, 282 S.E.2d 885 (1981); Outdoor Adv. Ass'n v. DOT, 186 Ga. App. 550, 367 S.E.2d 827 (1988); State Bd. of Educ. v. Drury, 263 Ga. 429, 437 S.E.2d 290 (1993); SJN Props., LLC v. Fulton County Bd. of Assessors, 296 Ga. 793, 770 S.E.2d 832 (2015); Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017); Ga. Dep't of Human Servs. v. Addison, 304 Ga. 425, 819 S.E.2d 20 (2018); Moosa Co. LLC v. Dep't of Revenue, 353 Ga. App. 429, 838 S.E.2d 108 (2020).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Declaratory Judgments, § 81 et seq.

Am. Jur. Pleading and Practice Forms. — 24A Am. Jur. Pleading and Practice Forms, Venue, § 1 et seq.

C.J.S. — 26 C.J.S., Declaratory Judgments, § 34.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 3-101 et seq.

50-13-11. Declaratory rulings by agencies.

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency, provided that nothing herein shall limit or impair the right of an agency to seek the opinion of the Attorney General on any question of law connected with the duties of the agency pursuant to Code Section 45-15-3 or any other applicable statutory or constitutional provision. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases.

History. — Ga. L. 1964, p. 338, § 12; Ga. L. 1965, p. 283, § 11.

JUDICIAL DECISIONS

Letter did not constitute declaratory ruling because director of agency did not issue the letter pursuant to any rule consistent with O.C.G.A. § 50-13-11. North Fulton Medical Ctr., Inc. v. Roach, 265 Ga. 125, 453 S.E.2d 463 (1995).

Declaratory ruling permissible if procedural rules followed. — While the law explicitly allowed a party to request a declaratory ruling from an administrative agency concerning the application of agency rules, the two associations failed to follow the appropriate procedures for obtaining an interpretation of a regulation from the state revenue department; thus, the associations were not entitled to a declaratory ruling since the associations circumvented the prescribed procedure for challenging the state revenue department's regulations. Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

Intervention in proceedings authorized. — Nonprofit insurance company should have been allowed to intervene in proceedings attacking the implementation of a plan of conversion from nonprofit to for-profit status adopted and approved by the Commissioner of Insurance pursuant to O.C.G.A. § 33-20-34, which, after approval, became a binding agreement between the Commissioner and the company. Blue Cross & Blue Shield of Ga., Inc. v. Deal, 244 Ga. App. 700, 536 S.E.2d 590 (2000).

Cited in Age Int'l, Inc. v. Miller, 830 F. Supp. 1484 (N.D. Ga. 1993).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 70, 245.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 161 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 293.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 2-103.

ALR. — Applicability of stare decisis doctrine to decisions of administrative agencies, 79 A.L.R.2d 1126.

50-13-12. Department of Revenue to hold hearing when demanded by aggrieved taxpayer; election of remedies.

Reserved. Repealed by Ga. L. 2012, p. 318, § 12/HB 100, effective January 1, 2013.

Editor's notes. — This Code section was based on Ga. L. 1964, p. 338, § 13; Ga. L. 1965, p. 283, § 12.

Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

50-13-13. Opportunity for hearing in contested cases; notice; counsel; subpoenas; record; enforcement powers; revenue cases.

(a) In addition to any other requirements imposed by common law, constitution, statutes, or regulations:

(1) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice served personally or by mail;

(2) The notice shall include:

(A) A statement of the time, place, and nature of the hearing;

(B) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) A reference to the particular section of the statutes and rules involved;

(D) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time, the notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished; and

(E) A statement as to the right of any party to subpoena witnesses and documentary evidence through the agency;

(3) Opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved;

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default;

(5) Unless specifically precluded by statute, in addition to the agency, any contested case may be held before any agency representative who has been selected and appointed by the agency for such purpose. Before appointing a hearing representative, the agency shall determine that the person under consideration is qualified by reason of training, experience, and competence;

(6) The agency, the hearing officer, or any representative of the agency authorized to hold a hearing shall have authority to do the following: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing briefs; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the agency or the hearing officer;

(7) Subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party

may apply to the superior court of the county where the contested case is being heard for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. The costs of securing the attendance of witnesses, including fees and mileage, shall be computed and assessed in the same manner as prescribed by law in civil cases in the superior court;

(8) A record shall be kept in each contested case and shall include:

(A) All pleadings, motions, and intermediate rulings;

(B) A summary of the oral testimony plus all other evidence received or considered except that oral proceedings or any part thereof shall be transcribed or recorded upon request of any party. Upon written request therefor, a transcript of the oral proceeding or any part thereof shall be furnished to any party of the proceeding. The agency shall set a uniform fee for such service;

(C) A statement of matters officially noticed;

(D) Questions and offers of proof and rulings thereon;

(E) Proposed findings and exceptions;

(F) Any decision (including any initial, recommended, or tentative decision), opinion, or report by the officer presiding at the hearing; and

(G) All staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case; and

(9) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(b) In proceedings before the agency, the hearing officer, or any representative of the agency authorized to hold a hearing, if any party or an agent or employee of a party disobeys or resists any lawful order of process; or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document; or refuses to appear after having been subpoenaed; or, upon appearing, refuses to take the oath or affirmation as a witness; or after taking the oath or affirmation, refuses to testify, the agency, hearing officer, or other representative shall have the same rights and powers given the court under Chapter 11 of Title 9, the "Georgia Civil Practice Act." If any person or party refuses as specified in this subsection, the agency, hearing officer, or other representative may certify the facts to the superior court of the county where the offense is committed for appropriate action, including a finding of contempt. The agency, hearing officer, or other representative shall have the power to issue writs of fieri facias in order to collect fines

imposed for violation of a lawful order of the agency, hearing officer, or other representative.

(c) Subsection (a) of this Code section and the other provisions of this chapter concerning contested cases shall not apply to any case arising in the administration of the revenue laws, which case is subject to a subsequent de novo trial of the law and the facts in the superior court or in the Georgia Tax Tribunal in accordance with Chapter 13A of this title.

History. — Ga. L. 1964, p. 338, § 14; Ga. L. 1965, p. 283, § 13; Ga. L. 1982, p. 3, § 50; Ga. L. 1994, p. 1270, § 9; Ga. L. 2012, p. 318, § 13/HB 100.

Cross references. — Subpoenas generally, § 24-13-20 et seq. Conduct of hearings before Public Service Commission by hearing officers, § 46-2-58.

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Law reviews. — For article discussing and comparing the principal means by which a Georgia taxpayer may obtain judicial review of his state tax liability with emphasis on income and sales tax, see 27 Mercer L. Rev. 309 (1975). For article surveying developments in Georgia workers' compensation law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 323 (1981). For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012).

For note, "Notice Requirements and the Entrapment Defense Under the Georgia Administrative Procedure Act" in light of Schaffer v. State Bd. of Veterinary Medicine, 143 Ga. App. 68, 237 S.E.2d 510 (1977), see 30 Mercer L. Rev. 347 (1978).

For comment on Pope v. Cokinos, 232 Ga. 425, 207 S.E.2d 63 (1974), see 26 Mercer L. Rev. 337 (1974).

JUDICIAL DECISIONS

Procedural irregularities in investigation were cured by subsequent procedures. — Even if the Georgia Commission on Professional Standards failed to comply with the proper statutory procedures under O.C.G.A. §§ 20-2-984(h) and 20-2-984.4(b) in conducting the Commission's investigation of a school superintendent, the superintendent's substantial rights were not prejudiced by the impropriety. O.C.G.A. § 50-13-19(h), which was cured by subsequent compliance with O.C.G.A. §§ 20-2-984.3(a)(2), 20-2-984.5(d), and 50-13-13(a)(2)(D). Quigg v. Ga. Prof'l Stds. Comm'n, 344 Ga. App. 142, 809 S.E.2d 267 (2017).

Agency's choice of adoptive parents. — Contesting of adoption agency's choice of adoptive parents by the child's foster parents is not a "contested case" within the meaning of this section, as the choice is entirely discretionary in nature. Drummond v. Fulton County Dep't of Family & Children Servs., 237 Ga. 449, 228 S.E.2d 839 (1976), cert. denied, 432 U.S. 905, 97 S. Ct. 2949, 53 L. Ed. 2d 1077 (1977).

Rescheduling of the hearing on the suspension of a driver's license for refusal to submit to a breath analysis test beyond the 30-day period provided for in former subsection (d) of O.C.G.A. § 40-5-55 involves no "unlawful procedure" but is within the scope of statutory authority. Hardison v. Fayssoux, 168 Ga. App. 398, 309 S.E.2d 397 (1983).

Subpoena for production of things. — Reference in O.C.G.A. § 50-13-13 to a person or party being "ordered" to produce any "book, paper, or document" is a reference to a subpoena for the production of things. Ga. Gov't Transparency & Cam-

paign Fin. Comm'n v. New Ga. Project Action Fund, 359 Ga. App. 32, 856 S.E.2d 733 (2021).

No subpoena authority for discovery in teacher termination action. — There is no statutory authority for the Professional Practices Commission (sitting for a local school board) to issue subpoenas for discovery purposes in teacher termination cases. Lansford v. Cook, 252 Ga. 414, 314 S.E.2d 103 (1984).

Judicial enforcement of subpoenas. — When the Georgia Government Transparency and Campaign Finance Commission initiated a preliminary investigation and issued administrative subpoenas to the appellees, the Commission could seek judicial enforcement of its administrative subpoenas in accordance with the Georgia Administrative Procedure Act because the subpoenas issued "commanded" and "compelled" the respective appellees to produce various communications and records; and those subpoenas sufficiently "ordered" the respective appellees to produce the requested materials, the alleged noncompliance with which would allow for the Commission to seek enforcement in the superior court. Ga. Gov't Transparency & Campaign Fin. Comm'n v. New Ga. Project Action Fund, 359 Ga. App. 32, 856 S.E.2d 733 (2021).

No entitlement to tape recording when transcript provided. — When the appellant is provided with a transcript of the administrative hearing, the appellant is not entitled to the tape recording from which the transcript was prepared. Nolen v. Department of Human Resources, 151 Ga. App. 455, 260 S.E.2d 353 (1979), cert. denied, 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 782 (1980).

Close scrutiny when prosecutor acts as legal advisor for hearing board. — When a prosecutor is also acting as the legal advisor for the hearing board, the court must closely scrutinize the relationship between the two. If it appears that the prosecutor has prevailed upon the board in an unfair manner, the board's decision should not be affirmed. Schaffer v. State Bd. of Veterinary Medicine, 143 Ga. App. 68, 237 S.E.2d 510 (1977), overruled on other grounds, In re Kennedy, 266 Ga. 249, 466 S.E.2d 1 (1996), overruled on other grounds, In re Henley, 271 Ga. 21, 518 S.E.2d 418 (1999).

Judicial immunity for Peace Officer Standards and Training Council. — Based on the statutory scheme as to Georgia Peace Officer Standards and Training Council's power to certify or discipline a police chief and the council's investigative powers under O.C.G.A. §§ 35-8-7.1 and 35-8-7.2, and the chief's remedies under Georgia's Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., the council's members and investigators had absolute immunity via quasi-judicial immunity, and thus, the chief's civil rights action against the council members and investigators, alleging through 42 U.S.C. §§ 1983 and 1985(3), violations of the chief's First and Fourteenth Amendment substantive due process rights was dismissed. Evans v. Ga. Peace Officer Stds. & Training Council, No. 1:05-CV-2579-RLV, 2006 U.S. Dist. LEXIS 19415 (N.D. Ga. Mar. 29, 2006).

Letter of concern issued by professional licensing board. — When the Georgia Board of Dentistry conducted an adjudicatory hearing, made findings of fact justifying discipline, and issued a letter of concern, the fact that the board could have issued a letter of concern without such procedures did not preclude judicial review since the sanction was issued as the result of contested case proceedings. Thebaut v. Georgia Bd. of Dentistry, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Reversing agency decision on ground not raised before agency. — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. Ga. Peace Officer Standards and Training Council v. Hodges, 330 Ga. App. 145, 767 S.E.2d 286 (2014).

Agency investigations. — While "proceedings before the agency" in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., can be understood to reference a more formal process — including a contested case — the phrase can also

be understood to encompass an agency's investigations. Ga. Gov't Transparency & Campaign Fin. Comm'n v. New Ga. Project Action Fund, 359 Ga. App. 32, 856 S.E.2d 733 (2021).

Motion to intervene. — Hearing officer did not err in allowing the healthcare provider's competitors to intervene in the proceeding to determine whether the healthcare provider was required to obtain a certificate of need; since the intervenors were competitors of the certificate of need applicant, the intervenors had standing. N. Atlanta Scan Assocs. v. Dep't of Cmty. Health, 277 Ga. App. 583, 627 S.E.2d 67 (2006).

Rule nisi issued by Public Service Commission provided reasonable notice of the commission's intent to investigate the authorized return on equity of a Tier 2 local exchange company and to adjust the commission's rates prior to the commission's election of alternative regulation. Georgia PSC v. ALLTEL Ga. Communs. Corp., 244 Ga. App. 645, 536 S.E.2d 542 (2000).

Landowners not entitled to a hearing regarding neighbors' planned dock. — Landowners' claims against the state for declaratory judgment, mandamus, an unconstitutional taking, and due process and equal protection violations, all arising out of the issuance of a license to their neighbors to build a private dock in a coastal marshland area, all failed. The Coastal Marshlands Protection Act did not apply to a private dock, pursuant to O.C.G.A. § 12-5-295(7); therefore, the landowners were not entitled to a hearing under the Act pursuant to O.C.G.A. § 12-5-283(b) and the Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq. Hitch v. Vasarhelyi, 302 Ga. App. 381, 691 S.E.2d 286 (2010).

Cited in Salerno v. Board of Dental Exmrs., 119 Ga. App. 743, 168 S.E.2d 875 (1969); Pope v. Cokinos, 231 Ga. 79, 200 S.E.2d 275 (1973); Wall v. American Optometric Ass'n, 379 F. Supp. 175 (N.D. Ga. 1974); Georgia Real Estate Comm'n v. Horne, 141 Ga. App. 226, 233 S.E.2d 16 (1977); Department of Natural Resources v. American Cyanamid Co., 239 Ga. 740, 238 S.E.2d 886 (1977); Atlanta Gas Light Co. v. Georgia Pub. Serv. Comm'n, 152 Ga. App. 366, 262 S.E.2d 628 (1979); National Council on Comp. Ins. v. Caldwell, 154 Ga. App. 528, 268 S.E.2d 793 (1980); Shepard v. Byrd, 581 F. Supp. 1374 (N.D. Ga. 1984); DeKalb County Sch. Dist. v. Ga. State Bd. of Educ., 294 Ga. 349, 751 S.E.2d 827 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Purpose and intent of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13) is not to create additional substantive requirements in what is cause for revocation of a license by an administrative agency; rather, the purpose and intent of the law is to provide uniform, minimum procedural requirements to be followed by an administrative agency in determining the legal rights, duties, or privileges of a party in a matter in which the particular agency regulates and to which the law applies. 1965-66 Op. Att'y Gen. No. 65-73.

Notice and hearing required before license revocation. — Due process clauses of U.S. Const., amend. 14 and Ga. Const. 1976, Art. I, Sec. I, Para. I (see Ga. Const. 1983, Art. I, Sec. I, Para. I) require notice and a hearing by an administrative agency before any action may be taken to revoke a license; this constitutional requirement must be met even though the act granting the right to revoke the license provides for an appeal to the superior court. 1958-59 Op. Att'y Gen. p. 1.

Law should prescribe notice and hearing. — It is necessary that the law under which administrative hearings are conducted prescribe notice and hearing, and it is not sufficient that a notice and hearing are given, even though not required by law. 1958-59 Op. Att'y Gen. p. 1.

Conduct of hearings in informal manner. — With the passage of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13) the bell was tolled on the practice of conducting hearings in an informal manner except by stipulation of the parties, agreed settlement, the entry of consent orders, or defaults. 1965-66 Op. Att'y Gen. No. 66-36.

Hearings by Office of State Administrative Hearings. — Unless otherwise exempted or excluded, contested cases not presided over by the agency head or board or body which is the ultimate decision maker are to be conducted by the Office of State Administrative Hearings. 1995 Op. Att'y Gen. No. 95-5.

Commissioner of Agriculture not obligated to provide formal administrative appeal. — Commissioner of Agriculture has neither a statutory nor a constitutional obligation to provide a formal means of administratively appealing the decision to bar a party from a state-owned and regulated farmers' market. 1965-66 Op. Att'y Gen. No. 66-217.

Momentary compliance by one with history of noncompliance. — Administrative agency may proceed to revoke license of licensee in conformity with Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13) and the fact that the licensee shows at the agency's proceedings that the licensee is momentarily complying with all lawful requirements for the retention of the license would be immaterial; the real question to be resolved by the agency's proceedings would be whether the licensee had been in noncompliance with all lawful requirements for the retention of the license at the time that the licensee is alleged to have been in noncompliance with such requirements. 1965-66 Op. Att'y Gen. No. 65-73.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 298 et seq., 363, 368.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 37, 95, 106 et seq., 157 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 223 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 4-201 et seq.

ALR. — Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel, 18 A.L.R.2d 552.

Administrative decision by officer not present when evidence was taken, 18 A.L.R.2d 606.

Power of administrative agency, in investigation of nonjudicial nature, to issue subpoenas against persons not subject to agency's regulatory jurisdiction, 27 A.L.R.2d 1208.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body, 65 A.L.R.2d 1278.

Revocation of teacher's certificate for moral unfitness, 97 A.L.R.2d 827.

Effectiveness of stipulation of parties or attorneys, notwithstanding its violating form requirements, 7 A.L.R.3d 1394.

Failure to give notice of application for default judgment where notice is required only by custom, 28 A.L.R.3d 1383.

Right to assistance by counsel in administrative proceedings, 33 A.L.R.3d 229.

Sufficiency of notice or hearing required prior to termination of welfare benefits, 47 A.L.R.3d 277.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 427.

50-13-14. Intervention in contested cases.

In contested cases:

(1) Upon timely application, any person shall be permitted to intervene when a statute confers an unconditional right to intervene or when the representation of an applicant's interest is or may be inadequate; or

(2) Upon timely application, any person may be permitted to intervene when a statute confers a conditional right to intervene or

when the applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion, the agency shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of existing parties.

History. — Ga. L. 1964, p. 338, § 15; Ga. L. 1965, p. 283, § 14.

Cross references. — Intervention in proceedings before Public Service Commission, § 46-2-59.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "an" was inserted preceding "applicant's" in paragraph (1).

JUDICIAL DECISIONS

Intervention in proceedings authorized. — Nonprofit insurance company should have been allowed to intervene in proceedings attacking the implementation of a plan of conversion from nonprofit to for-profit status adopted and approved by the Commissioner of Insurance pursuant to O.C.G.A. § 33-20-34, which, after approval, became a binding agreement between the Commissioner and the company. Blue Cross & Blue Shield of Ga., Inc. v. Deal, 244 Ga. App. 700, 536 S.E.2d 590 (2000).

Cited in National Council on Comp. Ins. v. Caldwell, 154 Ga. App. 528, 268 S.E.2d 793 (1980); Campaign for a Prosperous Georgia v. Georgia Power Co., 174 Ga. App. 263, 329 S.E.2d 570 (1985).

50-13-15. Rules of evidence in contested cases; official notice; conducting hearings by utilizing remote electronic communications.

In contested cases:

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in the trial of civil nonjury cases in the superior courts shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under such rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs or if it consists of a report of medical, psychiatric, or psychological evaluation of a type routinely submitted to and relied upon by an agency in the normal course of its business. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(2) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original or have it established as documentary evidence according to the rules of evidence applicable to the superior courts of this state;

(3) A party may conduct such cross-examination as shall be required for a full and true disclosure of the facts;

(4) Official notice may be taken of judicially cognizable facts. In addition, official notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence; and

(5) Any hearing which is required or permitted hereunder may be conducted by utilizing remote electronic communications if the record reflects that all parties have consented to the conduct of the hearing by use of such communications and that such procedure will not jeopardize the rights of any party to the hearing. In the administrative law judge's discretion, one or more witnesses may participate by remote electronic communications.

History. — Ga. L. 1964, p. 338, § 16; Ga. L. 1965, p. 283, §§ 15, 16; Ga. L. 1979, p. 1014, § 1; Ga. L. 1982, p. 871, §§ 1, 2; Ga. L. 2021, p. 118, § 1/HB 553.

The 2021 amendment, effective April 29, 2021, in paragraph (5), substituted "electronic" for "telephonic" in the middle of the first sentence and added the second sentence.

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Effect of O.C.G.A. § 50-13-15(4). — O.C.G.A. § 50-13-15(4) did not authorize the Board of Dentistry to use the board's expertise to compensate for the absence of key evidence not presented or noticed in issuing a letter of concern regarding a dentist's recommended treatment that allegedly fell below minimal professional standards. Thebaut v. Georgia Bd. of Dentistry, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Notice to party required of any official notice taken. — Last sentence of O.C.G.A. § 50-13-15(4) provides that the agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. However, this in no way takes away from the requirement that in order to take official notice of a technical or scientific fact, the party shall be notified either before or during the hearing that such notice will be taken and the party should be afforded an opportunity to contest this issue. Hicks v. Harden, 133 Ga. App. 789, 213 S.E.2d 49 (1975).

Administrative agency must confine itself to record before the agency and afford opportunity for showings contrary to material facts of which official notice has been taken; to constitute fatal error it must appear that an administrative agency's journey outside the record worked substantial prejudice. Atlanta Gas Light Co. v. Georgia Pub. Serv. Comm'n, 152 Ga. App. 366, 262 S.E.2d 628 (1979).

Preponderance of evidence standard was applicable in a disciplinary proceeding conducted by the Board of Dentistry. Georgia Bd. of Dentistry v. Pence, 223 Ga. App. 603, 478 S.E.2d 437 (1996).

Proviso for use of certain evidence is that it is necessary to establish facts not reasonably susceptible of proof under the usual rules of evidence in civil nonjury cases. Finch v. Caldwell, 155 Ga. App. 813, 273 S.E.2d 216 (1980).

Failure to object to witness' qualifications constitutes waiver. — In rate increase request hearings, when the power company failed to object to an expert witness' qualifications either before or during the expert's testimony, any objection the company might have had was waived. Georgia Power Co. v. Georgia Pub. Serv. Comm'n, 196 Ga. App. 572, 396 S.E.2d 562 (1990).

Failure to call witnesses does not circumvent rules of evidence. — Mere failure to call witnesses apparently readily available does not render the witnesses' testimony not reasonably susceptible of proof under the usual rules of evidence. Finch v. Caldwell, 155 Ga. App. 813, 273 S.E.2d 216 (1980); McGahee v. Yamaha Motor Mfg. Corp., 214 Ga. App. 473, 448 S.E.2d 249 (1994).

What constitutes hearsay. — What clearly is hearsay cannot be viewed as commonly relied upon by individuals in conduct of their affairs. Finch v. Caldwell, 155 Ga. App. 813, 273 S.E.2d 216 (1980).

Hearsay character of medical reports does not bar consideration. — Fact that medical reports are hearsay does not mean that such reports could not be considered by a hearing officer in making a determination when the reports satisfy the requirements of this section. Nolen v. Department of Human Resources, 151 Ga. App. 455, 260 S.E.2d 353 (1979), cert. denied, 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 782 (1980).

Effect of body looking beyond record. — Mere fact that the determining body has looked beyond the record proper does not invalidate the body's action unless substantial prejudice is shown to result. Atlanta Gas Light Co. v. Georgia Pub. Serv. Comm'n, 152 Ga. App. 366, 262 S.E.2d 628 (1979).

Inadmissibility of polygraph examination results. — Results of polygraph examination are not admissible into evidence, having no probative value. Feltham v. Cofer, 149 Ga. App. 379, 254 S.E.2d 499 (1979).

In the absence of a stipulation of admissibility, the general rule that the results of polygraph tests are not admissible into evidence applies; thus, the Board of Public Safety did not err in refusing to consider the results of the test. Feltham v. Cofer, 149 Ga. App. 379, 254 S.E.2d 499 (1979).

Cited in Cofer v. Summerlin, 147 Ga. App. 721, 250 S.E.2d 174 (1978); Jackson Elec. Mbrshp. Corp. v. Ga. PSC, 294 Ga. App. 253, 668 S.E.2d 867 (2008).

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Conduct of hearings in informal manner. — With the passage of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. T. 50, C. 13), the bell was tolled on the practice of conducting hearings in an informal manner except by stipulation of the parties, agreed settlement, the entry of consent orders, or defaults. 1965-66 Op. Att'y Gen. No. 66-36.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 344 et seq.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, §§ 235 et seq., 264 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 4-201 et seq.

ALR. — Necessity of some evidence at hearing to support decision of public board or official required to be made after or upon hearing, 123 A.L.R. 1349.

Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel, 18 A.L.R.2d 552.

Hearsay evidence in proceedings before state administrative agencies, 36 A.L.R.3d 12.

50-13-16. Proposal for decision in contested cases; opportunity to file exceptions and present briefs and arguments.

When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this Code section.

History. — Ga. L. 1964, p. 338, § 17.

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Inapplicable to disability benefit proceedings. — Brief and oral argument provisions of this section are inapplicable to disability benefit proceedings. Turner v. Harden, 136 Ga. App. 842, 222 S.E.2d 621 (1975).

RESEARCH REFERENCES

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, § 272 et seq.

U.L.A. — Model State Administrative Procedure Acts (1961 and 1981), 15 U.L.A. § 1 et seq.

ALR. — Necessity of some evidence at hearing to support decision of public board or official required to be made after or upon hearing, 123 A.L.R. 1349.

Administrative decision by officer not present when evidence was taken, 18 A.L.R.2d 606.

50-13-17. Initial decisions in contested cases; review of initial decisions; final decisions and orders; Public Service Commission exceptions.

(a) In contested cases in which the agency has not presided at the reception of the evidence, the agency representative who presided shall initially decide the case or the agency shall require the entire record before the agency representative to be certified to it for initial decision. When the representative makes the initial decision, and in absence of an application to the agency within 30 days from the date of notice of the initial decision for review, or an order by the agency within such time for review on its motion, the initial decision shall, without further proceedings, become the decision of the agency. On review from the initial decision of the representative, the agency shall have all the powers it would have in making the initial decision and, if deemed advisable, the agency may take additional testimony or remand the

case to the hearing representative for such purpose. When the agency makes the initial decision without having presided at the reception of evidence, the agency representative shall first recommend a decision, a copy of which shall be sent to each party and which shall be made a part of the record.

(b) A final decision or order adverse to a party, other than the agency, in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated, and the effective date of the decision or order. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Each agency shall maintain a properly indexed file of all decisions in contested cases, which file shall be open for public inspection with the exceptions provided in paragraph (4) of subsection (a) of Code Section 50-13-3. A copy of the decision or order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or to his attorney of record. Nothing in this Code section shall prevent agencies from entering summary decisions or orders for contested cases informally disposed of under paragraph (4) of subsection (a) of Code Section 50-13-13. Moreover, nothing in this Code section shall prevent the parties to a contested case before the Public Service Commission from waiving the requirements of this Code section relating to findings of fact and conclusions of law, nor preclude the commission from adopting a rule or rules prescribing the procedure whereby parties to a contested case before it may waive such requirements.

(c) Each agency shall render a final decision in contested cases within 30 days after the close of the record required by Code Section 50-13-13 except that any agency, by order, may extend such period in any case in which it shall find that the complexity of the issues and the length of the record require an extension of the period, in which event the agency shall render a decision at the earliest date practicable. Notwithstanding any other provisions of this law to the contrary, the procedures prescribed by Code Section 46-2-25, relating to procedure for utility rate changes, shall be applicable to and available to any person, firm, or corporation subject to the jurisdiction of the Public Service Commission; and nothing contained herein shall be deemed to abrogate or limit, in any manner, such Code section as it pertains to any rate, charge, classification, or service which may constitute the basis of a contested case, proceeding, hearing, or matter before the Public Service Commission.

(d) The Public Service Commission shall not be required to include findings of fact and conclusions of law in its orders and decisions in cases in which it presides at the reception of the evidence where no person appears in protest or opposition to the relief or authority sought;

provided, however, that such cases shall not include those in which the relief sought is an increase or decrease in the rate or rates of any person subject to its jurisdiction; and provided, further, that, if an aggrieved person files a petition seeking judicial review pursuant to Code Section 50-13-19 with respect to such an order or decision, the Public Service Commission shall nevertheless prepare such findings of fact and conclusions of law and include the same in the record of the proceedings transmitted to the reviewing court pursuant to subsection (e) of Code Section 50-13-19.

History. — Ga. L. 1964, p. 338, § 18; Ga. L. 1966, p. 333, § 1; Ga. L. 1975, p. 404, §§ 5-7; Ga. L. 1988, p. 1936, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "a" was inserted following "shall render" in the first sentence of subsection (c).

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012). For article, "Researching Georgia Law," see 34 Ga. St. U. L. Rev. 741 (2015).

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Construction with other statutes. — O.C.G.A. § 46-2-25 supercedes contrary provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-17, with regard to the judicial review of decisions made by the Georgia Public Service Commission. Atmos Energy Corp. v. Ga. PSC, 290 Ga. App. 243, 659 S.E.2d 385 (2008).

Natural gas distribution company could not challenge a rate change ruling by the Georgia Public Service Commission (PSC) because the order was not a final order under O.C.G.A. § 46-2-25(d) as the language indicated that it was only an interim decision; § 46-2-25 did not mandate the entry of a final order at the end of the six-month "file and suspend" period, and O.C.G.A. § 50-13-17(b) of the Administrative Procedure Act did not prevail over the more restrictive requirements imposed by § 46-2-25(d) as to the manner in which the PSC rendered a decision. Atmos Energy Corp. v. Ga. PSC, 285 Ga. 133, 674 S.E.2d 312 (2009).

When initial decisions deemed final. — The 30-day period for an aggrieved party to act under subsection (a) prevents that party from keeping the initial decision in abeyance indefinitely. Also, it serves to activate that decision as the final agency decision without requiring the agency itself to review all cases decided initially by a hearing officer, whether contested or not contested. Department of Pub. Safety v. MacLafferty, 230 Ga. 22, 195 S.E.2d 748 (1973).

Aggrieved party cannot bypass agency review. — Subsection (a) does not allow a party dissatisfied with the initial decision rendered by a hearing officer to bypass the review available within the agency and directly seek judicial review in the courts. Department of Pub. Safety v. MacLafferty, 230 Ga. 22, 195 S.E.2d 748 (1973).

Exhaustion of administrative remedies. — Superior court did not err in dismissing a taxpayer's petition for judicial review of a decision of the Department of Revenue because the taxpayer failed to exhaust the administrative remedies available; the taxpayer never asked the commissioner of revenue to review the department's initial decision. Alexander v. Dep't of Revenue, 316 Ga. App. 543, 728 S.E.2d 320 (2012).

Administrative Procedures Act, O.C.G.A. § 50-13-1 et seq., clearly contemplates applications to an agency to review initial decisions in contested cases; accordingly, even when an agency refers administrative proceedings to an administrative law judge with the Office of State Administrative Hearings for an initial decision pursuant to O.C.G.A. § 50-13-41, a

person aggrieved by the initial decision can make application to the agency under O.C.G.A. § 50-13-17 for review of that initial decision. Alexander v. Dep't of Revenue, 316 Ga. App. 543, 728 S.E.2d 320 (2012).

Reasons for imposing more severe sanctions must appear in record. — It is necessary that whenever the Real Estate Commission "reviews" a hearing officer's decision and imposes a more severe sanction than "recommended" the reasons for so doing must affirmatively appear as part of the record, otherwise the procedure of "review" under subsection (a) would have a "chilling" effect on a licensee's decision to exercise the licensee's right to review. Georgia Real Estate Comm'n v. Horne, 141 Ga. App. 226, 233 S.E.2d 16 (1977).

Reversing agency decision on ground not raised before agency. — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. Ga. Peace Officer Standards and Training Council v. Hodges, 330 Ga. App. 145, 767 S.E.2d 286 (2014).

Sufficiency of findings of fact. — When the Public Service Commission granted a rate increase, but disallowed some of the utility company's costs in calculating the rate base for a fair increase because the commission concluded that some of the costs were the result of the company's imprudent management of the project, the agency's decision was within the agency's authority, and was supported by the facts. Georgia Power Co. v. Georgia Pub. Serv. Comm'n, 196 Ga. App. 572, 396 S.E.2d 562 (1990).

Validity of decision rendered more than 30 days after close of record. — Board of Dentistry's decision to sanction a dentist was not void for want of jurisdiction, even though the decision was rendered more than 30 days following the close of the record since no harm was shown nor authority withdrawn. Thebaut v. Georgia Bd. of Dentistry, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Scope of appeal officer's review. — Since the credibility of witnesses is a question that must be decided by the factfinder who sees and hears the witnesses and is in a position to evaluate the witnesses' demeanor, an administrative appeal officer's substitution of an appeal officer's judgment for that of the administrative hearing officer is impermissible. Atkinson v. Ledbetter, 183 Ga. App. 739, 360 S.E.2d 66 (1987).

Cited in Smith v. UMW, 180 F. Supp. 796 (M.D. Ga. 1958); Hood v. Rice, 120 Ga. App. 691, 172 S.E.2d 170 (1969); Howell v. Harden, 231 Ga. 594, 203 S.E.2d 206 (1974); Wall v. American Optometric Ass'n, 379 F. Supp. 175 (N.D. Ga. 1974); Lee v. White Truck Lines, 143 Ga. App. 94, 238 S.E.2d 120 (1977); Department of Natural Resources v. American Cyanamid Co., 239 Ga. 740, 238 S.E.2d 886 (1977); Carnes v. Crawford, 246 Ga. 677, 272 S.E.2d 690 (1980); Fluker v. Edwards, 161 Ga. App. 418, 288 S.E.2d 684 (1982); Safety Fire Comm'r v. U.S.A. Gas, Inc., 229 Ga. App. 807, 494 S.E.2d 706 (1997); Ga. Peace Officers Stds. & Training Council v. Anderson, 290 Ga. App. 91, 658 S.E.2d 840 (2008); Greene v. Dep't of Cmty. Health, 293 Ga. App. 201, 666 S.E.2d 590 (2008).

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Receipt of notice of decision begins 30-day period. — The 30-day time period for seeking review of the initial decision by the agency does not begin to run until the date on which the respondent has notice of the decision. 1983 Op. Att'y Gen. No. 83-70.

Review of decision by agency. — If, after reviewing the initial decision, the agency issues a final decision, the provisions of O.C.G.A. § 50-13-19(b) and not O.C.G.A. § 50-13-17(a) govern the process of seeking review of that decision. 1983 Op. Att'y Gen. No. 83-70.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 368 et seq.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, § 272 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 4-201 et seq.

ALR. — Necessity of some evidence at hearing to support decision of public board or official required to be made after or upon hearing, 123 A.L.R. 1349.

Necessity, form, and contents of express finding of fact to support administrative determinations, 146 A.L.R. 209.

Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel, 18 A.L.R.2d 552.

Administrative decision by officer not present when evidence was taken, 18 A.L.R.2d 606.

Power of administrative agency to reopen and reconsider final decision as affected by lack of specific statutory authority, 73 A.L.R.2d 939.

Applicability of stare decisis doctrine to decisions of administrative agencies, 79 A.L.R.2d 1126.

Doctrine of res judicata or collateral estoppel as barring relitigation in state criminal proceedings of issues previously decided in administrative proceedings, 30 A.L.R.4th 856.

50-13-18. Procedure upon grant, denial, renewal, revocation, suspension, annulment, or withdrawal of licenses.

(a) When the grant, denial, or renewal of a license is required by law to be preceded by notice and opportunity for hearing, Code Section 50-13-13 shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or for a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or at a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency has sent notice, by certified mail or statutory overnight delivery to the licensee, of individual facts or conduct which warrant the intended action and the licensee has been given an opportunity to show compliance with all lawful requirements for the retention of the license except where:

(1) The agency finds that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, in which case summary suspension of a license may be ordered pending proceedings for revocation or other action, which proceeding shall be promptly instituted and determined; or

(2) The agency's order is expressly required, by a judgment or a statute, to be made without the right to a hearing or continuance of any type.

(d)(1) In contested cases which could result in the revocation, suspension, or limitation of a license, when a licensee makes a general or specific request for exculpatory, favorable, or arguably favorable information that is relative to pending allegations concerning a license, an agency must furnish the requested information, indicate that no such information exists, or refuse to furnish the information requested prior to a hearing. An agency shall not be required to release information which is made confidential by state or federal law, until such requested information has been determined to be exculpatory, favorable, or arguably favorable pursuant to the in camera procedure specified in paragraph (2) of this subsection.

(2) Once an agency has furnished exculpatory, favorable, or arguably favorable information, has indicated that no such information exists, or has refused to furnish such information, the licensee may request a prehearing in camera inspection of the remainder of the investigative file by the person or persons presiding over the hearing. Such person or persons shall furnish the licensee with all material that would aid in the licensee's defense that is exculpatory, favorable, or arguably favorable. Such person or persons shall seal a copy of the entire investigative file in order to preserve it in the event of an appeal.

History. — Ga. L. 1964, p. 338, § 19; Ga. L. 1965, p. 283, § 17; Ga. L. 1982, p. 3, § 50; Ga. L. 1991, p. 1400, § 1; Ga. L. 2000, p. 1589, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005).

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Correction of nonwillful violation prior to hearing. — This section may well foreclose revocation in any proceeding initiated by the Board of Examiners in Optometry when the respondent demonstrates correction of a nonwillful violation of board rules before the time of the hearing. Wall v. American Optometric Ass'n, 379 F. Supp. 175 (N.D. Ga.), aff'd, 419 U.S. 888, 95 S. Ct. 166, 42 L. Ed. 2d 134 (1974).

Function of an agency's finding pursuant to O.C.G.A. § 50-13-18(c)(1) that emergency action is required, unlike that of a notice, is not to inform the licensee of charges and define issues in a later proceeding. Everett v. Georgia Bd. of Dentistry, 264 Ga. 14, 441 S.E.2d 66 (1994).

Hearing and determination required before revocation of license. — Just as there can be no massive seizure of allegedly obscene materials for destruction without a prior adversary type hearing and determination of obscenity, there can be no valid revocation of a business license for having exhibited an obscene film without such prior hearing and determination. 106 Forsyth Corp. v. Bishop, 362 F. Supp. 1389 (M.D. Ga. 1972), aff'd, 482 F.2d 280 (5th Cir. 1973), cert. denied, 422 U.S. 1044, 95 S. Ct. 2660, 45 L. Ed. 2d 696 (1975).

Intent of this section is to give a licensee a hearing, and an opportunity to be heard when the licensee can demonstrate that at the time of the alleged

violation the licensee was in full compliance with the law. Hinson v. Georgia State Bd. of Dental Exmrs., 135 Ga. App. 488, 218 S.E.2d 162 (1975).

Application. — Healthcare provider did not show that the state community health department committed an error of law in issuing a cease and desist letter directing the healthcare provider to stop operating the provider's diagnostic imaging center until the healthcare provider obtained a certificate of need; the letter of nonreviewability the healthcare provider cited was not a form of permission required by law and, thus, the revocation of the letter, which triggered the need for the certificate of need, was not subject to the notice requirements of O.C.G.A. § 50-13-18(c). N. Atlanta Scan Assocs. v. Dep't of Cmty. Health, 277 Ga. App. 583, 627 S.E.2d 67 (2006).

Under this section, licensee is not entitled to two hearings. Hinson v. Georgia State Bd. of Dental Exmrs., 135 Ga. App. 488, 218 S.E.2d 162 (1975).

Service on office secretary. — When process was served, at local office of association, upon an office secretary who had never been an officer or official member of the association, and who was not otherwise an agent or officer designated for service of process, the service of process was legally insufficient. Masters v. Air Line Pilots Ass'n Int'l, 144 Ga. App. 350, 241 S.E.2d 38 (1977).

Essential to notify driver that license suspended. — Actual or legal notice to the defendant that license has been suspended is an essential element of driving after one's license has been suspended. Barrett v. State, 173 Ga. App. 452, 326 S.E.2d 816 (1985).

Due process did not require a hearing prior to the summary suspension when the board did make the requisite finding under O.C.G.A. § 50-13-18(c)(1), which was supported by the arrest warrant for sexual offenses committed against children and the alleged occurrence of the crimes at the same location when appellant practiced dentistry; furthermore, the proceeding to revoke appellant's license, with its accompanying procedural protections, was simultaneously instituted. Everett v. Georgia Bd. of Dentistry, 264 Ga. 14, 441 S.E.2d 66 (1994).

Cited in Hicks v. Georgia State Bd. of Pharmacy, 553 F. Supp. 314 (N.D. Ga. 1982); City Council v. Crump, 251 Ga. 594, 308 S.E.2d 180 (1983); Hale v. State, 188 Ga. App. 524, 373 S.E.2d 250 (1988); Penaranda v. Cato, 740 F. Supp. 1578 (S.D. Ga. 1990); Quigg v. Ga. Prof'l Stds. Comm'n, 344 Ga. App. 142, 809 S.E.2d 267 (2017).

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Monetary compliance by one with history of noncompliance. — Administrative agency may proceed to revoke license of licensee in conformity with the law and the fact that the licensee shows at the agency's proceedings that the licensee is momentarily complying with all lawful requirements for the retention of a license would be immaterial; the real question to be resolved by the agency's proceedings would be whether the licensee had been in noncompliance with all lawful requirements for the retention of the license at the time that the licensee is alleged to have been in noncompliance with such requirements. 1965-66 Op. Att'y Gen. No. 65-73.

O.C.G.A. § 50-13-18 concerns compliance with requirements at time of alleged noncompliance. — Opportunity to show compliance referred to by this section is the opportunity to show compliance with lawful requirements at the time the licensee is alleged to have been in noncompliance, and does not refer to a compliance at the time of a licensee receiving notice, or at the time of the institution of agency proceedings to revoke the license. 1965-66 Op. Att'y Gen. No. 65-73.

Distinctions between denials of applications for new or existing license. — Applicant would have no course of appeal should the applicant initially be denied a license for a school or an instructor's permit; however, the denial of an existing license would require a different result since when the state confers a license to engage in a profession, trade, or occupation not inherently inimical to the public welfare, such license becomes a

valuable right which cannot be denied or abridged except after due notice and a fair and impartial hearing before an unbiased tribunal. 1968 Op. Att'y Gen. No. 68-278.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 56 et seq.

C.J.S. — 53 C.J.S., Licenses, § 58 et seq.

U.L.A. — Model State Administrative Procedure Acts (1961 and 1981), 15 U.L.A.

ALR. — Constitutionality of license statute or ordinance as affected by delegation of authority as to amount of bond of licensee, 107 A.L.R. 1506.

50-13-19. (See Editor's notes.) Judicial review of contested cases.

(a) Any person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This Code section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition within 30 days after the service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision thereon. The petition may be filed in the Superior Court of Fulton County or in the superior court of the county of residence of the petitioner; or, if the petitioner is a corporation, the appeal may be brought in the Superior Court of Fulton County or in the superior court of the county where the petitioner maintains its principal place of doing business in this state; and provided, further, that all proceedings for review with respect to orders, rules, regulations, or other decisions or directives of the Commissioner of Agriculture may also be brought in the Superior Court of Tift County or the Superior Court of Chatham County. All proceedings for review, however, with respect to orders, rules, regulations, or other decisions or directives of the Public Service Commission must be brought in the Superior Court of Fulton County. Copies of the petition shall be served upon the agency and all parties of record. The petition shall state the nature of the petitioner's interest, the fact showing that the petitioner is aggrieved by the decision, and the ground as specified in subsection (h) of this Code section upon which the petitioner contends that the decision should be reversed or modified. The petition may be amended by leave of court.

(c) Irrespective of any provisions of statute or agency rule with respect to motions for rehearing or reconsideration after a final agency decision or order, the filing of such a motion shall not be a prerequisite

to the filing of any appeal for judicial review or relief; provided, however, that no objection to any order or decision of any agency shall be considered by the court upon petition for review unless such objection has been urged before the agency.

(d)(1) The filing of the petition for judicial review in superior court does not itself stay enforcement of the agency decision. Except as otherwise provided in this subsection, the agency may grant, or the reviewing court may order, a stay upon appropriate terms for good cause shown.

(2) In cases involving the grant of a permit, permit amendment, or variance by the director of the Environmental Protection Division of the Department of Natural Resources in which the petition for judicial review in superior court was filed by any person to whom such contested order or action is not directed, a stay shall not be granted unless by order of the superior court upon motion for a temporary restraining order or interlocutory injunction in accordance with Code Section 9-11-65.

(3) The provisions of paragraphs (1) and (2) of this subsection notwithstanding, in any case involving the grant of a permit, permit amendment, or variance by the director of the Environmental Protection Division of the Department of Natural Resources regarding water withdrawal for farm uses under Code Section 12-5-31 or Code Section 12-5-105, no stay shall be authorized if the petition for judicial review in superior court was filed by any person to whom such order or action is not directed.

(4) In contested cases involving a license to practice medicine or a license to practice dentistry in this state, a reviewing court may order a stay or an agency may grant a stay only if the court or agency makes a finding that the public health, safety, and welfare will not be harmed by the issuance of the stay.

(e) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(f) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and there were good reasons for failure to present it in the proceedings before the agency, the court may order that the additional evidence be taken

before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(h) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History. — Ga. L. 1964, p. 338, § 20; Ga. L. 1975, p. 404, § 8; Ga. L. 1977, p. 316, § 1; Ga. L. 1978, p. 1362, § 1; Ga. L. 1980, p. 820, § 1; Ga. L. 2004, p. 598, § 2; Ga. L. 2005, p. 818, § 3/SB 190; Ga. L. 2016, p. 755, § 3/HB 1025.

Editor's notes. — For application of this statute in 2020 and 2021, see Executive Orders 05.12.20.02, 05.28.20.02, 06.11.20.01, 06.29.20.02, 07.31.20.02, 08.15.20.01, 08.31.20.02, 09.15.20.01, 09.30.20.02. 10.15.20.01, 10.30.20.02, 11.13.20.01, 11.30.20.02, 12.08.20.01, 12.30.20.02, 01.15.21.01, 01.29.21.02, 02.15.21.01, 02.26.21.02, and 03.12.21.01.

Law reviews. — For article discussing and comparing the principal means by which a Georgia taxpayer may obtain judicial review of his state tax liability with emphasis on income and sales tax, see 27 Mercer L. Rev. 309 (1975). For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978). For article, "A Practical Guide to State Tax Practice," see 15 Ga. St. B.J. 74 (1978). For article surveying developments in Georgia workers' compensation law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 323 (1981). For annual survey of recent developments, see 38 Mercer L. Rev. 473 (1986). For article, "From Marshes to Mountains, Wetlands Come Under State Regulation," see 41 Mercer L. Rev. 865 (1990). For article, "Administrative Law," see 53 Mercer L. Rev. 81 (2001). For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For article, "The Status of Administrative Agencies under the Georgia Constitution," see 40 Ga. L. Rev. 1109 (2006). For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007). For annual survey on adminis-

trative law, see 60 Mercer L. Rev. 1 (2008). For annual survey on administrative law, see 61 Mercer L. Rev. 1 (2009). For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010). For article, "Administrative Law," see 63 Mercer L. Rev. 47 (2011). For annual survey on administrative law, see 65 Mercer L. Rev. 41 (2013). For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015). For annual survey on administrative law, see 70 Mercer L. Rev. 1 (2018).

JUDICIAL DECISIONS

Analysis

General Consideration
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General Consideration

Due process issues. — Because the plaintiff equine owner could, pursuant to O.C.G.A. § 2-2-9.1(n), seek judicial review of defendant Georgia Department of Agriculture Commissioner's final decision as to the seizure of the plaintiff's animals, and O.C.G.A. § 50-13-19(a), (h), provided a judicial safety valve for review, the owner had no constitutional challenge to the procedural adequacy of the hearing and appeal procedure set forth in the Georgia Humane Care for Equines Act, O.C.G.A. § 4-13-1 et seq., and the Commissioner thus had qualified immunity on a due process claim. Reams v. Irvin, 561 F.3d 1258 (11th Cir. 2009).

Venue of action. — Trial court did not err in the court's denial of the motion to transfer venue in a case involving an application for a Certificate of Need (CON) because the company began the process of purchasing property and applied for a CON to develop a psychiatric hospital in Coweta County, Georgia, therefore, the company engaged in business activities such that venue was proper there. Tanner Med. Ctr., Inc. v. Vest Newnan, LLC, 337 Ga. App. 884, 789 S.E.2d 258 (2016).

Presentation of additional evidence as reversible error. — When the claimant does not agree that the superior court could consider additional evidence, such as personnel records, and thereby waive the requirement of subsection (f), as to an application made to the court for leave to present additional evidence, and when counsel for the commissioner did not waive the requirement of the law but specifically pointed out that the case should be remanded to the board of review for purposes of introduction of such additional evidence, including personnel records, there has been no waiver of the requirement of subsection (f), and the presentation of additional evidence constitutes reversible error. Caldwell v. Corbin, 152 Ga. App. 153, 262 S.E.2d 516 (1979).

Reversing agency decision on ground not raised before agency. — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. Ga. Peace Officer Standards and Training Council v. Hodges, 330 Ga. App. 145, 767 S.E.2d 286 (2014).

Applicability. — In an action in which the school district appealed an administrative law judge's (ALJ) decision in favor of the parents under the Individuals with Disabilities Education Act (IDEA), and the district moved to dismiss the parents' counterclaim that sought additional reimbursement, arguing that the 30-day statute of limitations period in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(b), should apply, that the parents were required to appeal by January 19, 2006, 30 days after the December 20, 2005, final decision, and the counterclaim was not filed until March 14, 2006, the court rejected that argument because the 2004 version of the IDEA, which provided

a statute of limitations of 90 days, 20 U.S.C. § 1415(i)(2)(B), applied and the appeal was timely, however, the ALJ appropriately limited the compensatory education award under O.C.G.A. § 9-3-33, which provided for a two-year limitations period and the fraudulent concealment exception of O.C.G.A. § 9-3-96 did not apply because the parents received a diagnosis in October of 2002 that the child was autistic, and thus, even if the district fraudulently concealed matters pertaining to the child's condition so as to toll the two-year limitations period prior to October 2002, by October 2002, the parents had actual knowledge of the child's true condition and the tolling stopped; the claim for fraudulent concealment had to be asserted within two years of October 2002 in order to not be barred by O.C.G.A. § 9-3-33 and the concealment claim was not asserted until the January 2005 due process hearing request and the counterclaim was dismissed. Dekalb County Sch. Dist. v. J.W.M., 445 F. Supp. 2d 1371 (N.D. Ga. 2006).

Affording due deference to an agency's interpretation of an agency's own rules regarding the reimbursement rate paid to a nursing facility, and pursuant to the sufficient evidence supporting that agency's decision, the appeals court found that the Department of Community Health did not err in finding that the 2001 cost report was the "last approved cost report," as that phrase was used in the Department's policies and procedures manual; hence, the superior court clearly erred in finding that the phrase was ambiguous, and thus had to be construed against the Department. Dep't of Cmty. Health v. Pruitt Corp., 284 Ga. App. 888, 645 S.E.2d 13 (2007).

Appeal from a decision of the commissioner of securities was governed by O.C.G.A. § 10-5-17, part of the Georgia Securities Act, and not O.C.G.A. § 50-13-19(b) of the Administrative Procedures Act (APA) as the more specific statute governed over the more general one; thus, the 20-day time period of the securities statute applied, not the 30-day time period of the APA. Slater v. State ex rel. Cox, 287 Ga. App. 738, 653 S.E.2d 58 (2007), cert. denied, 2008 Ga. LEXIS 166 (Ga. 2008).

Mandamus requirement of no other adequate remedy. — This section does not repeal second requirement for issuance of writ of mandamus, that there must be no other adequate remedy. Carnes v. Crawford, 246 Ga. 677, 272 S.E.2d 690 (1980).

Failure to subpoena witness bars use as "additional evidence." — Proffered testimony of a witness does not meet the requirements of O.C.G.A. § 50-13-19(f) when the claimant could have requested, but did not, the Board of Review of the Employment Security Agency to issue a subpoena to compel the witness's attendance at the hearing pursuant to former O.C.G.A. § 34-8-8. Swafford v. Tanner, 180 Ga. App. 468, 349 S.E.2d 498 (1986).

Civil Practice Act inapplicable. — Civil Practice Act (O.C.G.A. T. 9, C. 11) has no application to judicial review of administrative agency decisions under O.C.G.A. § 50-13-19. Hewes v. Cooler, 169 Ga. App. 762, 315 S.E.2d 276 (1984).

Insurance Commissioner's order determining rates. — There was a statutory right to obtain judicial review of Insurance Commissioner's order determining the workers' compensation insurance rates under former Code 1933, § 114-609 (see O.C.G.A. § 34-9-130). National Council on Comp. Ins. v. Caldwell, 154 Ga. App. 528, 268 S.E.2d 793 (1980).

Unemployment benefits cases. — Venue for an employee's petition for judicial review from a denial of unemployment benefits lay in Fulton County pursuant to O.C.G.A. § 34-8-223(b); although the employee last worked in Laurens County pursuant to a subcontract, the employee's contractual employer was a staffing firm with the firm's principal place of business in Fulton. This provision, rather than O.C.G.A. § 50-13-19, applied to the employee's situation. Fed v. Butler, 327 Ga. App. 637, 760 S.E.2d 642 (2014).

Overweight vehicle assessment. — Person issued overweight vehicle assessment may prosecute action for judicial review of the administrative decision in the superior court of the county of his or her residence. DOT v. Del-Cook Timber Co., 248 Ga. 734, 285 S.E.2d 913 (1982).

General Consideration (Cont'd)

Zoning cases. — Generally, zoning cases are applicable authority for consideration on the issue of the definition of the "aggrieved person" as employed in O.C.G.A. § 50-13-19. Campaign for a Prosperous Georgia v. Georgia Power Co., 174 Ga. App. 263, 329 S.E.2d 570, aff'd, 255 Ga. 253, 336 S.E.2d 790 (1985).

Proceedings under Individuals with Disabilities Education Act. — The 30 day limitations period applicable to administrative appeals, rather than the two year personal injury limitations period, applies to an appeal of an educational agency's final administrative decision under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. Cory D., by & Through Diane D. v. Burke County Sch. Dist., 285 F.3d 1294 (11th Cir. 2002).

Suspension of real estate broker's license may be for a period greater than the unexpired portion of the license, and such action by the real estate commission is neither in violation of statutory provisions nor in excess of the statutory authority of the agency. Georgia Real Estate Comm'n v. Howard, 133 Ga. App. 199, 210 S.E.2d 357 (1974).

Presumption that judge made required findings. — Whenever a superior court judge is required by law to make certain findings in order to return a verdict, the presumption is that the judge has made the required findings, absent a showing to the contrary. This presumption applies even if the required findings are not specifically set out in the order. Burson v. Collier, 226 Ga. 427, 175 S.E.2d 660 (1970).

Superior court error in reversing administrative decision to suspend driver's license. — See Hardison v. Fayssoux, 168 Ga. App. 398, 309 S.E.2d 397 (1983).

Superior court erred in reversing the suspension of a driver's license and holding that, merely because the driver was found not guilty of a traffic violation, there could be no reasonable possibility that a civil judgment could be rendered against the driver. Miles v. Carr, 224 Ga. App. 247, 480 S.E.2d 282 (1997).

Temporary increase in utility's rates by superior court. — Utility's loss of revenue pending appeal of an agency's ratemaking order does not render the review procedures of O.C.G.A. § 50-13-19 an "inadequate remedy at law" and does not support the superior court's exercise of equity jurisdiction to grant a temporary increase. Georgia Pub. Serv. Comm'n v. Southern Bell, 254 Ga. 244, 327 S.E.2d 726 (1985).

Superior court may not issue interlocutory injunction. — Provision authorizing stay by a superior court exercising appellate jurisdiction under O.C.G.A. § 50-13-19 does not authorize an interlocutory injunction. Georgia Pub. Serv. Comm'n v. Southern Bell, 254 Ga. 244, 327 S.E.2d 726 (1985).

Injunction not appropriate method for challenging agency order. — Trial court properly denied injunctive relief against a power company because an injunction was no longer an appropriate method for challenging an agency order after the passage of the Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., which provides a statutory right of review pursuant to O.C.G.A. § 50-13-19. Fulton County Taxpayers Found., Inc. v. Ga. PSC, 287 Ga. 876, 700 S.E.2d 554 (2010).

Appeal of adverse judgment by agency party. — State Board of Pharmacy, being an agency which is also defined as a party, has the authority to appeal an adverse judgment of the superior court. Georgia State Bd. of Pharmacy v. Bennett, 126 Ga. App. 307, 190 S.E.2d 788 (1972).

Agency interpretation not entitled to judicial deference. — Decision of the Department of Community Health (DCH) interpreting the phrase "last approved cost report" as used in the DCH's policies and procedures manual for purposes of computing an owner's reimbursement rate was not entitled to judicial deference because the phrase was not used in a statute, rule, or regulation, but rather in the manual, the terms of which had not undergone the scrutiny afforded a statute during the legislative process or the adoption process. Pruitt Corp. v. Ga. Dep't of Cmty. Health, 284 Ga. 158, 664 S.E.2d 223 (2008).

Consideration of argument not advanced in administrative proceeding. — Trial court did not err, in an O.C.G.A. § 50-13-19 review of an administrative decision regarding reimbursement of Medicaid and Peachcare program payments, in allowing a hospital to advance constitutional arguments not urged in the administrative proceeding because, although the hospital changed the legal theory the hospital advanced, the trial court claim, that the retroactive application of an administrative rule was illegal, was also raised in the administrative proceeding. Ga. Dep't of Cmty. Health v. Fulton DeKalb Hosp. Auth., 294 Ga. App. 431, 669 S.E.2d 233 (2008), overruled on other grounds by Cobb Hosp., Inc. v. Ga. Dep't of Cmty. Health, 2020 Ga. App. LEXIS 619 (Ga. Ct. App. 2020).

Procedural irregularities in investigation were cured by subsequent procedures. — Even if the Georgia Commission on Professional Standards failed to comply with the proper statutory procedures under O.C.G.A. §§ 20-2-984(h) and 20-2-984.4(b) in conducting the Commission's investigation of a school superintendent, the superintendent's substantial rights were not prejudiced by the impropriety, O.C.G.A. § 50-13-19(h), which was cured by subsequent compliance with O.C.G.A. §§ 20-2-984.3(a)(2), 20-2-984.5(d), and 50-13-13(a)(2)(D). Quigg v. Ga. Prof'l Stds. Comm'n, 344 Ga. App. 142, 809 S.E.2d 267 (2017).

Failure to label order "judgment." — Order of the superior court affirming the administrative determination of the Department of Human Resources was not objectionable on the ground that the order was not labeled a judgment. Nolen v. Department of Human Resources, 151 Ga. App. 455, 260 S.E.2d 353 (1979), cert. denied, 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 782 (1980).

Error in affirming summary judgment. — When there were genuine issues of material fact as to whether the plaintiff hospital provided emergency medical services to a child who received a bowel transplant without obtaining prior authorization from the defendant state department, the trial court's affirmance of the grant of summary determination to the department was an error of law. Children's Hosp. v. Department of Medical Assistance, 235 Ga. App. 697, 509 S.E.2d 725 (1998).

Decision under single permit rule, Ga. Comp. R. & Regs. § 290-9-7-.03(a). — Superior court properly affirmed an order denying a hospital's request to consolidate separate hospital permits of two of their facilities as the hospital's argument that the 35-mile rule in the federal regulation, 42 C.F.R. § 413.65(e)(3), should be applied did not establish an issue of material fact and the court owed deference to an agency's interpretation of a statute the agency was empowered to enforce. Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 638 S.E.2d 447 (2006).

Municipalities had standing to appeal Georgia Public Service Commission's ruling. — Since a municipal association intervened in rate-making proceedings before the Georgia Public Service Commission (PSC), and certain municipalities joined the association's arguments in the trial court, the municipalities had standing to appeal the PSC's decision concerning a reallocation of franchise fees paid to cities, even though the municipalities did not apply to intervene before the PSC under O.C.G.A. § 46-2-59. Unified Gov't v. Ga. PSC, 293 Ga. App. 786, 668 S.E.2d 296 (2008).

Superior court failed to address basis for agency's conclusions. — Judgment reversing a decision of the Georgia Department of Transportation overruling an administrative law judge's finding that one owner had a valid multiple message permit for ithe owner's sign and that a second owner's application for a permit was properly denied was remanded because the superior court ignored the basis for the GDOT's conclusion and reviewed the ALJ's decision instead, and the findings and conclusions of the Deputy Commissioner of the GDOT pertaining to governmental restrictions on commercial speech did not properly address and resolve the issues; in its final agency decision, the Deputy Commissioner essentially sidestepped the issues the ALJ addressed and resolved and did not directly address the issue of whether, apply-

General Consideration (Cont'd)

ing the applicable provisions and regulations, the first owner failed to make the necessary revisions to the owners' sign, and the GDOT's conclusion that allowing the first owner to keep the owner's permit would be unduly restrictive was arbitrary and capricious. Lamar Co., LLC v. Whiteway Neon-Ad, 303 Ga. App. 495, 693 S.E.2d 848 (2010).

Administrative Procedures Act, O.C.G.A. § 50-13-1 et seq., clearly contemplated applications to an agency to review initial decisions in contested cases; accordingly, even when an agency referred administrative proceedings to an administrative law judge with the Office of State Administrative Hearings for an initial decision pursuant to O.C.G.A. § 50-13-41, a person aggrieved by the initial decision can make application to the agency under O.C.G.A. § 50-13-17 for review of that initial decision. Alexander v. Dep't of Revenue, 316 Ga. App. 543, 728 S.E.2d 320 (2012).

Revocation of teacher's certificate. — Superior court exceeded the court's authority in overturning the Professional Standards Commission's (PSC) decision to revoke a teacher's teaching certificate because the PSC's decision had a rational basis since the record contained evidence of an adverse consequence to a female student as well as evidence about the teacher's lack of leadership and unprofessional behavior; the PSC specifically adopted an administrative law judge's findings of fact and conclusions of law based on the full record, and the superior court was bound to uphold the PSC's judgment because the record contained evidence supporting the sanction. Prof'l Stds. Comm'n v. Adams, 306 Ga. App. 343, 702 S.E.2d 675 (2010).

Irreparable harm to election candidate. — Superior court's decision that a candidate had not shown irreparable harm justifying immediate appeal to the superior court under O.C.G.A. § 50-13-19(a) from an interim decision of the Georgia Government Transparency and Campaign Finance Commission was a final decision appealable to the Court of Appeals. Oxendine v. Gov't Transparency & Campaign Fin. Comm'n, 341 Ga. App. 901, 802 S.E.2d 310 (2017).

Service by mail sufficient for placement of name on Child Protective Services Information System. — Trial court erred by dismissing the petition for judicial review of the placement of petitioner's name on Georgia's Child Protective Services Information System pursuant to former O.C.G.A. § 49-5-181, for failure to serve the Division of Family and Children Services of the Department of Human Services because personal service, as opposed to service by mail, was not required. Dessalines v. Dep't of Human Servs., 356 Ga. App. 826, 849 S.E.2d 673 (2020).

Cited in Epstein v. Maddox, 277 F. Supp. 613 (N.D. Ga. 1967); Salerno v. Board of Dental Exmrs., 119 Ga. App. 743, 168 S.E.2d 875 (1969); Burson v. Faith, 227 Ga. 526, 181 S.E.2d 827 (1971); Burson v. Webb, 125 Ga. App. 824, 189 S.E.2d 120 (1972); Department of Pub. Safety v. Byars, 127 Ga. App. 190, 192 S.E.2d 926 (1972); Freeman v. Department of Pub. Safety, 127 Ga. App. 773, 195 S.E.2d 203 (1972); Butts v. Department of Pub. Safety, 128 Ga. App. 490, 197 S.E.2d 474 (1973); Howell v. Harden, 129 Ga. App. 200, 198 S.E.2d 890 (1973); Clark v. Georgia Real Estate Comm'n, 129 Ga. App. 741, 200 S.E.2d 926 (1973); Graham v. Board of Exmrs., 133 Ga. App. 430, 211 S.E.2d 385 (1974); Wall v. American Optometric Ass'n, 379 F. Supp. 175 (N.D. Ga. 1974); Gainesville-Hall County Economic Opportunity Org., Inc. v. Blackmon, 233 Ga. 507, 212 S.E.2d 341 (1975); Georgia Power Co. v. Allied Chem. Corp., 233 Ga. 558, 212 S.E.2d 628 (1975); Tellis v. Saucier, 133 Ga. App. 779, 213 S.E.2d 39 (1975); Kirton v. Biggers, 135 Ga. App. 416, 218 S.E.2d 113 (1975); Hinson v. Georgia State Bd. of Dental Exmrs., 135 Ga. App. 488, 218 S.E.2d 162 (1975); Pfeffer v. Department of Pub. Safety, 136 Ga. App. 448, 221 S.E.2d 658 (1975); Turner v. Harden, 136 Ga. App. 842, 222 S.E.2d 621 (1975); Allied Chem. Corp. v. Georgia Power Co., 236 Ga. 548, 224 S.E.2d 396 (1976); Turner Communications Corp. v. Georgia DOT, 139 Ga. App. 436, 228 S.E.2d 399 (1976); Hawthorn Envtl. Preservation Ass'n v. Coleman, 417

F. Supp. 1091 (N.D. Ga. 1976); Georgia Real Estate Comm'n v. Horne, 141 Ga. App. 226, 233 S.E.2d 16 (1977); Cofer v. Schultz, 146 Ga. App. 771, 247 S.E.2d 586 (1978); Smith v. State, 147 Ga. App. 549, 249 S.E.2d 353 (1978); Courts v. Economic Opportunity Auth. for Savannah—Chatham County Area, Inc., 451 F. Supp. 587 (S.D. Ga. 1978); General Communications Serv., Inc. v. Georgia Pub. Serv. Comm'n, 149 Ga. App. 466, 254 S.E.2d 710 (1979); Georgia Real Estate Comm'n v. Burnette, 243 Ga. 516, 255 S.E.2d 38 (1979); Georgia Consumer Ctr., Inc. v. Georgia Power Co., 150 Ga. App. 511, 258 S.E.2d 250 (1979); Atlanta Gas Light Co. v. Georgia Pub. Serv. Comm'n, 152 Ga. App. 366, 262 S.E.2d 628 (1979); Georgia State Bd. of Pharmacy v. Purvis, 155 Ga. App. 597, 271 S.E.2d 870 (1980); Bituminous Cas. Corp. v. United Servs. Auto. Ass'n, 158 Ga. App. 739, 282 S.E.2d 198 (1981); Georgia Dep't of Human Resources v. Montgomery, 248 Ga. 465, 284 S.E.2d 263 (1981); Village Ctrs., Inc. v. DeKalb County, 248 Ga. 177, 281 S.E.2d 522 (1981); Fluker v. Edwards, 161 Ga. App. 418, 288 S.E.2d 684 (1982); Geron v. Calibre Cos., 250 Ga. 213, 296 S.E.2d 602 (1982); Hicks v. Georgia State Bd. of Pharmacy, 553 F. Supp. 314 (N.D. Ga. 1982); DOT v. Gibson, 251 Ga. 66, 303 S.E.2d 19 (1983); Loyd v. Georgia State Health Planning & Dev. Agency, 168 Ga. App. 850, 310 S.E.2d 738 (1983); North Fulton Community Hosp. v. State Health Planning & Dev. Agency, 168 Ga. App. 801, 310 S.E.2d 764 (1983); DOT v. Sapp Outdoor Adv. Co., 171 Ga. App. 228, 319 S.E.2d 87 (1984); Kariuki v. DeKalb County, 253 Ga. 713, 324 S.E.2d 450 (1985); Johnson v. Ellis, 174 Ga. App. 861, 331 S.E.2d 884 (1985); Swafford v. Tanner, 180 Ga. App. 468, 349 S.E.2d 498 (1986); Ledbetter v. Foster, 180 Ga. App. 696, 350 S.E.2d 31 (1986); Coin Call, Inc. v. Southern Bell Tel. & Tel. Co., 636 F. Supp. 608 (N.D. Ga. 1986); Carnes v. Charlock Invs. (USA), Inc., 258 Ga. 771, 373 S.E.2d 742 (1988); Georgia Dep't of Natural Resources v. Union Timber Corp., 258 Ga. 873, 375 S.E.2d 856 (1989); Earp v. Harris, 191 Ga. App. 414, 382 S.E.2d 156 (1989); Wills v. Composite State Bd. of Medical Exmrs., 259 Ga. 549, 384 S.E.2d 636 (1989); First Union Nat'l Bank v. Independent Ins. Agents of Ga., Inc., 197 Ga. App. 227, 398 S.E.2d 254 (1990); Board of Regents v. Cohen, 197 Ga. App. 463, 398 S.E.2d 758 (1990); Colquitt Elec. Membership Corp. v. City of Moultrie, 197 Ga. App. 794, 399 S.E.2d 497 (1990); Board of Natural Resources v. Walker County, 200 Ga. App. 301, 407 S.E.2d 436 (1991); Department of Medical Assistance v. Presbyterian Home, Inc., 200 Ga. App. 885, 409 S.E.2d 881 (1991); Nix v. Long Mtn. Resources, Inc., 262 Ga. 506, 422 S.E.2d 195 (1992); Ledbetter v. McDougald, 209 Ga. App. 907, 434 S.E.2d 763 (1993); Atlanta Gas Light Co. v. Georgia Pub. Serv. Comm'n, 212 Ga. App. 575, 442 S.E.2d 860 (1994); Johnsen v. Collins, 875 F. Supp. 1571 (S.D. Ga. 1994); Georgia Real Estate Comm'n v. Peavy, 229 Ga. App. 201, 493 S.E.2d 602 (1997); Georgia Pub. Serv. Comm'n v. Alltel Ga. Communications Corp., 230 Ga. App. 563, 497 S.E.2d 50 (1998); Reheis v. AZS Corp., 232 Ga. App. 852, 503 S.E.2d 36 (1998); Miles v. Smith, 239 Ga. App. 641, 521 S.E.2d 687 (1999); Georgia PSC v. ALLTEL Ga. Communs. Corp., 244 Ga. App. 645, 536 S.E.2d 542 (2000); Ga. Bd. of Natural Res. v. Ga. Emission Testing Co., 249 Ga. App. 817, 548 S.E.2d 141 (2001); Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003); Couch v. Parker, 280 Ga. 580, 630 S.E.2d 364 (2006); Prof'l Stds. Comm'n v. Peterson, 284 Ga. App. 424, 643 S.E.2d 899 (2007); Carolina Tobacco Co. v. Baker, 295 Ga. App. 115, 670 S.E.2d 811 (2008); Scarborough v. Hunter, 293 Ga. 431, 746 S.E.2d 119 (2013); Barnett v. Ga. Dep't of Labor, 323 Ga. App. 882, 748 S.E.2d 688 (2013); DeKalb County Sch. Dist. v. Ga. State Bd. of Educ., 294 Ga. 349, 751 S.E.2d 827 (2013); Pandora Franchising, LLC v. Kingdom Retail Group, LLLP, 299 Ga. 723, 791 S.E.2d 786 (2016); Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017); C&M Enters. of Ga., LLC v. Williams, 346 Ga. App. 79, 816 S.E.2d 44 (2018); Crittenden v. White, 346 Ga. App. 179, 816 S.E.2d 308 (2018); Ga. Lottery Corp. v. Tabletop Media, LLC, 346 Ga. App. 498, 816 S.E.2d 438 (2018); Ga. Dep't of Human Servs. v. Addison, 304 Ga. 425, 819 S.E.2d 20 (2018); Central Ga. Elec. Mbrshp. Corp. v.

General Consideration (Cont'd)

Ga. Pub. Serv. Comm'n, 351 Ga. App. 69, 830 S.E.2d 459 (2019); Dep't of Cmty. Health v. Emory Univ., 351 Ga. App. 257, 830 S.E.2d 628 (2019); Schuman v. Dep't of Human Servs., 354 Ga. App. 509, 841 S.E.2d 218 (2020).

Prerequisites to Judicial Review

"Aggrieved," as used in O.C.G.A. § 50-13-19(a), has been interpreted to mean that the person seeking to appeal must show that the person has an interest in the agency decision that has been specially and adversely affected thereby. Georgia Power Co. v. Campaign for a Prosperous Ga., 255 Ga. 253, 336 S.E.2d 790 (1985); Thebaut v. Georgia Bd. of Dentistry, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Provision for immediate review under O.C.G.A. § 50-13-19(a) is not applicable simply because an administrative ruling risks duplication of effort or expense; instead, there must be some suggestion that the administrative ruling, if incorrect, could not be remedied so as to cause irreparable harm. Schlachter v. Georgia State Bd. of Exmrs. of Psychologists, 215 Ga. App. 171, 450 S.E.2d 242 (1994).

Irreparable harm justifying immediate review not shown. — Candidate had not shown irreparable harm justifying immediate appeal to the superior court under O.C.G.A. § 50-13-19(a) from an interim decision of the Georgia Government Transparency and Campaign Finance Commission because judicial review would be available after the final decision; that the charges had been pending over eight years and alleged damage to the candidate's reputation was not irreparable harm. Oxendine v. Gov't Transparency & Campaign Fin. Comm'n, 341 Ga. App. 901, 802 S.E.2d 310 (2017).

Untimely appeal. — Because challengers who opposed a decision of the Coastal Marshlands Protection Committee granting a permit to a developer failed to comply with O.C.G.A. § 50-13-19(b), the trial court lacked jurisdiction to consider the challengers' untimely petition; nevertheless, because the committee and the developer filed timely petitions for review in the trial court, and then appealed to the court of appeals, the challengers' appeals were properly before the court of appeals as cross-appeals filed pursuant to O.C.G.A. § 5-6-38(a). Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 286 Ga. App. 518, 649 S.E.2d 619 (2007), aff'd, 284 Ga. 736, 670 S.E.2d 429 (2008).

Statute of limitations of subsection (b). — Applicable 30-day statute of limitations of the Georgia Administrative Procedures Act, O.C.G.A. § 50-13-19(b), applied to defeat a suit contesting an administrative order that plaintiff State Department of Education reimburse parents of a disabled child for the child's placement under 20 U.S.C. § 1415(j), the "stay-put" provision of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. Ga. State Dep't of Educ. v. Cherry, 314 F.3d 545 (11th Cir. 2002).

Compliance with O.C.G.A. § 50-13-19(f) required. — Superior court erred in reversing the suspension and reinstating a driver's license based on grounds and proffered evidence that the driver had not urged in the driver's original petition for judicial review and that were not covered by amendment to the original petition or prior application to the court to present additional evidence. Department of Pub. Safety v. Bell, 215 Ga. App. 301, 450 S.E.2d 320 (1994).

Determination of timeliness. — Georgia Civil Practice Act's three-day rule under O.C.G.A. § 9-11-6(e) was inapplicable to a determination of timeliness with respect to a petition for judicial review of a Medicaid applicant's claim for benefits, pursuant to O.C.G.A. § 50-13-19; similarly, the certified mail rule under O.C.G.A. § 50-13-23 was expressly deemed inapplicable pursuant to O.C.G.A. § 49-4-153(c) and, accordingly, the applicant's petition was properly denied as untimely. Gladowski v. Dep't of Family & Children Servs., 281 Ga. App. 299, 635 S.E.2d 886 (2006).

Exhaustion of administrative remedies required in Medicaid reimbursement disputes. — In an action involving a dispute over Medicaid reimbursement rates, the plaintiffs were not excused from

the exhaustion of administrative remedies requirement because the plaintiffs were required to raise the plaintiffs' defective notice claims in the administrative review process in the first instance and O.C.G.A. § 49-4-153 governed that administrative review process. Ga. Dep't of Behavioral Health & Developmental Disabilities v. United Cerebral Palsy of Ga., Inc., 298 Ga. 779, 784 S.E.2d 781 (2016).

Matter held to be "contested case." — Matter before the state revenue commissioner (the proposed termination by a liquor producer of four of its designated wholesalers) was a "contested case" within the meaning of the Administrative Procedure Act (APA), not involving the suspension or cancellation of licenses, and the trial court was thus correct in treating the review of the commissioner's order denying the proposal as a petition for judicial review pursuant to the APA; and, there having been no application to appeal the decision of the superior court affirming the commissioner's order, as required by O.C.G.A. § 5-6-35, the motion to dismiss the appeal was granted. Schieffelin & Co. v. Strickland, 253 Ga. 385, 320 S.E.2d 358 (1984).

Matter was not a "contested case." — Trial court did not err in dismissing a retailer's petition for judicial review of the orders entered on an investigatory docket proceeding by the Georgia Public Service Commission, as it was not a contested case permitting review under O.C.G.A. § 50-13-19(a); further, this disposition did not prevent the retailer in pursuing a remedy in its rate case against the Georgia Power Company. Federated Dep't Stores, Inc. v. Ga. PSC, 278 Ga. App. 239, 628 S.E.2d 658 (2006).

Judicial review available after contested case proceedings. — Although the Georgia Board of Dentistry conducted an adjudicatory hearing, made findings of fact justifying discipline, and issued a letter of concern, the fact that the board could have issued a letter of concern without such procedures did not preclude judicial review since the sanction was issued as the result of contested case proceedings. Thebaut v. Georgia Bd. of Dentistry, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Party aggrieved by professional sanction. — Dentist was "aggrieved" by the Board of Dentistry's action in issuing a letter of concern and was therefore entitled to judicial review, in spite of the non-public nature of the letter, since the dentist had a professional interest in the board's decision that criticized the dentist's actions. Thebaut v. Georgia Bd. of Dentistry, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Aggrievement not shown. — Physicians and a sociologist had not shown aggrievement and thus lacked standing to seek judicial review of a decision of the Georgia Composite State Board of Medical Examiners (now Georgia Composite Medical Board) in which the board refused to open a disciplinary investigation against physicians who had participated in executions; they had not shown how the board's refusal to act adversely affected their practice of medicine or threatened them with an economic injury, and they had not shown how any injuries were special to them, rather than common to all those physicians practicing medicine in Georgia. Zitrin v. Ga. Composite State Bd. of Med. Examiners, 288 Ga. App. 295, 653 S.E.2d 758 (2007), cert. denied, No. S08C0500, 2008 Ga. LEXIS 285 (Ga. 2008).

First property owner's petition for judicial review of a decision by the Georgia Public Service Commission not to consider the propriety of the siting of an electrical substation near the first owner's residential property was denied because the first owner was not aggrieved under O.C.G.A. § 50-13-19(a) as no evidence was presented of any specific damage unique to the first owner's property. Ga. PSC v. Turnage, 284 Ga. 610, 669 S.E.2d 138 (2008).

Superior court must dismiss untimely appeal. — When an appeal of an adverse decision by an administrative agency is filed beyond the time allowed by law, the superior court has no jurisdiction to take any action other than to dismiss the case. Miller v. Georgia Real Estate Comm'n, 136 Ga. App. 718, 222 S.E.2d 183 (1975).

Finality of decision is unyielding prerequisite to judicial review. Department of Human Resources v. Williams, 130 Ga. App. 149, 202 S.E.2d 504 (1973).

Prerequisites to Judicial Review (Cont'd)

Final order required for judicial review. — Trial court erred by affirming a decision of the Georgia Public Service Commission (PSC) in a ratemaking appeal filed by a gas distribution company and by denying the PSC's motion to dismiss the company's appeal; the trial court lacked jurisdiction to hear the company's petition for judicial review since one order appealed from was an interim order, and not a final order, and a voice vote appealed from was not even a decision subject to review. Atmos Energy Corp. v. Ga. PSC, 290 Ga. App. 243, 659 S.E.2d 385 (2008).

Because the order of the Georgia Public Service Commission (PSC) regarding a construction monitoring report was the result of a semi-annual review process, the order stated that jurisdiction over the matters was expressly retained for the purpose of entering such further order or orders as the PSC might deem just and proper, and the order explained that all PSC decisions regarding cost recovery would be made after a prudence review at the end of construction, the order was not a final decision by the PSC, and the superior court properly held that the court lacked jurisdiction to review the order under the portion of O.C.G.A. § 50-13-19 providing for judicial review of a final decision. Ga. Interfaith Power & Light, Inc. v. Georgia Power Co., 352 Ga. App. 670, 835 S.E.2d 656 (2019).

Agency review of constitutional attacks. — Fact that one basis, or even the sole basis, of a respondent's complaint as to the hearing officer's initial decision is a constitutional attack does not eliminate the necessity for agency review as a prerequisite to judicial review. Department of Pub. Safety v. Foreman, 130 Ga. App. 71, 202 S.E.2d 196 (1973); Georgia Bd. of Dentistry v. Pence, 223 Ga. App. 603, 478 S.E.2d 437 (1996).

Constitutional attack on notice of appeal provision must first be made before agency, and then before the superior court. Sparks v. Caldwell, 244 Ga. 530, 261 S.E.2d 590 (1979).

Exhaustion of remedies necessary for judicial review. — No provision permits an aggrieved party to ignore prerequisite of agency review of an initial decision before petitioning the courts for relief. Department of Pub. Safety v. MacLafferty, 230 Ga. 22, 195 S.E.2d 748 (1973).

Exhaustion of all administrative remedies available within the Department of Public Safety is necessary for judicial review of a final decision in a contested case. Department of Pub. Safety v. Foreman, 130 Ga. App. 71, 202 S.E.2d 196 (1973).

Agency review is a necessary step in exhaustion of administrative remedies as a prerequisite to judicial review. Department of Pub. Safety v. Foreman, 130 Ga. App. 71, 202 S.E.2d 196 (1973).

Exhaustion of administrative remedies available within the agency is necessary for judicial review of a final decision in a contested case, and an aggrieved person who fails to seek review by the agency of an initial decision of a hearing officer fails to exhaust administrative remedies. Carnes v. Crawford, 246 Ga. 677, 272 S.E.2d 690 (1980).

Trial court properly denied the defendant's amended motion for a new trial holding that the administration of breath tests pursuant to Ga. Comp. R. & Regs. 92-3-.06(12)(b) did not violate the due process clause under both U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. I, given that: (1) the claim was raised for the first time in the new trial motion, and was thus untimely; (2) the defendant had an alternative remedy under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., by filing an action for a declaratory judgment; (3) the defendant failed to show that the Division of Forensic Sciences (DFS) eliminated meaningful procedures for conducting breath tests when it promulgated the rule; and (4) the techniques and methods approved by DFS were sufficient to ensure fair and accurate testing. Palmaka v. State, 280 Ga. App. 761, 634 S.E.2d 883 (2006).

That the Administrative Procedure Act, O.C.G.A. § 50-13-19(a), refers to a "person" does not negate the Act's requirement that all administrative remedies be exhausted; in order to exhaust administrative remedies before the Georgia Public

Service Commission, a person must file a timely application for leave to intervene and participate in the certification proceedings. Fulton County Taxpayers Found., Inc. v. Ga. PSC, 287 Ga. 876, 700 S.E.2d 554 (2010).

Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health and the Department's Commissioner from requiring the society's members to respond to certain disputed requests in an annual survey because the futility exception to the exhaustion requirement was inapplicable; the Commissioner's position in the lawsuit did not establish futility because actions taken to defend a lawsuit could not establish futility. Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs., 290 Ga. 628, 724 S.E.2d 386 (2012).

Court of Appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health (DCH) and the Department's Commissioner from requiring the society's members to respond to certain disputed requests in an annual survey because the "acting outside statutory authority" exception to the exhaustion requirement did not apply; the society did not allege that DCH was acting wholly outside DCH's jurisdiction under O.C.G.A. § 31-6-70 to conduct surveys, but instead, the society claimed that the manner in which the survey was being conducted did not fully comply with the procedural requirements of the statute. Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs., 290 Ga. 628, 724 S.E.2d 386 (2012).

Superior court did not err in dismissing a taxpayer's petition for judicial review of a decision of the Department of Revenue because the taxpayer failed to exhaust the administrative remedies available; the taxpayer never asked the commissioner of revenue to review the department's initial decision. Alexander v. Dep't of Revenue, 316 Ga. App. 543, 728 S.E.2d 320 (2012).

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ACS) sought information beyond the scope of O.C.G.A. § 31-6-70. Furthermore, because the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(a)(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were available to ASCs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ACSs. Ga. Soc'y of Ambulatory Surgery Ctrs. v. Ga. Dep't of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

Trial court properly upheld an agency decision that a power company had the right to continue service to an apartment complex under the grandfather clause to the Georgia Territorial Electric Service Act, O.C.G.A. § 46-3-8(b), after individual meters were installed to replace one master meter because none of the exceptions to the grandfather clause existed and the challenging electric corporation failed to raise its challenge to the application of the grandfather clause before the agency. Excelsior Elec. Mbrshp. Corp. v. Ga. PSC, 322 Ga. App. 687, 745 S.E.2d 870 (2013).

Exhaustion of administrative remedies not necessary in certain circumstances. — Mere existence of an unexhausted administrative remedy does not, standing alone, afford a defendant an absolute defense to a legal action. AT&T Wireless PCS, Inc. v. Leafmore Forest Condominium Ass'n of Owners, 235 Ga. App. 319, 509 S.E.2d 374 (1998).

Because the plaintiffs' challenge was to the authority of the Coastal Marshlands Protection Committee to issue a water bottom lease, plaintiffs were not required to exhaust administrative remedies under O.C.G.A. § 50-13-19 before filing a declaratory judgment action. DBL, Inc. v. Car-

Prerequisites to Judicial Review (Cont'd)

son, 284 Ga. App. 898, 645 S.E.2d 56, cert. denied, No. S07C1191, 2007 Ga. LEXIS 566 (2007).

Agency's rules precluding hearing. — Public assistance recipients' claim against the commissioner of the Department of Human Resources for automatic grant adjustments was not barred by the recipients' failure to exhaust administrative remedies since the department's rules precluded a hearing in cases of requests for automatic grant adjustments. Wilson v. Ledbetter, 260 Ga. 180, 390 S.E.2d 846 (1990).

Exhaustion of remedies as prerequisite for standing. — Aggrieved party has no standing to complain of a hearing officer's initial decision if the hearing officer does not exhaust administrative remedies by applying to the agency for review of the hearing officer's decision. Department of Pub. Safety v. MacLafferty, 230 Ga. 22, 195 S.E.2d 748 (1973).

Brief not required. — Although petitioners for judicial review of an administrative decision have the right to file briefs if the petitioners wish to do so under O.C.G.A. § 50-13-19(g), briefs are not required for superior court review of such decisions as a general matter. Board of Regents of the Univ. Sys. of Ga./Albany State College v. Moore, 210 Ga. App. 623, 436 S.E.2d 789 (1993).

Standing established by requiring review of "contested case." — "Standing to challenge" the administrative decision is what is intended to be established by the requirement in Ga. L. 1978, p. 1362, § 1 (see O.C.G.A. § 50-13-19) that the judicial review be of a "contested case"; and that is what is meant to be described by the language at Ga. L. 1975, p. 404, § 3 (see O.C.G.A. § 50-13-2). National Council on Comp. Ins. v. Caldwell, 154 Ga. App. 528, 268 S.E.2d 793 (1980).

Lack of standing to seek judicial review. — Trial court properly concluded that the taxpayers lacked standing to seek judicial review of the Georgia Public Service Commission's (PSC) certification order because the taxpayers did not file a timely application to intervene in the certification proceedings and, thus, did not satisfy the first requirement of the Administrative Procedure Act, O.C.G.A. § 50-13-19(a); the taxpayers had an available administrative remedy by applying for intervention status in the proceedings conducted by the PSC on the company's application for certification within 30 days following the first published notice of the proceeding, O.C.G.A. § 46-2-59(c), but the taxpayers did not seek to intervene until eight months after notice of the proceedings were first published by the PSC. Fulton County Taxpayers Found., Inc. v. Ga. PSC, 287 Ga. 876, 700 S.E.2d 554 (2010).

Optional administrative process. — Litigant is not required to exhaust an optional administrative process before seeking redress to the courts. Motor Fin. Co. v. Harris, 150 Ga. App. 762, 258 S.E.2d 628 (1979).

Administrative review of conversion plan. — When the plaintiffs sought an interpretation of a plan of conversion which had been reviewed and approved by the Commissioner of Insurance, the parties were required to follow the administrative review process before seeking judicial review. Cerulean Cos. v. Tiller, 271 Ga. 65, 516 S.E.2d 522 (1999).

Trial court erred in accepting jurisdiction over a proceeding seeking an interpretation of a plan of conversion because the Commissioner of Insurance had reviewed the plan, approved the plan, and participated in the conversion process after approval, and the parties were required to follow the administrative review process before seeking judicial review. Blue Cross & Blue Shield of Ga., Inc. v. Deal, 244 Ga. App. 700, 536 S.E.2d 590 (2000).

Review of decertification. — Because a peace officer's invocation of a right against self-incrimination could not shield that officer from an inquiry into the effect of that assertion on the officer's job performance, and because the record supported an administrative decision that the officer's refusal to cooperate in an investigation provided sufficient grounds for the Georgia Peace Officer Standards and Training Council to enter an order of decertification, the superior court erred in

reversing an administrative law judge's decision upholding the decertification. Ga. Peace Officers Stds. & Training Council v. Anderson, 290 Ga. App. 91, 658 S.E.2d 840 (2008).

When risk of criminal prosecution involved. — Dentist's action for declaratory and injunctive relief, seeking to prevent the board of dentistry from taking action against the dentist based on an opinion of the attorney general to the effect that certain procedures being performed by the dentist were not within the lawful scope of the practice of dentistry, was not barred by a failure to exhaust administrative remedies since the only way for the dentist to challenge the board's position was to continue performing the procedures, thereby risking criminal prosecution for the felony offense of practicing medicine without a license and/or the initiation of administrative proceedings to revoke a dentist's license to practice dentistry. Thomas v. Georgia Bd. of Dentistry, 197 Ga. App. 589, 398 S.E.2d 730 (1990).

O.C.G.A. § 50-13-19(f) establishes a two-prong test that must be met before a superior court can grant an application for leave to present additional evidence. The evidence sought to be introduced must be material and good reason for failure to present such evidence at the hearing must be shown. Golden v. Georgia Bureau of Investigation, 198 Ga. App. 115, 400 S.E.2d 668 (1990), cert. denied, 198 Ga. App. 897, 400 S.E.2d 668 (1991).

Jurisdiction over unnamed party served with petition. — Trial court erred in dismissing a petition for failure to join a party to an appellate proceeding when such party was served with the petition (though not specifically named therein) and was therefore subject to the appellate court's jurisdiction. Campaign for a Prosperous Georgia v. Georgia Power Co., 174 Ga. App. 263, 329 S.E.2d 570, aff'd, 255 Ga. 253, 336 S.E.2d 790 (1985).

Remand not needed if appellant abandons request for hearing in trial court. — Although a trial court erred in failing to hear oral argument and receive written briefs as requested by a power company, a remand was unnecessary because the company, by requesting that the appellate court consider the merits of the company's appeal of a Public Service Commission ruling, had essentially withdrawn or abandoned the company's briefing and hearing request. Ga. Power Co. v. Ga. PSC, 296 Ga. App. 556, 675 S.E.2d 294 (2009).

Scope of Judicial Review

Effect of remand on jurisdiction of reviewing court. — Reviewing superior court does not lose jurisdiction of case on remand to agency but the court retains jurisdiction under subsection (f). Howell v. Harden, 231 Ga. 594, 203 S.E.2d 206 (1974).

No need to exhaust administrative remedy under O.C.G.A. § 46-2-90. — Trial court erred in concluding that the petitioners failed to exhaust their administrative remedies and by dismissing the petition challenging the calculation of municipal franchise fees because the petitioners were not required to exhaust any administrative remedy before proceeding under O.C.G.A. § 46-2-90 as that statute does not contemplate any administrative proceedings before the Georgia Public Service Commission. Cazier v. Georgia Power Company, 339 Ga. App. 506, 793 S.E.2d 668 (2016), aff'd, 303 Ga. 820, 815 S.E.2d 922 (2018).

Because it was unclear whether the superior court determined that a case in which the Georgia Public Service Commission (PSC) explained in its order that all PSC decisions regarding cost recovery would be made after a prudence review at the end of construction was the type of case where the lack of adequate remedy exception would never be applicable or whether the superior court determined that the appellants had not shown that review of the PSC's final decision would not provide an adequate remedy, the case was remanded to determine whether the appellants met the appellants' burden to show that review of the PSC's final order would not provide the appellants an adequate remedy, thereby authorizing the superior court to review the order under O.C.G.A. § 50-13-19. Ga. Interfaith Power & Light, Inc. v. Georgia Power Co., 352 Ga. App. 670, 835 S.E.2d 656 (2019).

Scope of Judicial Review (Cont'd)

Appellate court determines error of law by superior court. — Function of an appellate court is to determine whether the judge of the superior court has in the judge's own final ruling committed an error of law. DeWeese v. Georgia Real Estate Comm'n, 136 Ga. App. 154, 220 S.E.2d 458 (1975).

Ripeness for judicial review. — Under O.C.G.A. § 50-13-19(h)(1), another superior court could consider a claim provided that the claim was preserved in the administrative proceedings below; thus, the claim for taking was ripe for judicial review at the time the administrative decision was appealed to the superior court. GSW, Inc. v. Dep't of Natural Res., 254 Ga. App. 283, 562 S.E.2d 253 (2002).

Georgia Department of Community Health (DCH) erred by deeming recovery from a Medicaid claimant's estate appropriate under O.C.G.A. § 49-4-147.1(a) as the claimant was still alive. But nothing in O.C.G.A. § 50-13-19(h) authorized the trial court to bar DCH from ever pursuing the claimant's estate to recover Medicaid payments. Ga. Dep't of Cmty. Health v. Medders, 292 Ga. App. 439, 664 S.E.2d 832 (2008).

Challenge to validity of rule limited. — Action for declaratory judgment challenging the validity of an agency rule has no place once judicial review of an administrative decision is sought. State Health Planning Agency v. Coastal Empire Rehabilitation Hosp., 261 Ga. 832, 412 S.E.2d 532 (1992).

Interpretation of narrative standard rule as to discharges. — Georgia Department of Natural Resources Environmental Protection Division's (EPD's) interpretation of the narrative standard was entitled to deference as it was proper for the EPD to interpret the narrative standard as not intended to convert the designated use of a water body to a more protected use as the plain language of the narrative standard does not specify the degree of interference with legitimate water uses that would constitute a violation of the rule. Altamaha Riverkeeper, Inc. v. Rayonier Performance Fibers, LLC, 346 Ga. App. 269, 816 S.E.2d 125 (2018), cert. denied, No. S18C1474, 2019 Ga. LEXIS 554 (Ga. 2019).

Judicial review contemplated is appellate in nature and is not such a "pretrial, trial, or post trial procedure" as is provided for in Ga. L. 1966, p. 609, § 1 (see O.C.G.A. Ch. 11, T. 9). Howell v. Harden, 231 Ga. 594, 203 S.E.2d 206 (1974).

Rehearing and reconsideration distinguished from review. — Rehearing or reconsideration contemplates a second, a de novo, consideration of a cause or a retrial of the issues; while a review involves only the examination of the record by an appellate tribunal and consideration for the purpose of correction. Department of Pub. Safety v. MacLafferty, 230 Ga. 22, 195 S.E.2d 748 (1973).

Review limited to record. — Absent an application to the court for leave to present additional evidence, appellate review of administrative decisions is confined to the record. Quarterman v. Edwards, 169 Ga. App. 300, 312 S.E.2d 643 (1983); Department of Pub. Safety v. Ramey, 215 Ga. App. 334, 450 S.E.2d 332 (1994).

Trial court did not err in affirming the state community health department's administrative decision to order the healthcare provider to cease operations until the healthcare provider obtained a certificate of need; with judicial review limited to the record, the healthcare provider did not show that the state community health department committed an error of law in issuing that order. N. Atlanta Scan Assocs. v. Dep't of Cmty. Health, 277 Ga. App. 583, 627 S.E.2d 67 (2006).

By the statute's express provisions, an appeal from the denial of a request to expunge a criminal record under O.C.G.A. § 35-3-37(d)(6) is as provided in O.C.G.A. § 50-13-19. In such case, the review shall be conducted by the court without a jury and shall be confined to the record; the court, upon request, shall hear oral argument and receive written briefs. Grimes v. Catoosa County Sheriff's Office, 307 Ga. App. 481, 705 S.E.2d 670 (2010).

Appellate issue was limited to the propriety of the judgment. — Because a city could have challenged an agency consent order under O.C.G.A. §§ 12-2-2(c)

and 50-13-19, but did not, the city's appeal of a judgment to enforce the consent order did not fall under O.C.G.A. § 5-6-35(a)(1), but arose from proceedings under O.C.G.A. § 12-5-189; since the city did not appeal the director's decision, the appellate issue was limited to the propriety of the judgment and not the correctness of the decision. City of Rincon v. Couch, 272 Ga. App. 411, 612 S.E.2d 596 (2005).

Clearly erroneous standard of review to be applied by the superior court prevents a de novo determination of evidentiary questions leaving only a determination of whether the facts found by the administrative law judge were supported by any evidence. Commissioner of Ins. v. Stryker, 218 Ga. App. 716, 463 S.E.2d 163 (1995).

Standard of review. — Superior court erroneously conducted a de novo review of an ALJ's findings affirming a decision to suspend a driver's license, when, after being advised of the implied consent rights and of the consequences of refusing to submit to a state-administered breath test, the driver refused the test; as the correct standard of review was the "any evidence" test, because the hearing before the ALJ was conducted pursuant to O.C.G.A. § 40-5-67.1, the appeal in the superior court was expressly excepted from O.C.G.A. § 40-5-66(a), and had to be conducted pursuant to § 40-5-67.1(h); moreover, the administered breath tests were not invalid merely because the officer gave the tests ten minutes apart, and the driver's failure to give an adequate sample could not be used to suspend the license. Dozier v. Pierce, 279 Ga. App. 464, 631 S.E.2d 379 (2006).

Trial court erred by failing to apply the proper standard of review to a decision of the Georgia Department of Community Health that terminated a claimant's medical assistance under a Medicaid waiver program available to qualifying children. The appellate court directed that the standard of review set forth in O.C.G.A. § 49-4-153(c) was applicable to the case, which called for application of the substantial evidence standard set forth in the Administrative Procedure Act, O.C.G.A. § 50-13-19. Greene v. Dep't of Cmty. Health, 293 Ga. App. 201, 666 S.E.2d 590 (2008).

Record contained no showing that the trial court applied an incorrect standard to any legal conclusions made by the Georgia Public Service Commission because both at the hearing and in the court's order, the trial court correctly framed the issue and explicitly considered the issue at length; because there was no evidence in the record affirmatively showing that the trial court applied the wrong standard of review, the court of appeals would not presume error. MXenergy Inc. v. Ga. PSC, 310 Ga. App. 630, 714 S.E.2d 132 (2011).

Order affirming the issuance of National Pollutant Discharge Elimination System permit was vacated and the case remanded with direction to the superior court to in turn remand the case to the administrative law judge (ALJ) for reconsideration because the ALJ applied an erroneous theory of law to the evidence and the evidence had to be considered anew in assessing whether the interference with legitimate water uses was unreasonable, as opposed to whether there was any interference. Altamaha Riverkeeper, Inc. v. Rayonier Performance Fibers, LLC, 346 Ga. App. 269, 816 S.E.2d 125 (2018), cert. denied, No. S18C1474, 2019 Ga. LEXIS 554 (Ga. 2019).

Opportunity by agency to rule on objection as prerequisite. — Scope of judicial review is limited to those objections upon which the agency has had an opportunity to rule. Department of Pub. Safety v. Foreman, 130 Ga. App. 71, 202 S.E.2d 196 (1973).

Court correctly held that an intervenor's failure to raise the issue of allegedly improper ex parte communications before the Public Service Commission precluded the court's consideration of the issue. Georgia Power Co. v. Georgia Pub. Serv. Comm'n, 196 Ga. App. 572, 396 S.E.2d 562 (1990).

Consideration of new evidence which goes to merits is not authorized during judicial review of an agency decision. Caldwell v. Corbin, 152 Ga. App. 153, 262 S.E.2d 516 (1979).

Service requirements met. — Trial court erred in substituting the court's judgment for that of the Georgia Department of Motor Vehicle Services and in setting aside a driver's license suspension

Scope of Judicial Review (Cont'd)

as an officer complied with O.C.G.A. § 40-5-67.1(f)(1) by handing the driver a copy of the DPS Form 1205 when the driver was arrested. Davis v. Brown, 274 Ga. App. 48, 616 S.E.2d 826 (2005).

Civil Practice Act, (see O.C.G.A. Ch. 11, T. 9) is inapplicable to judicial review of administrative agency decisions and motions for judgment on the pleadings and for summary judgment are "functionless" and are not appropriate in the superior court when that court is sitting as an appellate court under authority of the law. Walker v. Harden, 129 Ga. App. 782, 201 S.E.2d 483 (1973).

Judicial review provided is not governed by the provisions of the Civil Practice Act (see O.C.G.A. Ch. 11, T. 9). Miller v. Georgia Real Estate Comm'n, 136 Ga. App. 718, 222 S.E.2d 183 (1975).

Commissioner's powers not transferred to courts. — Standards for review set forth in subsection (h) of this section, properly applied, do not transfer to courts powers which under the Constitution belong to the Insurance Commissioner, nor do the standards usurp the commissioner's function to tell the commissioner how the commissioner should discharge the task and how the commissioner should protect the various interests which are deemed to be in the commissioner's, not the court's, keeping. National Council on Comp. Ins. v. Caldwell, 154 Ga. App. 528, 268 S.E.2d 793 (1980).

Compliance with O.C.G.A. § 5-6-35(a)(1) required. — In a case involving a white supremacist organization being denied a permit for the Adopt-A-Highway program administered by the Georgia Department of Transportation (Department), the court dismissed the Department's appeal for lack of jurisdiction because the Department sought review of a decision of a state administrative agency and was required under O.C.G.A. § 5-6-35(a)(1) to bring the Department's appeal by way of an application for discretionary review, but failed to do so. State of Ga. v. International Keystone Knights of the Ku Klux Klan, Inc., 299 Ga. 392, 788 S.E.2d 455 (2016).

Judicial review of air quality permit. — Trial court decision invalidating an air quality permit issued by the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources to a power company to construct a pulverized coal-fired electric power plant in a particular county contained an erroneous ruling that the permit was invalid because the permit failed to include a limit on the power plant's carbon dioxide gas (CO_2) emissions since no provisions of the Clean Air Act (CAA), 42 U.S.C. § 7401 et seq., or the state implementation plan controlled or limited CO_2 emissions. Because CO_2 was not a pollutant that "otherwise is subject to regulation under the CAA," CO_2 was not a regulated new source review pollutant in the Prevention of Significant Deterioration (PSD) program and was not required to be controlled by use of best available control technology (BACT), therefore, the trial court erred by ruling that the PSD permit was required to include a BACT emission limit to control the power company's CO_2 emissions. Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009), cert. denied, No. S09C1879, 2009 Ga. LEXIS 809 (Ga. 2009).

Sufficiency of Evidence

Appellate review for sufficiency of evidence. — Paragraphs (h)(1) through (6) of this section clearly authorize appellate review of the sufficiency of the evidence to support the agency's decision on questions of law. Stevens v. Board of Regents, 129 Ga. App. 347, 199 S.E.2d 620 (1973).

Reversal when no evidence to authorize trial court's findings. — When the trial judge would be authorized to reverse the administrative agency pursuant to paragraph (h)(5) of this section, the appellate court is still bound by the evidence rule and can only reverse when there is no competent evidence to authorize the findings by the trial court. Hicks v. Harden, 133 Ga. App. 789, 213 S.E.2d 49 (1975).

"Any evidence" test. — Under paragraph (h)(5) of this section, "clearly erroneous" is the "any evidence rule," making findings of facts under this section binding on appeal unless wholly unsupported.

Georgia Dep't of Human Resources v. Holland, 133 Ga. App. 616, 211 S.E.2d 635 (1974).

"Clearly erroneous" criterion for judicial review is the same as the "any evidence rule," which has long been binding on the appellate courts. Georgia Real Estate Comm'n v. Hooks, 139 Ga. App. 34, 227 S.E.2d 864 (1976).

Paragraph (h)(5) of this section precludes review if "any evidence" on the record substantiates the administrative agency's findings of fact and conclusions of law. Flowers v. Georgia Real Estate Comm'n, 141 Ga. App. 105, 232 S.E.2d 586 (1977).

"Clearly erroneous" criterion of paragraph (h)(5) of this section for judicial review is the same as the "any evidence rule." DOT v. Rushing, 143 Ga. App. 235, 237 S.E.2d 722 (1977).

"Clearly erroneous" language of paragraph (h)(5) of this section is the same as the "any evidence rule." Hall v. Ault, 143 Ga. App. 158, 237 S.E.2d 653 (1977), aff'd, 240 Ga. 585, 242 S.E.2d 101 (1978).

Rather than applying the "any evidence" standard of review, a trial court improperly made an independent determination that a university registrar's termination was "arbitrary and capricious and was not the meaningful hearing that due process requires." Under the "any evidence" standard, the trial court was not allowed to substitute the court's judgment for that of the administrative law judge. The administrative law judge properly upheld a university registrar's termination since the evidence showed that the registrar's office was in chaos; that students, alumni, parents, and faculty complained about the office; that registrar staff employees complained about the registrar; that the registrar did not know how to use the student information management system on the computer; and that the registrar had not done an adequate job of staff development. Bd. of Regents of the Univ. Sys. of Ga. v. Hogan, 298 Ga. App. 454, 680 S.E.2d 518 (2009).

"Any-evidence" standard was the appropriate standard of review for the superior court in reviewing the grant of a zoning variance by a county board of commissioners. Emory Univ. v. Levitas, 260 Ga. 894, 401 S.E.2d 691 (1991).

Trial court applied the correct "any evidence" standard of review to the administrative law judge's findings that the factual evidence of misrepresentation and concealment regarding a solid waste landfill permit application satisfied the clear and convincing evidence standard of O.C.G.A. § 12-8-23.1(a)(3)(B)(ii). Bartram Envtl., Inc. v. Reheis, 235 Ga. App. 204, 509 S.E.2d 114 (1998).

Conflicting evidence satisfies any evidence test. — Under O.C.G.A. § 50-13-19(h)(5), the "any evidence" is the applicable touchstone and the presence of conflicting evidence is sufficient to satisfy that test. Bowman v. Palmour, 209 Ga. App. 270, 433 S.E.2d 380 (1993).

Presence of conflicting evidence, including dueling experts, is sufficient to satisfy the "any evidence" standard. Sawyer v. Reheis, 213 Ga. App. 727, 445 S.E.2d 837 (1994).

Judgment affirming a decision of the Department of Community Health based on the court's finding that there was evidence to support the judgment was error because, under O.C.G.A. § 50-13-19(h), a reviewing court was authorized to reverse or modify an agency decision if its application of the law to the facts was erroneous; a reviewing court was statutorily required to examine the soundness of the conclusions of law drawn from the findings of fact supported by any evidence. A determination that the findings of fact were supported by evidence did not end judicial review of an administrative decision. Pruitt Corp. v. Ga. Dep't of Cmty. Health, 284 Ga. 158, 664 S.E.2d 223 (2008).

Error of law found. — Georgia Department of Community Health made an error of law under O.C.G.A. § 50-13-19(h)(4) in testing whether a patient's hyperbaric oxygen therapy treatment was an accepted treatment that was medically necessary; in determining whether the treatment was reimbursable under Medicaid, the proper standard was, under 42 U.S.C. § 1396d(r)(5), whether the treatment was necessary "to correct or ameliorate a physical or mental defect or condition" regardless of whether the treatment was an accepted medical practice. Ga. Dep't of Cmty. Health v. Freels, 258 Ga. App. 446, 576 S.E.2d 2 (2002).

Sufficiency of Evidence (Cont'd)

Trial court could have found that the Georgia Department of Motor Vehicle Services acted arbitrarily and capriciously and abused the Department's discretion in applying the 10-day notice requirement as it could be inferred that the DPS Form 1205 served on a driver was seized by an officer during the driver's arrest; the driver was entitled to a hearing before an administrative law judge, despite the driver's failure to request a hearing within the 10-day time period. Davis v. Brown, 274 Ga. App. 48, 616 S.E.2d 826 (2005).

Georgia Public Service Commission was authorized to dismiss a natural gas company's application for certification because creation of a natural gas company as a Limited Liability Company (LLC) wholly owned by the city's utility board was in derogation of a city charter as the charter required the utility board to create a wholly owned subsidiary in the form of a non-profit corporation rather than a LLC, thus, the city's creation of a LLC was an ultra vires act. Infinite Energy v. Marietta Natural Gas, 349 Ga. App. 343, 826 S.E.2d 189 (2019).

Expert testimony. — Superior court erred in the court's determination that the Georgia Department of Community Health's experts were not qualified to testify about the efficacy of hyperbaric oxygen therapy, and in substituting the court's judgment for that of the department, which was entitled to rely on the department's experts' testimony. Ga. Dep't of Cmty. Health v. Freels, 258 Ga. App. 446, 576 S.E.2d 2 (2002).

Suspension of educator certificate justified. — Georgia Professional Standards Commission's suspension of a school superintendent's educator certificate for one year for violating Interim Ethics Rules 505-2-.03(1)(n) and (o), Ga. Comp. R. & Regs. r. 505-2-.03(1)(n) and (o), was not clearly erroneous since: (1) the superintendent, believing that the Sheriff's Department's response to an elderly friend's report of suspicions of criminal activity was too slow, twice confronted a suspect; (2) the superintendent displayed a firearm to the suspect; (3) the superintendent instigated the confrontations on a public highway, on a school day, during school hours; (4) the superintendent was a role model to students; and (5) violence and the use of weapons by students was a significant public policy concern in the Georgia educational system. Prof'l Stds. Comm'n v. Alberson, 273 Ga. App. 1, 614 S.E.2d 132 (2005).

Suspension of student justified. — Trial court's order requiring a student's reinstatement as a student and a member of a university's varsity football team was reversed due to a lack of a justiciable controversy as: (1) Ga. Const. 1983, Art. VIII, Sec. V, Para. II clearly manifested an intent to entrust the schools to supervising authorities rather than the courts; (2) the student admitted that the suspension arose from a telephone call the student made to facilitate a drug sale and it was not clearly erroneous or arbitrary and capricious for lack of evidence; (3) the student suffered no deprivation of constitutional or statutory rights as there was no right to participate in extracurricular sports; and (4) the suspension did not prejudice the student's substantial rights as the suspension was tailored to permit the student's eventual re-enrollment to complete the student's degree requirements, did not render the student ineligible for a scholarship, and was not a deprivation of major proportion warranting judicial intervention. Bd. of Regents of the Univ. Sys. of Ga. v. Houston, 282 Ga. App. 412, 638 S.E.2d 750 (2006).

Incomplete record. — Under O.C.G.A. § 50-13-19(e), an administrative agency was responsible for transmitting the entire record of the agency proceeding to the trial court upon a petition seeking review of an agency decision; since an appellate court was unable to locate transcripts from a hearing before an administrative law judge, or a proceeding before the full agency board, the appellate court concluded that the trial court improperly reviewed a psychologist's petition for review of the board's decision without the entire record, and the trial court's judgment affirming the agency decision was vacated and the case was remanded. Farrar v. Ga. Bd. of Examiners of Psychologists, 280 Ga. App. 455, 634 S.E.2d 79 (2006).

Application to rate increases. — Since the Public Service Commission granted a rate increase, but disallowed some of the utility company's costs in calculating the rate base for a fair increase because the commission concluded that some of the costs were the result of the company's imprudent management of the project, in that some were attributable to avoidable delay and some were caused by poor productivity of the construction work force, the agency's decision was within the agency's authority and was supported by the facts. Georgia Power Co. v. Georgia Pub. Serv. Comm'n, 196 Ga. App. 572, 396 S.E.2d 562 (1990).

Evidence sustaining denial of application for hospital certificate of need. — Appellate court reinstated the agency denial of a Certificate of Need to establish an inpatient psychiatric hospital because the agency's conclusion that the applicant did not meet the applicant's burden of establishing no adverse impact on similar existing programs was supported by substantial evidence, in particular, expert testimony and exhibits regarding the applicant's unrealistic projections, overinflated market share, and failure to account for an existing facility's additional 30 pediatric beds. Tanner Med. Ctr., Inc. v. Vest Newnan, LLC, 337 Ga. App. 884, 789 S.E.2d 258 (2016).

Evidence sufficient. — Electric membership corporation alleged that an electric utility company, a consumer's designated territorial supplier, falsely told the consumer that the consumer did not qualify as a large load consumer under O.C.G.A. § 46-3-8(a) and thus had to select the utility as the consumer's provider, and that the consumer's request-for-services form was void because the form was based on this misrepresentation. As the hearing officer's findings—that the allegations of misrepresentation were untenable and that the consumer and utility had a binding contract—were supported by the evidence, the findings were upheld. Jackson Elec. Mbrshp. Corp. v. Ga. PSC, 294 Ga. App. 253, 668 S.E.2d 867 (2008), cert. denied, No. S09C0356, 2009 Ga. LEXIS 201 (Ga. 2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 402 et seq.

Am. Jur. Pleading and Practice Forms. — 1A Am. Jur. Pleading and Practice Forms, Administrative Law, § 185 et seq.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, § 313 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 5-101 et seq.

ALR. — Exhaustion of administrative remedies as condition of resort to court in respect of right claimed under social security or old age acts, 130 A.L.R. 882.

Approval of or refusal to approve bond of public officer as subject of judicial review, 134 A.L.R. 1359.

Malicious prosecution predicated upon prosecution, institution, or instigation of administrative proceedings, 143 A.L.R. 157.

Propriety of ruling by which ultimate disposition of issue between private parties is made to depend upon correction by administrative authority of antecedent defective regulation, 153 A.L.R. 1026.

Stay, pending review, of judgment or order revoking or suspending a professional, trade, or occupational license, 166 A.L.R. 575.

Validity of administrative proceedings conducted on Sunday or holiday, 26 A.L.R.2d 996.

Exhaustion of grievance procedures or of remedies provided in collective bargaining agreement as condition of employee's resort to civil courts for assertedly wrongful discharge, 72 A.L.R.2d 1439.

Revocation of teacher's certificate for moral unfitness, 97 A.L.R.2d 827.

Failure to pursue or exhaust remedies under union contract as affecting employee's right of state civil action for retaliatory discharge, 32 A.L.R.4th 350.

Wrongful discharge based on public policy derived from professional ethics codes, 52 A.L.R.5th 405.

50-13-20. Review of final judgment.

An aggrieved party may obtain a review of any final judgment of the superior court under this chapter by the Court of Appeals or the Supreme Court, as provided by law. In contested cases involving a license to practice medicine or a license to practice dentistry in this state, the filing of an application for appeal or a notice of appeal shall not by itself stay enforcement of the agency decision. In such cases, the superior court which considered the petition for judicial review or the Court of Appeals or the Supreme Court may order a stay only if such court makes a finding that the public health, safety, and welfare will not be harmed by the issuance of the stay.

History. — Ga. L. 1964, p. 338, § 21; Ga. L. 1988, p. 388, § 1.

Cross references. — Procedure for appeals from decisions of superior courts reviewing decisions of state and local administrative agencies, § 5-6-35.

Law reviews. — For survey article on appellate practice and procedure, see 60 Mercer L. Rev. 21 (2008). For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010). For annual survey on administrative law, see 70 Mercer L. Rev. 1 (2018).

JUDICIAL DECISIONS

Interlocutory appeals unavailable. — Under O.C.G.A. § 50-13-20, the Court of Appeals has jurisdiction only of final judgment of a reviewing court and O.C.G.A. § 5-6-34, providing for interlocutory appeal upon certificate of immediate review, does not govern. Hardison v. Booth, 160 Ga. App. 69, 286 S.E.2d 60 (1981).

Denial of motion to dismiss for lack of jurisdiction was not "final judgment" within meaning of this section and was, therefore, not appealable. Georgia State Bd. of Pharmacy v. Purvis, 155 Ga. App. 597, 271 S.E.2d 870 (1980).

Remand order is not appealable final judgment. Georgia Consumer Ctr., Inc. v. Georgia Power Co., 150 Ga. App. 511, 258 S.E.2d 250 (1979).

Georgia Court of Appeals did not have jurisdiction over an appeal from a decision of a superior court remanding a case involving a challenge to a permit to build a community dock issued under the Coastal Marshlands Protection Act, O.C.G.A. § 12-5-286(a), to an administrative law judge for further consideration. The order was not final as required under O.C.G.A. § 50-13-20. Coastal Marshlands Prot. Comm. v. Altamaha Riverkeeper, Inc., 304 Ga. App. 1, 695 S.E.2d 273, cert. denied, No. S10C1494, 2010 Ga. LEXIS 745 (Ga. 2010).

Superior court order remanding a case back to the administrative tribunal does not constitute a final judgment. State Health Planning Review Bd. v. Piedmont Hosp., 173 Ga. App. 450, 326 S.E.2d 814 (1985).

Rate case remand order considered final judgment. — Trial court's remand order to the Public Service Commission after making a determination that the matter should be treated as a rate case, rather than a mere accounting matter, was a final order or judgment subject to direct appeal. Georgia Public Serv. Comm'n v. Campaign for a Prosperous Ga., 229 Ga. App. 28, 492 S.E.2d 916 (1997).

Remand returning case for consideration of new evidence was functionally a final order. — ALJ order remanding a case to the Coastal Marshlands Protection Committee was functionally and substantively an appealable final judgment; the remand did more than merely return the case for consideration of additional issues and evidence, but was ordered on the basis that the committee

erred as a matter of law in the committee's construction of a statute. Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 286 Ga. App. 518, 649 S.E.2d 619 (2007), aff'd, 284 Ga. 736, 670 S.E.2d 429 (2008).

Agency party has authority to appeal judgment of court. — State Board of Pharmacy, being an agency which is also defined as a party, has the authority to appeal an adverse judgment of the superior court. Georgia State Bd. of Pharmacy v. Bennett, 126 Ga. App. 307, 190 S.E.2d 788 (1972).

Finding of no irreparable harm from interim decision was appealable. — Superior court's decision that a candidate had not shown irreparable harm justifying immediate appeal to the superior court under O.C.G.A. § 50-13-19(a) from an interim decision of the Georgia Government Transparency and Campaign Finance Commission was a final decision appealable to the Court of Appeals. Oxendine v. Gov't Transparency & Campaign Fin. Comm'n, 341 Ga. App. 901, 802 S.E.2d 310 (2017).

Cited in Howell v. Harden, 129 Ga. App. 200, 198 S.E.2d 890 (1973); Howell v. Harden, 231 Ga. 594, 203 S.E.2d 206 (1974); Graham v. Board of Exmrs., 133 Ga. App. 430, 211 S.E.2d 385 (1974); Georgia Pub. Serv. Comm'n v. Southern Bell, 254 Ga. 244, 327 S.E.2d 726 (1985); Johnsen v. Collins, 875 F. Supp. 1571 (S.D. Ga. 1994); Atmos Energy Corp. v. Ga. PSC, 290 Ga. App. 243, 659 S.E.2d 385 (2008); Atmos Energy Corp. v. Ga. PSC, 290 Ga. App. 243, 659 S.E.2d 385 (2008); Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009); DeKalb County Sch. Dist. v. Ga. State Bd. of Educ., 294 Ga. 349, 751 S.E.2d 827 (2013); C&M Enters. of Ga., LLC v. Williams, 346 Ga. App. 79, 816 S.E.2d 44 (2018).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 639 et seq.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, § 467 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 5-101 et seq.

ALR. — Approval of or refusal to approve bond of public officer as subject of judicial review, 134 A.L.R. 1359.

50-13-20.1. Judicial review of final decision in contested case issued by administrative law judge.

A petition for judicial review of a final decision in a contested case issued by an administrative law judge pursuant to subsection (c) of Code Section 50-13-41 shall be subject to judicial review in the same manner as provided in Code Section 50-13-19 except that the procedure and standard of judicial review specifically provided for an agency shall be applied and shall not be affected, altered, or changed by Article 2 of this chapter.

History. — Code 1981, § 50-13-20.1, enacted by Ga. L. 1994, p. 1856, § 4; Ga. L. 2018, p. 762, § 2/HB 790.

Editor's notes. — Ga. L. 1994, p. 1856, § 5, not codified by the General Assembly, provides: "This Act shall become effective July 1, 1994, for purposes of commencing transfer of positions, independent hearing officers, employees, and equipment and for general administrative purposes. The Office of State Administrative Hearings may commence the performance of its duties on and after July 1, 1994, and shall assume full responsibility for the performance of its duties on and after April 1, 1995. The Office of State Administrative Hearings shall, where necessary for any class of hearings, promulgate rules and

regulations in order to comply with all federal and state procedural requirements. During the period between July 1, 1994, and April 1, 1995, covered agencies may continue to conduct covered administrative hearings as provided by prior law; but on and after April 1, 1995, all such hearings in new and, where practical, in pending proceedings shall be conducted as provided in this Act."

JUDICIAL DECISIONS

Cited in C&M Enters. of Ga., LLC v. Williams, 346 Ga. App. 79, 816 S.E.2d 44 (2018).

50-13-21. Compliance with filing and hearing requirements by Safety Fire Commissioner and Commissioner of Insurance.

As to such regulations, standards, and plans as are required by law to be filed and kept on file with the office of the Secretary of State, the Commissioner of Insurance, when performing the duties as Safety Fire Commissioner, may comply with the filing requirements of this chapter by filing with the office of the Secretary of State merely the name and designation of such regulations, standards, and plans, provided the regulations, standards, and plans are kept on file in the office of the Commissioner of Insurance by the titles otherwise applicable under this chapter and the regulations, standards, and plans are open for public examination and copying. The Commissioner of Insurance, when performing the duties as Safety Fire Commissioner, may also satisfy the procedure for conduct of hearings on contested cases and rule making required under this chapter by following Chapter 2 of Title 33. The Commissioner of Insurance, when performing the duties as Commissioner of Insurance, may satisfy the procedure for conduct of hearings on contested cases required under this chapter by following Chapter 2 of Title 33. When the Commissioner of Insurance is performing rule-making duties as Commissioner of Insurance, he shall satisfy the procedures required under this chapter and under Chapter 2 of Title 33. In the event of any conflicts between rule-making procedures of this chapter and Chapter 2 of Title 33 as it respects duties of the Commissioner of Insurance, this chapter shall govern.

History. — Ga. L. 1967, p. 618, § 1; Ga. L. 1986, p. 855, § 28; Ga. L. 1989, p. 681, § 1.

Administrative rules and regulations. — Rules and regulations for installation; inspection; recharging, repairing, servicing, and testing of portable fire extinguishers or fire suppression systems, Official Compilation of the Rules and Regulations of the State of Georgia, Comptroller General, Rules of Safety Fire Commissioner, Subject 120-3-23.

JUDICIAL DECISIONS

Names and designations, but not contents, of rules are filed. — In accordance with this section, the contents of these rules are not filed with or published by the Secretary of State in the Official Compilation of the Rules and Regulations of the State of Georgia, but the names and designations of the rules are filed. These regulations are on file in the office of the Comptroller General and open for public examination and copying. Virginia Mut. Ins. Co. v. Hayes, 150 Ga. App. 756, 258 S.E.2d 617 (1979).

Cited in Bradford v. Davidson, 150 Ga. App. 625, 258 S.E.2d 235 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Alternate rule-making procedures. — Insurance Department may utilize rule-making procedures of O.C.G.A. T. 33, C. 2 in lieu of rule-making procedures outlined in O.C.G.A. § 50-13-21. 1982 Op. Att'y Gen. No. 82-10.

50-13-22. Construction of chapter.

Nothing in this chapter shall be held to diminish the constitutional rights of any person, to limit or repeal additional requirements imposed by statute or otherwise recognized by law, to diminish any delegation of authority to any agency, nor to create any substantive rights; but this chapter shall be procedural. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise.

History. — Ga. L. 1964, p. 338, § 22; Ga. L. 1982, p. 3, § 50.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was substituted for a semicolon following "law" in the second sentence.

JUDICIAL DECISIONS

Cited in Pope v. Cokinos, 231 Ga. 79, 200 S.E.2d 275 (1973); Georgia Real Estate Comm'n v. Horne, 141 Ga. App. 226, 233 S.E.2d 16 (1977).

50-13-23. Determining date when documents received by or filed with agencies.

Notwithstanding any provision of law to the contrary, any document required by law, rule, or regulation to be received by or filed with any agency pursuant to the requirements of this chapter shall be deemed to be received by or filed with such agency on the earlier of: (1) the date such document is actually received by such agency; (2) the official postmark date such document was mailed, properly addressed with postage prepaid, by registered or certified mail; or (3) the date on which such document was delivered to a commercial delivery company for

statutory overnight delivery as provided in Code Section 9-10-12 as evidenced by the receipt provided by the commercial delivery company.

History. — Code 1981, § 50-13-23, enacted by Ga. L. 1991, p. 1301, § 1; Ga. L. 2000, p. 1589, § 14.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Timeliness of mailing. — Under O.C.G.A. § 50-13-23, the date on which a document is postmarked, rather than the date on which the document is mailed, is determinative of the document's timeliness; thus, in deciding whether the mailing of a request for a hearing was made within the time limit of O.C.G.A. § 40-5-67.1(g), the trial court erred in determining that the date on which the document was mailed was controlling. Department of Pub. Safety v. Ramey, 215 Ga. App. 334, 450 S.E.2d 332 (1994).

Georgia Civil Practice Act's three-day rule under O.C.G.A. § 9-11-6(e) was inapplicable to a determination of timeliness with respect to a petition for judicial review of a Medicaid applicant's claim for benefits, pursuant to O.C.G.A. § 50-13-19. Similarly, the certified mail rule under O.C.G.A. § 50-13-23 was expressly deemed inapplicable pursuant to O.C.G.A. § 49-4-153(c) and, accordingly, the applicant's petition was properly denied as untimely. Gladowski v. Dep't of Family & Children Servs., 281 Ga. App. 299, 635 S.E.2d 886 (2006).

ARTICLE 2

OFFICE OF STATE ADMINISTRATIVE HEARINGS

Administrative rules and regulations. — The Office of State Administrative Hearings, Official Compilation of the Rules and Regulations of the State of Georgia, Title 616.

50-13-40. Office created; chief state administrative law judge.

(a) There is created within the executive branch of state government the Office of State Administrative Hearings. The office shall be independent of state administrative agencies and shall be responsible for impartial administration of administrative hearings in accordance with this article. The office shall be assigned for administrative purposes only, as that term is defined in Code Section 50-4-3, to the Department of Administrative Services.

(b) The head of the office shall be the chief state administrative law judge who shall be appointed by the Governor, shall serve a term of six years, shall be eligible for reappointment, and may be removed by the Governor for cause. The chief state administrative law judge shall have been admitted to the practice of law in this state for a period of at least five years. The chief state administrative law judge shall be in the unclassified service as defined by Code Section 45-20-2 and shall receive a salary to be determined by the Governor. All successors shall be appointed in the same manner as the original appointment and

vacancies in office shall be filled in the same manner for the remainder of the unexpired term.

(c) The chief state administrative law judge shall promulgate rules and regulations and establish procedures to carry out the provisions of this article.

(d) The chief state administrative law judge shall have the power to employ clerical personnel and court reporters necessary to assist in the performance of his or her duties.

(e)(1) The chief state administrative law judge shall have the power to employ full-time assistant administrative law judges who shall exercise the powers conferred upon the chief state administrative law judge in all administrative cases assigned to them. Each assistant administrative law judge shall have been admitted to the practice of law in this state for a period of at least three years. The chief state administrative law judge may establish different levels of administrative law judge positions and the compensation for such positions shall be determined by the chief state administrative law judge.

(2) The chief state administrative law judge may appoint a special assistant administrative law judge on a temporary or case basis as may be necessary for the proper performance of the duties of the office, pursuant to a fee schedule established in advance by the chief state administrative law judge. A special assistant administrative law judge shall have the same qualifications and authority as a full-time assistant administrative law judge.

(3) The chief state administrative law judge may designate in writing a qualified full-time employee of an agency other than an agency directly connected with the proceeding to conduct a specified hearing, but such appointment shall only be with the prior consent of the employee's agency. Such employee shall then serve as a special designated assistant administrative law judge for the purposes of the specific hearing and shall not be entitled to any additional pay for this service.

(4) When the character of the hearing requires utilization of a hearing officer with special skill and technical expertise in the field, the chief state administrative law judge may so certify in writing and appoint as a special lay assistant administrative law judge a person who is not a member of the bar of this state or otherwise not qualified under this Code section. Such appointment shall specify in writing the reasons such special skill is required and the qualifications of the appointed individual.

(5) The chief state administrative law judge may designate a class of hearings for which individuals with the necessary skill and

training need not meet the qualifications of paragraphs (1) through (4) of this subsection. These full-time associate administrative law judges shall exercise the powers conferred upon the chief state administrative judge in the class of administrative cases assigned to them. The chief state administrative law judge shall determine the compensation for such positions.

(f) The chief state administrative law judge and any administrative law judge employed on a full-time basis: (1) shall not otherwise engage in the practice of law; and (2) shall not, except in the performance of his or her duties in a contested case, render legal advice or assistance to any state board, bureau, commission, department, agency, or officer.

History. — Code 1981, § 50-13-40, enacted by Ga. L. 1994, p. 1856, § 3; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-106/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Cited in Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009); Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013); Southern States-Bartow County, Inc. v. Riverwood Farm Prop. Owners Ass'n, Inc., 331 Ga. App. 878, 769 S.E.2d 823 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Current hearing officers utilized by Department of Transportation may continue to hold hearings until April 1, 1995. 1994 Op. Att'y Gen. No. 94-21.

50-13-41. Hearing procedures; powers of administrative law judge; issuance of decision; reviewing agency; review of contested cases.

(a)(1) Whenever a state agency authorized by law to determine contested cases initiates or receives a request for a hearing in a contested case which is not presided over by the agency head or board or body which is the ultimate decision maker, the hearing shall be conducted by the Office of State Administrative Hearings, and such hearings shall be conducted in accordance with the provisions of this chapter and the rules and regulations promulgated under this article. Whenever an agency under this paragraph receives a request for a hearing in a contested case, such agency shall forward such request for a hearing to the Office of State Administrative Hearings within a

reasonable period of time not to exceed 30 days after receipt of such request, and if the agency fails to do so, the party requesting the hearing may petition the Office of State Administrative Hearings for an order permitting such party to file a request for a hearing directly with the Office of State Administrative Hearings.

(2) An administrative law judge shall have the power to do all things specified in paragraph (6) of subsection (a) of Code Section 50-13-13. An administrative law judge shall have the power to impose civil penalties pursuant to paragraph (3) of this subsection for failing to obey any lawful process or order of the administrative law judge or any rule or regulation promulgated under this article, for any indecorous or improper conduct committed in the presence of the administrative law judge, or for submitting pleadings or papers for an improper purpose or containing frivolous arguments or arguments that have no evidentiary support. The superior court of the county in which the violation is committed shall, on application of the administrative law judge or any party, enforce by proper proceedings any lawful process or order for civil penalties of the administrative law judge.

(3) An administrative law judge may impose a civil penalty for any violation provided for in paragraph (2) of this subsection of not less than $100.00 nor more than $1,000.00 per violation. Any violator who is assessed a civil penalty may also be assessed the cost of collection. The administrative law judge shall have the power to issue writs of fieri facias to collect such penalties and costs assessed, which shall be enforced in the same manner as a similar writ issued by a superior court. All penalties and costs assessed shall be tendered and made payable to the Office of State Administrative Hearings and shall be deposited in the general fund of the state treasury.

(4) The Office of State Administrative Hearings may require the electronic filing of documents.

(5) Except where alternative means of service are required by law, the Office of State Administrative Hearings may serve any party electronically.

(6) The Office of State Administrative Hearings may make available or transfer the record of any hearing to any party electronically.

(b) An administrative law judge shall have all the powers of the ultimate decision maker in the agency with respect to a contested case. Article 2 of Chapter 13 of Title 24 shall govern the issuance of subpoenas issued under this article, except that the administrative law judge shall carry out the functions of the court, and the clerk of the Office of State Administrative Hearings shall carry out the functions of the clerk of the court. Subpoenas shall be enforced pursuant to

subsection (a) of this Code section. Nothing in this article shall affect, alter, or change the ability of the parties to reach informal disposition of a contested case in accordance with paragraph (4) of subsection (a) of Code Section 50-13-13.

(c) Within 30 days after the close of the record, an administrative law judge shall issue a decision to all parties in the case except when it is determined that the complexity of the issues and the length of the record require an extension of this period and an order is issued by an administrative law judge so providing. Every decision of an administrative law judge shall contain findings of fact, conclusions of law, and a disposition of the case. Except as provided in subsection (d) of this Code section, every decision of an administrative law judge shall be a final decision as set forth in subsection (b) of Code Section 50-13-17. Code Section 50-13-20.1 shall govern judicial review of every final decision of an administrative law judge, except that any aggrieved party, including the agency, may seek judicial review.

(d)(1) As used in this subsection, the term "reviewing agency" shall mean the ultimate decision maker in a contested case that is a constitutional board or commission; an elected constitutional officer in the executive branch of this state; or a board, bureau, commission, or other agency of the executive branch of this state created for the purpose of licensing or otherwise regulating or controlling any profession, business, or trade if members thereof are appointed by the Governor; the Department of Transportation; the Department of Community Health; or the Department of Human Services, in a contested case where such department is required to be the ultimate decision maker by federal law or regulations governing Title IV-B and Title IV-E of the federal Social Security Act.

(2) Except as otherwise provided in this article, in all contested cases referred by a reviewing agency, every decision of an administrative law judge shall be treated as an initial decision as set forth in subsection (a) of Code Section 50-13-17, including, but not limited to, the taking of additional testimony or remanding the case to the administrative law judge for such purpose. On review, the reviewing agency shall consider the whole record or such portions of it as may be cited by the parties. In reviewing initial decisions by the Office of State Administrative Hearings, the reviewing agency shall give due regard to the administrative law judge's opportunity to observe witnesses. If the reviewing agency rejects or modifies a proposed finding of fact or a proposed decision, it shall give reasons for doing so in writing in the form of findings of fact and conclusions of law.

(3) A reviewing agency shall have a period of 30 days following the entry of the decision of the administrative law judge in which to reject or modify such decision. If a reviewing agency fails to reject or modify

the decision of the administrative law judge within such 30 day period, then the decision of the administrative law judge shall stand affirmed by the reviewing agency by operation of law.

(4) A reviewing agency may, prior to the expiration of the review period provided for in paragraph (3) of this subsection, extend such review period by order of the reviewing agency in any case wherein unusual and compelling circumstances render it impracticable for the reviewing agency to complete its review within such period. Any such order shall recite with particularity the circumstances which render it impracticable for the reviewing agency to complete its review within such review period. Any such extension by the reviewing agency shall not exceed 30 days. Prior to the expiration of the extended review period, the review period may be further extended by further order of the reviewing agency for one additional period not to exceed 30 days if unusual and compelling circumstances render it impracticable to complete the review within the extended review period. Such further order further extending the review period shall likewise recite with particularity the circumstances which render it impracticable for the reviewing agency to complete its review within the review period as previously extended. If a reviewing agency fails to reject or modify the decision of the administrative law judge within the extended review period, then the decision of the administrative law judge shall stand affirmed by the reviewing agency by operation of law.

(5) An agency may provide by rule that proposed decisions in all or in specified classes of cases before the Office of State Administrative Hearings will become final without further agency action and without expiration of the 30 day review period otherwise provided for in this subsection.

History. — Code 1981, § 50-13-41, enacted by Ga. L. 1994, p. 1856, § 3; Ga. L. 1995, p. 1072, § 6; Ga. L. 1998, p. 750, § 10; Ga. L. 2018, p. 762, § 3/HB 790; Ga. L. 2019, p. 893, § 11/SB 225; Ga. L. 2019, p. 1056, § 50/SB 52; Ga. L. 2020, p. 371, § 9/HB 1098; Ga. L. 2020, p. 493, § 50/SB 429; Ga. L. 2021, p. 118, § 2/HB 553.

The 2019 amendments. — The first 2019 amendment, effective May 7, 2019, added "; or the Department of Human Services in a contested case where the such department is required to be the ultimate decision maker by federal law or regulations governing titles IV-B and IV-E of the federal Social Security Act." at the end of paragraph (d)(1). The second 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in the first sentence of paragraph (d)(4).

The 2020 amendments. — The first 2020 amendment, effective July 29, 2020, inserted "the Department of Transportation;" near the end of paragraph (d)(1). The second 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "Title IV-B and Title IV-E" for "titles IV-B and IV-E" near the end of paragraph (d)(1).

The 2021 amendment, effective April 29, 2021, added paragraphs (a)(4) through (a)(6); in paragraph (d)(1), in the middle, inserted a comma following "business", inserted "the Department of Community

Health;", and inserted a comma following "Department of Human Services".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, in paragraph (d)(1), single quotes were substituted for double quotes preceding and following "reviewing agency" near the beginning and "the" was deleted following "in a contested case where" near the end.

Editor's notes. — Ga. L. 1998, p. 750, § 11, not codified by the General Assembly, provides that all cases pending before the Professional Practices Commission on June 30, 1998, shall be transferred to the Professional Standards Commission.

U.S. Code. — The federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012). For article, "Researching Georgia Law," see 34 Ga. St. U. L. Rev. 741 (2015).

JUDICIAL DECISIONS

Reasons for State Personnel Board's decision. — State Personnel Board was authorized to reverse an administrative law judge's (ALJ) determination upholding a school instructor's dismissal as O.C.G.A. § 45-20-9(e)(2) comprehensively and specifically regulated the board's authority in its review of an ALJ's initial decision following a dismissal or adverse personnel action hearing; while O.C.G.A. § 50-13-41(d) applied generally to hearings conducted by the Office of State Administrative Hearings, the board did not comprehensively express the whole law on the subject of the board's review of an ALJ's initial decision. Ga. Dep't of Educ. v. Niemeier, 274 Ga. App. 111, 616 S.E.2d 861 (2005).

State Personnel Board's final decision reversing an administrative law judge's (ALJ) determination upholding a school instructor's dismissal met the requirement of O.C.G.A. § 50-13-41(d) as the board's additional findings cited the testimony of several other school staff members, a stipulated expert, and the Professional Standards Commission report was included as an exhibit in the record; based on its findings of fact, the board concluded that the evidence failed to prove the charges against the instructor by a preponderance of the evidence. Ga. Dep't of Educ. v. Niemeier, 274 Ga. App. 111, 616 S.E.2d 861 (2005).

When the State Personnel Board, in reviewing the decision of an administrative law judge (ALJ) decreasing the sanction imposed on a state employee from dismissal to a 30-day suspension, reimposed the dismissal, it was error for a trial court to find that the board's decision was not supported by a sufficient rationale; the board had properly adopted findings and conclusions of the ALJ which were consistent with the board's own decision and then explained that the ALJ's recommended sanction was too lenient for the proved misconduct, as the misconduct was so severe as to warrant dismissal, so the board's decision was adequately supported under O.C.G.A. § 50-13-41(d). Ga. Dep't of Natural Res. v. Willis, 274 Ga. App. 801, 619 S.E.2d 335 (2005).

Decision under single permit rule, Ga. Comp. R. & Regs. § 290-9-7-.03(a). — Superior court properly affirmed an order denying a hospital's request to consolidate separate hospital permits of two of their facilities, as the hospital's argument that the 35-mile rule in the federal regulation, 42 C.F.R. § 413.65(e)(3), should be applied did not establish an issue of material fact, and the court owed deference to an agency's interpretation of a statute the agency was empowered to enforce. Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 638 S.E.2d 447 (2006).

Exhaustion under Individuals with Disabilities Act and Georgia statute. — In a case in which the federal claims of a minor and the minor's father related to the minor's education and were subject to the Individuals with Disabilities Education Act's exhaustion requirement, a school board, a superintendent, and 10 employees were entitled to dismissal under Fed. R. Civ. P. 12(b)(6) since the minor and the minor's father had not exhausted their administrative remedies as required

by 20 U.S.C. § 1415(f)(1)(A) and O.C.G.A. § 50-13-41(a)(1). Pope v. Cherokee County Bd. of Educ., 562 F. Supp. 2d 1371 (N.D. Ga. 2006).

Exhaustion of administrative remedies. — Superior court did not err in dismissing a taxpayer's petition for judicial review of a decision of the Department of Revenue because the taxpayer failed to exhaust the administrative remedies available; the taxpayer never asked the commissioner of revenue to review the department's initial decision. Alexander v. Dep't of Revenue, 316 Ga. App. 543, 728 S.E.2d 320 (2012).

Administrative Procedures Act, O.C.G.A. § 50-13-1 et seq., clearly contemplates applications to an agency to review initial decisions in contested cases; accordingly, even when an agency refers administrative proceedings to an administrative law judge with the Office of State Administrative Hearings for an initial decision pursuant to O.C.G.A. § 50-13-41, a person aggrieved by the initial decision can make application to the agency under O.C.G.A. § 50-13-17 for review of that initial decision. Alexander v. Dep't of Revenue, 316 Ga. App. 543, 728 S.E.2d 320 (2012).

Revocation of teacher's certificate. — Superior court exceeded the court's authority in overturning the Professional Standards Commission's (PSC) decision to revoke a teacher's teaching certificate because the PSC's decision had a rational basis since the record contained evidence of an adverse consequence to a female student as well as evidence about the teacher's lack of leadership and unprofessional behavior; the PSC specifically adopted an administrative law judge's findings of fact and conclusions of law based on the full record, and the superior court was bound to uphold the PSC's judgment because the record contained evidence supporting the sanction. Prof'l Stds. Comm'n v. Adams, 306 Ga. App. 343, 702 S.E.2d 675 (2010).

Compliance with appeal procedures of administrative decision required. — In a case involving a white supremacist organization being denied a permit for the Adopt-A-Highway program administered by the Georgia Department of Transportation (Department), the court dismissed the Department's appeal for lack of jurisdiction because the Department sought review of a decision of a state administrative agency and was required under O.C.G.A. § 5-6-35(a)(1) to bring the Department's appeal by way of an application for discretionary review, but failed to do so. State of Ga. v. International Keystone Knights of the Ku Klux Klan, Inc., 299 Ga. 392, 788 S.E.2d 455 (2016).

Permit improperly reversed. — Trial court reviewing an administrative law judge's (ALJ) decision affirming the issuance of a permit to build a dock over marshlands, under the Coastal Marshlands Protection Act of 1970, O.C.G.A. § 12-5-280 et seq., by the Coastal Marshlands Protection Committee (Committee) erroneously reversed the decision because the court focused on the Committee's decision, instead of deciding whether the ALJ correctly affirmed the Committee's decision, since the ALJ conducted a de novo review of the Committee's decision at which new evidence could be received. Coastal Marshlands Prot. Comm. v. Altamaha Riverkeeper, Inc., 315 Ga. App. 510, 726 S.E.2d 539 (2012).

Cited in M.T.V. v. Dekalb County Sch. Dist., 446 F.3d 1153 (11th Cir. 2006); Draper v. Atlanta Indep. Sch. Sys., 480 F. Supp. 2d 1331 (N.D. Ga. 2007); Carolina Tobacco Co. v. Baker, 295 Ga. App. 115, 670 S.E.2d 811 (2008); C&M Enters. of Ga., LLC v. Williams, 346 Ga. App. 79, 816 S.E.2d 44 (2018); Schuman v. Dep't of Human Servs., 354 Ga. App. 509, 841 S.E.2d 218 (2020).

OPINIONS OF THE ATTORNEY GENERAL

Hearings by Office of State Administrative Hearings. — Unless otherwise exempted or excluded, contested cases not presided over by the agency head or board or body which is the ultimate decision maker are to be conducted by the Office of State Administrative Hearings. 1995 Op. Att'y Gen. No. 95-5.

50-13-42. Applicability of article.

(a) In addition to those agencies expressly exempted from the operation of this chapter under paragraph (1) of Code Section 50-13-2, this article shall not apply to the Commissioner of Agriculture, the Public Service Commission, the Certificate of Need Appeal Panel, or the Department of Community Health, unless specifically provided otherwise for certain programs or in relation to specific laws, or to the Department of Labor with respect to unemployment insurance benefit hearings conducted under the authority of Chapter 8 of Title 34. Such exclusion does not prohibit such office or agencies from contracting with the Office of State Administrative Hearings on a case-by-case basis.

(b) This article shall apply to hearings conducted pursuant to Code Sections 45-20-8 and 45-20-9. The State Personnel Board may provide by rule that proposed decisions in all or in specified classes of cases before the Office of State Administrative Hearings will become final without further action by the board and without expiration of the 30 day review period otherwise provided for in subsection (d) of Code Section 50-13-41.

(c) This article shall not apply with respect to any matter as to which an aggrieved party is permitted to file a petition with the Georgia Tax Tribunal in accordance with Chapter 13A of this title.

History. — Code 1981, § 50-13-42, enacted by Ga. L. 1994, p. 1856, § 3; Ga. L. 1997, p. 844, § 5; Ga. L. 1999, p. 296, § 22; Ga. L. 2004, p. 598, § 3; Ga. L. 2009, p. 453, § 1-57/HB 228; Ga. L. 2012, p. 318, § 14/HB 100; Ga. L. 2018, p. 762, § 4/HB 790.

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

JUDICIAL DECISIONS

Cited in Babies Right Start v. Ga. Dep't of Pub. Health, 293 Ga. 553, 748 S.E.2d 404 (2013).

50-13-43. Agencies to cooperate with chief state administrative law judge; Office of State Administrative Hearings to comply with federal law; rules and regulations.

All agencies shall cooperate with the chief state administrative law judge in the discharge of his or her duties. The Office of State Administrative Hearings shall comply with all applicable federal statutes, regulations, and guidelines, including those related to time frames for hearings, release of decisions, and other procedural requirements. The Office of State Administrative Hearings shall promulgate,

when necessary for any class of hearings, specific rules and regulations in order to ensure compliance with federal requirements and receipt and retention of federal funding, tax credits, and grants.

History. — Code 1981, § 50-13-43, enacted by Ga. L. 1994, p. 1856, § 3.

50-13-44. Administrative transfer of individuals to Office of State Administrative Hearings; approval of chief state administrative law judge; funding of transferred positions; transferred employees status.

(a) Any full-time hearing officer or equivalent position, used exclusively or principally to conduct or preside over hearings for a covered agency immediately prior to July 1, 1994, shall be administratively transferred to the Office of State Administrative Hearings, if such employee qualifies under Code Section 50-13-40. Any person serving immediately prior to July 1, 1994, as an independent hearing officer or equivalent under contract or written order of appointment shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1994, and shall continue as a special assistant administrative law judge. All full-time staff of covered agencies who have exclusively or principally served as support staff for administrative hearings shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1994. All equipment or other tangible property in possession of covered agencies which is used or held exclusively or principally by personnel transferred under this Code section shall be transferred to the Office of State Administrative Hearings as of July 1, 1994.

(b) All such transfers shall be subject to the approval of the chief state administrative law judge and such personnel or property shall not be transferred if the chief state administrative law judge determines that the hearing officer, staff, equipment, or property should remain with the transferring agency.

(c) Funding for functions and positions transferred to the Office of State Administrative Hearings under this article shall be transferred as provided for in Code Section 45-12-90. The employees of the Office of State Administrative Hearings shall be in the unclassified service unless they are in the classified service as such term is defined by Code Section 45-20-2.

(d) The chief state administrative law judge shall assess agencies the cost of services rendered to them in the conduct of hearings.

(e)(1) Any full-time hearing officer of the State Personnel Board used exclusively or principally to conduct or preside over hearings for such

board immediately prior to July 1, 1997, shall be administratively transferred to the Office of State Administrative Hearings if such employee qualifies under Code Section 50-13-40. Any person serving immediately prior to July 1, 1997, as an independent hearing officer under contract or written order of appointment shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1997, and shall continue as a special assistant administrative law judge. All full-time staff of the State Personnel Board who have exclusively or principally served as support staff for administrative hearings conducted by such hearing officers shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1997. All equipment or other tangible property in possession of the State Personnel Board which is used or held exclusively or principally by personnel transferred under this subsection shall be transferred to the Office of State Administrative Hearings as of July 1, 1997.

(2) Funding for functions and positions transferred to the Office of State Administrative Hearings under this subsection shall be transferred as provided for in Code Section 45-12-90.

History. — Code 1981, § 50-13-44, enacted by Ga. L. 1994, p. 1856, § 3; Ga. L. 1997, p. 844, § 6; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-107/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Cited in Scarborough v. Hunter, 293 Ga. 431, 746 S.E.2d 119 (2013); Ga. Dep't of Human Servs. v. Addison, 304 Ga. 425, 819 S.E.2d 20 (2018).

CHAPTER 13A

TAX TRIBUNALS

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50-13A-3.	Application of definitions within Code Section 48-1-2; "tribunal" defined.
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50-13A-20.	Applicability of provisions.

Editor's notes. — Ga. L. 2012, p. 318, § 16/HB 100, not codified by the General Assembly, provides, in part, that this chapter shall be applicable to all proceedings commenced on or after January 1, 2013.

Law reviews. — For article on the 2012 enactment of this chapter, see 29 Ga. St. U.L. Rev. 70 (2012).

Administrative rules and regulations. — Rules of procedure for the Georgia Tax Tribunal, Official Compilation of the Rules and Regulations of the State of Georgia, Office of State Administrative Hearings, Subject 616-1-3.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — 115 Am. Jur. POF 3d, Challenge to Tax Assessment of Residential Property, § 203.

50-13A-1. Short title.

This chapter shall be known and may be cited as the "Georgia Tax Tribunal Act of 2012."

History. — Code 1981, § 50-13A-1, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

JUDICIAL DECISIONS

Appeal procedure. — Trial court properly dismissed a tobacco retailer's appeal of a decision of the Georgia Tax Tribunal that the retailer owed unpaid taxes as the general intention behind the creation of the Tribunal did not permit the court to ignore the plain language of O.C.G.A. § 48-11-18 concerning the designated appellate forum available to tobacco tax payers. Moosa Co. LLC v. Dep't of Revenue, 353 Ga. App. 429, 838 S.E.2d 108 (2020), cert. denied, No. S20C0816, 2020 Ga. LEXIS 679 (Ga. 2020).

50-13A-2. Role of agency.

The General Assembly finds that there is a need for an independent specialized agency separate and apart from the Department of Revenue to resolve disputes between the department and taxpayers in an efficient and cost-effective manner. Such an agency would:

(1) Improve the utilization of judicial resources by resolving tax cases in a more streamlined and efficient manner;

(2) Increase the uniformity of decision making in tax cases;

(3) Improve the equal access of all parties to court process; and

(4) Increase public confidence in the fairness of the state tax system.

History. — Code 1981, § 50-13A-2, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

Law reviews. — For article, "Office of State Administrative Services: 20 Years of Continuous Progress in Becoming One of the Leading Administrative Courts in the Nation," see 21 Ga. St. Bar. J. 16 (Oct. 2015).

50-13A-3. Application of definitions within Code Section 48-1-2; "tribunal" defined.

Except where the context may otherwise clearly require, all terms used in this chapter shall have the meaning given such term by Code Section 48-1-2. As used in this chapter, the term "tribunal" means the Georgia Tax Tribunal established by Code Section 50-13A-4 which shall be an independent and autonomous division within the Office of State Administrative Hearings operating under the sole direction of the chief tribunal judge.

History. — Code 1981, § 50-13A-3, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

JUDICIAL DECISIONS

Appeal procedure. — Trial court properly dismissed a tobacco retailer's appeal of a decision of the Georgia Tax Tribunal that the retailer owed unpaid taxes as the general intention behind the creation of the Tribunal did not permit the court to ignore the plain language of O.C.G.A. § 48-11-18 concerning the designated appellate forum available to tobacco tax payers. Moosa Co. LLC v. Dep't of Revenue, 353 Ga. App. 429, 838 S.E.2d 108 (2020), cert. denied, No. S20C0816, 2020 Ga. LEXIS 679 (Ga. 2020).

50-13A-4. Creation of tax tribunal; seal.

(a) There is created within the executive branch of government the Georgia Tax Tribunal. The tribunal shall be assigned for administrative purposes only, as provided in Code Section 50-4-3, to the Department of Administrative Services and shall be funded through appropriations by the General Assembly to the Department of Administrative Services.

(b) The tribunal shall have a seal engraved with the words "Georgia Tax Tribunal." The tribunal shall authenticate all of its orders, records, and proceedings with the seal, and the courts of this state shall take judicial notice of the seal.

History. — Code 1981, § 50-13A-4, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

50-13A-5. Composition of tribunal; vacancies and other administrative matters.

(a) The tribunal shall consist of at least one full-time administrative law judge. If the tribunal has more than one judge, each shall exercise the powers of the tribunal in all matters, causes, or proceedings assigned to him or her.

(b) Initial tribunal judges shall be appointed by the Governor. If, initially, the tribunal has only one judge, that individual shall be appointed for a term of four years and shall be the chief tribunal judge; provided, however, that if, initially, the tribunal has more than one judge, then one judge shall be appointed for an initial term of four years and one judge shall be appointed as chief tribunal judge for an initial term of six years to ensure that the judges' initial terms do not expire in the same year. Once appointed, each initial tribunal judge shall continue in office until his or her term expires and a successor has been appointed and confirmed. Initial tribunal judges may be reappointed for successive terms, provided that each successive term shall be for four years.

(c) After initial appointments are made pursuant to subsection (b) of this Code section, all appointments and reappointments of the chief tribunal judge and other tribunal judges shall be made by the Governor,

with the consent of the Senate, for terms of four years. Once appointed and confirmed, each such tribunal judge shall continue in office until his or her term expires and a successor has been appointed and confirmed. A tribunal judge may be reappointed for successive terms.

(d) Each tribunal judge shall receive an annual salary no less than that of the chief administrative law judge of the Office of State Administrative Hearings; provided, however, that the tribunal judge's total salary shall not be reduced during such judge's term of appointment.

(e) A vacancy in the tribunal occurring other than by expiration of term shall be filled for the unexpired term in the same manner as an original appointment.

(f) The executive of the tribunal shall be the chief tribunal judge who shall have sole charge of the administration of the tribunal, including, but not limited to, the preparation of a budget and matters involving employment and expenditures as set forth in Code Section 50-13A-8, and shall apportion among the judges all causes, matters, and proceedings coming before the tribunal.

(g) With the consent of the Senate, the Governor may remove a tribunal judge, after notice and an opportunity to be heard, for neglect of duty, inability to perform duties, malfeasance in office, or other good cause.

(h) Whenever the tribunal trial docket or business becomes congested or any tribunal judge is absent, is disqualified, or for any other reason is unable to perform his or her duties as tribunal judge, and it appears to the Governor that the services of an additional tribunal judge or judges should be provided, the Governor may, without obtaining the approval of the Senate, appoint a judge, or judges, pro tempore of the tribunal. Any person appointed judge pro tempore of the tribunal shall have the qualifications set forth in subsections (a) and (b) of Code Section 50-13A-6 and shall serve for a period not to exceed 12 months.

(i) A tribunal judge may disqualify himself or herself on his or her own motion in any matter and may be disqualified for any cause listed in Code Section 15-1-8.

History. — Code 1981, § 50-13A-5, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

50-13A-6. Qualification and terms of tribunal judges; oath; role.

(a) Each judge of the tribunal shall be a citizen of the United States and, during the period of service, a resident of this state. No person shall be appointed as a tribunal judge unless at the time of appointment

the individual is an attorney licensed to practice in this state and has practiced primarily in the area of tax law for at least eight years.

(b) Before entering upon the duties of office, each tribunal judge shall take and subscribe to an oath or affirmation that he or she shall faithfully discharge the duties of the office, and such oath shall be filed in the office of the Secretary of State.

(c) Each tribunal judge shall devote his or her full time during business hours to the duties of the tribunal. A tribunal judge shall not engage in any other gainful employment or business that interferes with or is inconsistent with his or her duties as a judge and shall not hold another office or position of profit in a government of this state, any other state, or the United States.

(d) If a tribunal judge does not have a full docket of tax cases, the chief tribunal judge may, acting in his or her sole discretion, petition the chief administrative law judge of the Office of State Administrative Hearings to allow such tribunal judge to hear and resolve nontax cases pending before the Office of State Administrative Hearings. The chief tribunal judge, the chief administrative law judge of the Office of State Administrative Hearings, and the tribunal judge in question shall mutually agree upon the number and types of such cases, taking into account the particular judge's background and qualifications.

History. — Code 1981, § 50-13A-6, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

Law reviews. — For article, "Office of State Administrative Services: 20 Years of Continuous Progress in Becoming One of the Leading Administrative Courts in the Nation," see 21 Ga. St. Bar. J. 16 (Oct. 2015).

50-13A-7. Location of office; conduct of hearings at other locations.

(a) The tribunal's principal location shall be located in Fulton County, Georgia, and in a building that is separate and apart from any building in which the commissioner has an office.

(b) The tribunal may, but shall not be required to, conduct hearings at its principal location in Fulton County. The tribunal may also hold hearings at any place within this state, with a view toward securing to taxpayers a reasonable opportunity to appear before the tribunal with as little inconvenience and expense as practicable. When the tribunal holds hearings outside of its principal location, it shall do so in a place that is physically separate from facilities regularly occupied by the commissioner.

History. — Code 1981, § 50-13A-7, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

50-13A-8. Support personnel for tribunal.

(a) The chief tribunal judge shall appoint a clerk of the tribunal, a court reporter, and such other employees, including staff attorneys and clerical assistants, and make such other expenditures, including expenditures for library, publications, and equipment, as are reasonably necessary to permit the tribunal to execute its functions efficiently; provided, however, that the chief tribunal judge shall endeavor to utilize staff employed by the Office of State Administrative Hearings and shall consult with the chief state administrative law judge so as to best utilize staff positions to best serve both the tribunal and the Office of State Administrative Hearings.

(b) A tribunal court reporter shall be subject to the provisions of Code Sections 15-14-20 through 15-14-36 as if appointed by a judge of a superior court, except when such provisions are in conflict with this chapter.

(c) No employee of the tribunal shall act as attorney, representative, or accountant for others in a matter involving any tax imposed or levied by this state or county or municipality of this state.

(d) In addition to contracting the services of the tribunal court reporter, the chief tribunal judge may contract the reporting of tribunal proceedings and, in the contract, fix the terms and conditions under which transcripts shall be supplied by the contractor to the tribunal and to other persons and agencies.

History. — Code 1981, § 50-13A-8, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

50-13A-9. Petitions for relief; jurisdiction; bonds.

(a) On and after January 1, 2013, any person may petition the tribunal for relief as set forth in Code Sections 48-2-18, 48-2-35, 48-2-59, 48-3-1, 48-5-519, 48-6-7, and 48-6-76 and subparagraph (d)(2)(C) of Code Section 48-7-31. The tribunal shall have jurisdiction over actions for declaratory judgment that fall within subsection (a) of Code Section 50-13-10 and involve a rule of the commissioner that is applicable to taxes administered by the commissioner under Title 48.

(b) The tribunal shall have concurrent jurisdiction with the superior courts over those matters set forth in subsection (a) of this Code section.

(c) The tribunal shall not have jurisdiction to hear any matter arising under Title 3 or Title 40.

(d) No person shall be required as a condition either to initiating or maintaining an action before the tribunal to provide a surety bond or other security for any amounts that may be in dispute in such action.

Nothing contained in this chapter shall be construed to prohibit the commissioner from requiring a bond under those circumstances set forth in Code Section 48-2-51.

(e) The tribunal shall also have jurisdiction over refund petitions filed pursuant to Code Section 48-5-342.

History. — Code 1981, § 50-13A-9, enacted by Ga. L. 2012, p. 318, § 15/HB 100; Ga. L. 2016, p. 277, § 2/HB 364.

Law reviews. — For article, "Office of State Administrative Services: 20 Years of Continuous Progress in Becoming One of the Leading Administrative Courts in the Nation," see 21 Ga. St. Bar. J. 16 (Oct. 2015).

JUDICIAL DECISIONS

Appeal procedure. — Trial court properly dismissed a tobacco retailer's appeal of a decision of the Georgia Tax Tribunal that it owed unpaid taxes as the general intention behind the creation of the Tribunal did not permit the court to ignore the plain language of O.C.G.A. § 48-11-18 concerning the designated appellate forum available to tobacco tax payers. Moosa Co. LLC v. Dep't of Revenue, 353 Ga. App. 429, 838 S.E.2d 108 (2020), cert. denied, No. S20C0816, 2020 Ga. LEXIS 679 (Ga. 2020).

Cited in Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017).

50-13A-10. Commencement of actions; service; pleadings and proceedings.

(a) Actions may be commenced before the tribunal on and after January 1, 2013. Actions before the tribunal shall be commenced by filing a petition with the tribunal, naming the commissioner as respondent in his or her official capacity, within the time periods prescribed by Code Section 48-2-18, 48-2-35, 48-2-59, 48-6-7, or 48-6-76 or subparagraph (d)(2)(C) of Code Section 48-7-31, as the case may be, or as otherwise provided by law. The petitioner shall serve a copy of the petition on the commissioner and the Attorney General and attach a certificate of service to the petition filed with the tribunal. In the case of a refund action pursuant to Code Section 48-6-7 or 48-6-76, the petition also shall be served on the clerk of the superior court or collecting officer who is made a party to the action. Service shall be accomplished by certified mail or statutory overnight delivery. The petition shall include a summary statement of facts and law upon which the petitioner relies in seeking the requested relief.

(b) The commissioner and any other respondents shall file a response to petitioner's statement of facts and law which constitutes his or her answer with the tribunal no later than 30 days after the service of the petition. The commissioner and any other respondents shall serve a copy of their response on the petitioner's representative or, if the petitioner is not represented, on the petitioner, and shall file a certificate of such service with the response. If in any case a response has not

been filed within the time required by this subsection, the case shall automatically become in default unless the time for filing the response has been extended by agreement of the parties, for a period not to exceed 30 days, or by the judge of the tribunal. The default may be opened as a matter of right by the filing of a response within 15 days of the day of default and payment of costs. At any time before final judgment, the judge of the tribunal, in his or her discretion, may allow the default to be opened for providential cause that prevented the filing of the response or for excusable neglect or when the tribunal judge, from all the facts, determines that a proper case has been made for the default to be opened on terms to be fixed by the tribunal judge.

(c) Pleadings and proceedings before the tribunal shall be subject to the amendment and supplementation provisions of Code Section 9-11-15.

(d) Code Section 50-13A-18 shall apply to service of pleadings and documents.

(e) As soon as reasonably practicable, the tribunal judge shall schedule a prehearing conference to address discovery, scheduling, and other matters.

(f) The tribunal judge may remand a matter in dispute to the commissioner for further consideration upon motion by all parties to the proceeding, for good cause shown on the motion of any party, or sua sponte when the tribunal judge reasonably determines that circumstances warrant. Any such remand shall not divest the tribunal of jurisdiction, and the tribunal judge's order shall provide that any party, upon appropriate advance notice to all other parties, shall be entitled to have such matter returned to the tribunal for resolution.

(g) Contested cases pending before the Office of State Administrative Hearings on and before December 31, 2012, and cases when the taxpayer made a written demand for a hearing pursuant to Code Section 50-13-12 before January 1, 2013, shall not be transferred to the tribunal. If, on and after January 1, 2013, a written petition for relief or a demand for hearing is filed with the commissioner or by the affected party directly with the Office of State Administrative Hearings in a matter falling within the tribunal's jurisdiction under subsection (a) of Code Section 50-13A-9, such matter shall be transferred to the tribunal, and the remaining provisions of this chapter shall be applicable.

History. — Code 1981, § 50-13A-10, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

50-13A-11. Petition operates as a stay; lifting of stay.

(a) Except as provided for in Code Section 48-2-51, involving jeopardy assessments, the filing of a petition with the tribunal shall operate as a stay of any enforcement or collection action by the commissioner with respect to any tax, penalty, interest, or any collection costs that are disputed in the petition until the tribunal decision is finalized, including appeals to the superior court pursuant to Code Section 50-13A-17 or to any appellate court.

(b) Upon petition by the commissioner, and for good cause shown, the tribunal judge may lift the stay provided for in subsection (a) of this Code section.

History. — Code 1981, § 50-13A-11, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

50-13A-12. Fees.

(a) Upon filing a petition, the petitioner shall pay to the clerk of the tribunal a fee as determined by the rules established by the tribunal.

(b) A similar fee shall be paid by other parties making an appearance in the proceeding, except that no fee shall be charged to a government body or government official appearing in a representative capacity.

(c) The chief tribunal judge may fix a fee, not in excess of the fees charged and collected by the clerks of the superior courts of this state, for compiling, or for preparing and compiling, a transcript of the record, or for copying any record, entry, or other paper and the compilation and certification thereof.

History. — Code 1981, § 50-13A-12, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

50-13A-13. Application of Georgia Civil Practice Act; discovery; attendance of witnesses.

(a) The provisions of Chapter 11 of Title 9, the "Georgia Civil Practice Act," governing discovery and depositions shall apply to proceedings before the tribunal; provided, however, that the parties to a proceeding shall make every effort to conduct discovery by informal consultation or communication. Upon motion of a party, the frequency or extent of formal discovery methods may be limited by the tribunal if it determines that the discovery is unduly burdensome or expensive when taking into account the amount in controversy, limitations on the

parties' resources, and the importance of the issues at stake in the litigation.

(b) The chief tribunal judge shall, by rules and regulations or by order in a particular proceeding, prescribe the period during which any discovery shall be commenced and completed. After the period for completing discovery has expired, or earlier as the parties may agree, the parties to a proceeding shall stipulate all relevant and nonprivileged matters to the fullest extent to which complete or qualified agreement can be reached or fairly should be reached. Neither the existence nor the use of the discovery mechanisms authorized by this Code section shall excuse failure to comply with this provision.

(c)(1) A party shall disclose to other parties at a reasonable time prior to the hearing the identity of any person who may be called at trial to present expert testimony.

(2) Except as otherwise stipulated or directed by the tribunal judge, expert witness disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness if one has been prepared or will be offered at the hearing.

(d) A judge or the clerk of the tribunal, on the request of any party to the proceeding, shall issue subpoenas requiring the attendance of witnesses and giving of testimony and subpoenas requiring the production of evidence or things.

(e) Any employee of the tribunal designated in writing for such purpose by a tribunal judge, or by the chief tribunal judge if more than one judge has been appointed, may administer oaths.

(f) Any witness who is subpoenaed or whose deposition is taken shall receive the same fees and mileage as a witness in a superior court of this state.

(g) In proceedings before the tribunal, if any party or an agent or employee of a party disobeys or resists any lawful order of process; neglects to produce, after having been ordered to do so, any pertinent book, paper, or document; refuses to appear after having been subpoenaed; upon appearing, refuses to take the oath or affirmation as a witness; or, after taking the oath or affirmation, refuses to testify, the tribunal judge shall have the same rights and powers given any other court under Chapter 11 of Title 9, the "Georgia Civil Practice Act." If any person or party refuses as specified in this subsection, the tribunal judge may certify the facts to the superior court of the county where the offense is committed for appropriate action, including a finding of contempt.

History. — Code 1981, § 50-13A-13, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

50-13A-14. Conduct of trials; evidence; recordings.

(a) Trials in proceedings before the tribunal shall be de novo and without a jury. All questions of law decided by the tribunal, including interpretations of constitutional, statutory, and regulatory provisions, shall be made without any deference to any determination or interpretation, whether written or unwritten, that may have been made on the matter by the Department of Revenue, except such requirement shall have no effect on the judicial standard of deference accorded to rules promulgated pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Hearings shall be open to the public, but on motion of any party, if such party shows good cause to protect certain information from being disclosed to the public, the tribunal judge may issue a protective order or an order closing part or all of a hearing to the public.

(b) The tribunal shall take evidence, and the tribunal judges shall conduct hearings and issue final judgments and interlocutory orders.

(c) The tribunal judges shall apply the rules of evidence as applied in the trial of civil nonjury cases in the superior courts; provided, however, that for hearings conducted in the small claims division, the tribunal judge may, when necessary to ascertain facts not reasonably susceptible of proof under such rules, consider evidence not otherwise admissible thereunder if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(d) Testimony before a tribunal judge shall be given only on oath or affirmation.

(e) The petition and other pleadings in the proceeding shall be deemed to conform to the proof presented at the hearing, unless a party satisfies the tribunal judge that presentation of the evidence would unfairly prejudice the party in maintaining its position on the merits or unless deeming the taxpayer's petition to conform to the proof would confer jurisdiction on the tribunal over a matter that would not otherwise come within the tribunal's jurisdiction.

(f) Except for hearings conducted in the small claims division of the tribunal as provided in Code Section 50-13A-16, all hearings before the tribunal shall be recorded by means acceptable for use in courts of this state.

History. — Code 1981, § 50-13A-14, enacted by Ga. L. 2012, p. 318, § 15/HB 100; Ga. L. 2021, p. 120, § 4/SB 185.

The 2021 amendment, effective April 29, 2021, added the second sentence in subsection (a). See Editor's notes for applicability.

Editor's notes. — Ga. L. 2021, p. 120, § 5/SB 185, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, and shall be applicable to all proceedings commenced before the Georgia Tax Tribunal or a superior court of this state on or after such date." This Act became effective April 29, 2021.

50-13A-15. Writing required for judgments and orders; confidentiality; application of stare decisis; publication.

(a) Except with regard to proceedings in the small claims division of the tribunal pursuant to Code Section 50-13A-16, the tribunal judge shall render all final judgments and interlocutory orders in writing, as appropriate, including therein a concise statement of the facts found and the conclusions of law reached. The tribunal judge's final judgment or interlocutory order shall, subject to law, grant such relief, invoke such remedies, and issue such orders as the tribunal judge deems appropriate to carry out its final judgment or interlocutory order.

(b) The chief tribunal judge shall adopt rules and regulations to address confidentiality of taxpayer information and proceedings before the tribunal.

(c) The tribunal judges shall adhere to the principle of stare decisis. The tribunal judge's interpretation of a tax statute subject to contest in one case shall be followed by the tribunal in subsequent cases involving the same statute, and its application of a statute to the facts of one case shall be followed by tribunal judges in subsequent cases involving similar facts, unless the tribunal judge's interpretation or application conflicts with that of an appellate court or the tribunal judge provides satisfactory reasons for departing from prior precedent.

(d) Except as to a final judgment of the small claims division, all other final judgments of the tribunal shall be indexed and published in such print or electronic form as the chief tribunal judge deems best adapted for public convenience. Such publications shall be made permanently available and constitute the official reports of the tribunal.

History. — Code 1981, § 50-13A-15, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

50-13A-16. Small claims division established; jurisdiction; representation; hearings; finality of decisions.

(a) There is hereby established a small claims division of the tribunal.

(b) Judges of the tribunal shall sit as the judges of the small claims division.

(c) Within 90 days of filing a petition pursuant to Code Section 50-13A-9, a taxpayer may elect to have the small claims division have jurisdiction over any proceeding with respect to which the amount of tax and penalties in controversy, exclusive of interest, is less than a threshold amount determined by the rules of the tribunal. A taxpayer may not revoke such election to proceed in the small claims division after this 90 day period. For good cause, the tribunal judge may, on his or her own motion or on the motion of a party to the case, remove a case from the small claims division.

(d) In proceedings before the small claims division of the tribunal, accountants and other tax return preparers designated by the taxpayer shall be permitted to accompany and appear with the taxpayer in order to provide factual information regarding positions taken on tax returns of the taxpayer. An accountant or tax return preparer accompanying and appearing with a taxpayer for this purpose shall not be deemed to be acting as an advocate of the taxpayer or representing the taxpayer before the tribunal.

(e) At any time prior to entry of judgment, a taxpayer may dismiss a proceeding in the small claims division by notifying the clerk of the tribunal in writing. Such dismissal shall be without prejudice.

(f) Hearings in the small claims division shall be conducted in a manner consistent with proceedings before magistrate courts, as specified in Article 3 of Chapter 10 of Title 15. The tribunal judge may receive such evidence as the judge deems appropriate for determination of the case. Testimony shall be given under oath or affirmation.

(g) A judgment of the small claims division shall be conclusive upon all parties and may not be appealed. A judgment of the small claims division shall not be considered or cited as precedent in any other case, hearing, or proceeding.

History. — Code 1981, § 50-13A-16, enacted by Ga. L. 2012, p. 318, § 15/HB 100; Ga. L. 2013, p. 141, § 50/HB 79.

50-13A-17. Procedure and designation of appealing courts.

(a) As used in this Code section, the term "reviewing court" means the Superior Court of Fulton County.

(b) Any party may appeal a final judgment of the tribunal, except for judgments of the small claims division, to the reviewing court. Proceedings for judicial review shall be instituted by filing a petition with the reviewing court within 30 days after the service of the tribunal's final

judgment or, if a rehearing is requested, within 30 days after the decision thereon. Copies of the petition for judicial review shall be served upon the tribunal and all parties of record. The petition shall state the nature of the petitioner's interest, the fact showing that the petitioner is aggrieved by the judgment, and the grounds as specified in subsection (g) of this Code section upon which the petitioner contends that the judgment should be reversed or modified. The petition for judicial review may be amended by leave of the reviewing court.

(c) Notwithstanding any provisions of law or tribunal rule with respect to motions for rehearing or reconsideration after a final tribunal judgment or interlocutory order, the filing of such a motion shall not be a prerequisite to the filing of any action for judicial review or relief; provided, however, that no objection to any order or judgment of the tribunal shall be considered by the reviewing court upon petition for review unless such objection has been heard by the tribunal.

(d) Within 30 days after the service of the petition for judicial review or within further time allowed by the reviewing court, the tribunal shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the reviewing court for the additional costs. The reviewing court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing in the reviewing court, application is made to the reviewing court for leave to present additional evidence and it is shown to the satisfaction of the reviewing court that the additional evidence is material and there were good reasons for failure to present it in the proceedings before the tribunal, the reviewing court may order that the additional evidence be taken before the tribunal upon conditions determined by the reviewing court. A tribunal judge may modify his or her findings and judgment by reason of the additional evidence and shall file that evidence and any modifications, new findings, or judgments with the reviewing court.

(f) The hearing or a petition for judicial review shall be conducted by the reviewing court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the tribunal not shown in the record, proof thereon may be taken in the reviewing court. The reviewing court, upon request, shall hear oral argument and receive written briefs. The reviewing court shall affirm, reverse, or modify the tribunal's judgment or remand the case for further proceedings within 90 days of the filing of the last such written brief.

(g) The reviewing court shall not substitute its judgment for that of the tribunal's as to the weight of the evidence on questions of fact. The

reviewing court may affirm the tribunal's judgment or remand the case for further proceedings. The reviewing court may reverse or modify the judgment if substantial rights of the petitioner have been prejudiced because the tribunal judge's findings, inferences, conclusions, or judgments are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the tribunal;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(h) An aggrieved party may seek a review of any final judgment of the reviewing court by the Court of Appeals or the Supreme Court, as provided by law.

History. — Code 1981, § 50-13A-17, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

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Cited in Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017).

50-13A-18. Service; filing.

(a) An initial petition shall be served by certified mail or statutory overnight delivery and any other pleading, motion, response, statement, or document permitted or required to be served shall be served by first-class mail or hand delivery.

(b) Any pleading, motion, response, statement, or document required by law, rule, or regulation to be received by or filed with the tribunal pursuant to the requirements of this chapter shall be deemed to be received by or filed with the tribunal on the earlier of:

(1) The date such pleading, motion, response, statement, or document is actually received by the tribunal;

(2) The official postmark date such pleading, motion, response, statement, or document was mailed, properly addressed with postage prepaid, by registered or certified mail; or

(3) The date on which such pleading, motion, response, statement, or document was delivered to a commercial delivery company for

statutory overnight delivery as provided in Code Section 9-10-12 as evidenced by the receipt provided by the commercial delivery company.

(c) Mailing or delivery to the address of the taxpayer given on the taxpayer's petition or to the address of the taxpayer's representative of record, if any, or to the usual place of business of the commissioner, and, when applicable, of the clerk of superior court or collecting official who is made a party to the action shall constitute personal service on such party. The chief tribunal judge may by rule prescribe that notice by other means shall constitute personal service and may in a particular case order that notice be given to additional persons or order that notice be given by other means.

History. — Code 1981, § 50-13A-18, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

50-13A-19. Rules of practice, procedure, and forms.

The tribunal shall adopt rules of practice and procedure and adopt all reasonable rules and forms as may be necessary or appropriate to carry out the intent and purposes of this chapter.

History. — Code 1981, § 50-13A-19, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

50-13A-19.1. Role of tribunal in refund matters from Department of Revenue.

(a) The tribunal shall docket the declaratory judgments of the revenue commissioner pursuant to subsection (h) of Code Section 48-2-35 as actions in the tribunal without the filing of a petition for relief.

(b)(1) The tribunal shall determine by interlocutory order the party at fault for the delay in finally determining a claim for refund.

(2) If the tribunal determines that the Department of Revenue is primarily at fault, the order shall require that the Department of Revenue pay all interest due to the taxpayer on the claim for refund, including the interest due on the local sales and use tax deemed to have been illegally or erroneously collected. The tribunal shall thereafter remand the matter back to the Department of Revenue for determination on the underlying claim for refund.

(3) If the tribunal determines that the taxpayer who made the claim for refund is primarily at fault, the order shall prohibit the accrual of any interest due to the taxpayer on the finally determined

claim for refund. The tribunal shall thereafter remand the matter back to the Department of Revenue for determination on the underlying claim for refund.

(4) If the tribunal determines that the delay is justified, the order shall remand the matter back to the Department of Revenue for determination and for further hearings at the tribunal's discretion.

(c) The tribunal, at its discretion, may award reasonable attorneys' fees to either party in such proceedings.

(d) Orders of the tribunal issued pursuant to this Code section shall be excluded from the provisions of subsection (d) of Code Section 50-13A-15.

(e) Except as otherwise provided in this Code section, such actions shall follow the procedures and tribunal rules applicable to other proceedings within the tribunal.

History. — Code 1981, § 50-13A-19.1, enacted by Ga. L. 2016, p. 574, § 5/HB 960.

50-13A-20. Applicability of provisions.

(a) For purposes of the language contained in the Code sections referenced in subsection (b) of this Code section, the term "agency" shall include the tribunal.

(b) Only the following provisions of Article 1 of Chapter 13 of this title shall apply to the tribunal and its administration:

(1) Code Section 50-13-3, except for paragraph (4) of subsection (a);

(2) Code Section 50-13-4, except for paragraphs (3) and (4) of subsection (a) and subsections (b), (g), (h), and (i);

(3) Code Section 50-13-6, except for paragraph (2) of subsection (c);

(4) Code Section 50-13-7;

(5) Code Section 50-13-8; and

(6) Code Section 50-13-10.

History. — Code 1981, § 50-13A-20, enacted by Ga. L. 2012, p. 318, § 15/HB 100.

CHAPTER 14

OPEN AND PUBLIC MEETINGS

Sec.
50-14-1. Meetings to be open to public; limitation on action to contest agency action; recording; notice of time and place; access to minutes; teleconference.
50-14-2. Certain privileges not repealed.
50-14-3. Excluded proceedings.
50-14-4. Procedure when meeting closed.
50-14-5. Jurisdiction to enforce chapter.
50-14-6. Penalty for violation; defense.

Editor's notes. — Ga. L. 1988, p. 235, § 1, effective July 1, 1988, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 50-14-1 through 50-14-4 and was based on Ga. L. 1972, p. 575, §§ 1-3; Ga. L. 1978, p. 1364, § 1; Ga. L. 1980, p. 595, § 1; Ga. L. 1980, p. 1254, § 1; Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act); and Ga. L. 1982, p. 1810, § 1.

This chapter is commonly referred to as the "Open Meetings Law" or "Open Meetings Act," although those names are not official.

Law reviews. — For article, "The Amended Open Meetings Law: New Requirements for Publicly Funded Corporations As Well As Governmental Agencies," see 25 Ga. St. B.J. 78 (1988). For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990). For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998). For survey article on administrative law for the period from June 1, 1997 through May 31, 1999, see 51 Mercer L. Rev. 103 (1999). For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

For note, "Opening the Doors to Access: A Proposal for Enforcement of Georgia's Open Meetings and Open Records Laws," see 15 Ga. St. U.L. Rev. 1075 (1999).

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County zoning board's exclusion of public from the portion of a meeting which included the vote and decision on conditional use permits violated the Open Meetings Act, O.C.G.A. T. 50, C. 14. Beck v. Crisp County Zoning Bd. of Appeals, 221 Ga. App. 801, 472 S.E.2d 558 (1996).

RESEARCH REFERENCES

ALR. — Pending or prospective litigation exception under state law making proceedings by public bodies open to the public, 35 A.L.R.5th 113.

50-14-1. Meetings to be open to public; limitation on action to contest agency action; recording; notice of time and place; access to minutes; teleconference.

(a) As used in this chapter, the term:

(1) "Agency" means:

(A) Every state department, agency, board, bureau, office, commission, public corporation, and authority;

(B) Every county, municipal corporation, school district, or other political subdivision of this state;

(C) Every department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;

(D) Every city, county, regional, or other authority established pursuant to the laws of this state; and

(E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing body of any agency as defined in this paragraph which constitutes more than 33 1/3 percent of the funds from all sources of such organization; provided, however, that this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a subagency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) "Executive session" means a portion of a meeting lawfully closed to the public.

(3)(A) "Meeting" means:

(i) The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or

(ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.

(B) "Meeting" shall not include:

(i) The gathering of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;

(ii) The gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide,

multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken by the members;

(iii) The gathering of a quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;

(iv) The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or

(v) The gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum.

This subparagraph's exclusions from the definition of the term "meeting" shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

(b)(1) Except as otherwise provided by law, all meetings shall be open to the public. All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.

(2) Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision shall be commenced within 90 days of the date such contested action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision.

(c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual and sound recording during open meetings shall be permitted.

(d)(1) Every agency subject to this chapter shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted at least one week in advance and maintained in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter as well as on the agency's website, if any. Meetings shall be held in accordance with a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting.

(2) For any meeting, other than a regularly scheduled meeting of the agency for which notice has already been provided pursuant to this chapter, written or oral notice shall be given at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in such county at least equal to that of the legal organ; provided, however, that, in counties where the legal organ is published less often than four times weekly, sufficient notice shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet at least 24 hours in advance of the called meeting. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately or as soon as practicable make the information available upon inquiry to any member of the public. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda shall be provided by facsimile, e-mail, or mail through a self-addressed, stamped envelope provided by the requestor.

(3) When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances, including notice to the county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes. Such reasonable notice shall also include, upon written

request within the previous calendar year from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet.

(e)(1) Prior to any meeting, the agency or committee holding such meeting shall make available an agenda of all matters expected to come before the agency or committee at such meeting. The agenda shall be available upon request and shall be posted at the meeting site as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting and shall be posted, at a minimum, at some time during the two-week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.

(2)(A) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting.

(B) The regular minutes of a meeting subject to this chapter shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency or its committee, but in no case later than immediately following its next regular meeting; provided, however, that nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Such minutes shall, at a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, the identity of the persons making and seconding the motion or other proposal, and a record of all votes. The name of each person voting for or against a proposal shall be recorded. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.

(C) Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. In the case of executive sessions where matters subject to the attorney-client privilege are discussed, the fact that an attorney-client discussion occurred and its subject shall be identified, but the substance of the discussion need not be recorded and shall not be identified in the minutes. Such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session.

(f) An agency with state-wide jurisdiction or committee of such an agency shall be authorized to conduct meetings by teleconference,

provided that any such meeting is conducted in compliance with this chapter.

(g)(1) As used in this paragraph, emergency conditions shall include declarations of federal, state, or local states of emergency; provided, however, that no such declaration shall be necessary for an agency as defined by subparagraph (A) of paragraph (1) of subsection (a) of this Code section to find that emergency conditions exist thereby necessitating meeting by teleconference.

(2) Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees thereof not otherwise permitted by subsection (f) of this Code section to conduct meetings by teleconference may meet by means of teleconference so long as the notice required by this chapter is provided and means are afforded for the public to have simultaneous access to the teleconference meeting. The participation by teleconference of members of agencies or committees means full participation in the same manner as if such members were physically present. In the event such teleconference meeting is a public hearing, members of the public must be afforded the means to participate fully in the same manner as if such members of the public were physically present.

(3) On any other occasion of the meeting of an agency or committee thereof, and so long as a quorum is present in person, a member may participate by teleconference if necessary due to reasons of health or absence from the jurisdiction so long as the other requirements of this chapter are met. Absent emergency conditions or the written opinion of a physician or other health professional that reasons of health prevent a member's physical presence, no member shall participate by teleconference pursuant to this subsection more than twice in one calendar year.

History. — Code 1981, § 50-14-1, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1992, p. 1061, §§ 1, 2; Ga. L. 1993, p. 784, § 1; Ga. L. 1999, p. 549, §§ 1, 2; Ga. L. 2012, p. 218, § 1/HB 397; Ga. L. 2021, p. 320, § 1/HB 98.

The 2021 amendment, effective May 4, 2021, added paragraph (g)(1); redesignated the existing first sentence of subsection (g) as paragraph (g)(2) and redesignated the last two sentences as paragraph (g)(3); and added the last two sentences of paragraph (g)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "two-week" was substituted for "two week" in paragraph (e)(1).

Pursuant to Code Section 28-9-5, in 2009, "that" was inserted following "however," in subparagraph (a)(1)(E).

Cross references. — Preventing or disrupting lawful meetings, gatherings, or processions, § 16-11-34. Preventing or disrupting General Assembly sessions or other meetings of members; unlawful activities within the state capitol or certain Capitol Square buildings, § 16-11-34.1.

Law reviews. — For article discussing provisions opening local government meetings to the public, see 13 Ga. L. Rev. 97 (1978). For article discussing Georgia's open government provisions with respect to land use planning, in light of Evans v. Just Open Gov't, 242 Ga. 834, 251 S.E.2d

546 (1979), see 31 Mercer L. Rev. 89 (1979). For article, "Georgia's Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine," see 40 Mercer L. Rev. 1 (1988). For annual survey of local government law, see 44 Mercer L. Rev. 309 (1992). For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003). For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005). For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012). For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012). For annual survey on local government law, see 64 Mercer L. Rev. 213 (2012). For annual survey on local government law, see 68 Mercer L. Rev. 199 (2016). For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017). For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018). For annual survey on commercial transportation: a two-year survey, see 71 Mercer L. Rev. 39 (2019). For annual survey on local government law, see 71 Mercer L. Rev. 189 (2019).

For note discussing Georgia's Sunshine Law requiring meetings by state and local governmental authorities to be open to the public, see 10 Ga. St. B.J. 598 (1974). For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992). For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 256 (1999).

JUDICIAL DECISIONS

Analysis

General Consideration
Application

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1972, p. 575, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Applicability of Act. — Test for applicability of the Open Meetings Act, O.C.G.A. T. 50, C. 14, is two-pronged: first, is the meeting one of a "governing body of an agency" or any committee thereof; and second, is the meeting one "at which official business or policy of the agency is to be discussed or at which official action is to be taken?" Crosland v. Butts County Bd. of Zoning Appeals, 214 Ga. App. 295, 448 S.E.2d 454 (1994).

Construction of Act. — Open Meetings Act, O.C.G.A. T. 50, C. 14, must be broadly construed to effect the Act's purpose of protecting the public and individuals from closed door meetings. Jersawitz v. Fortson, 213 Ga. App. 796, 446 S.E.2d 206 (1994); Crosland v. Butts County Bd. of Zoning Appeals, 214 Ga. App. 295, 448 S.E.2d 454 (1994).

In view of the General Assembly's intent, the correct reading of the Open Meetings Act, O.C.G.A. § 50-14-1(e)(2), and the one that is most natural and reasonable, is that, having first mandated that meeting minutes include a record of all votes, the paragraph then sets forth alternative requirements for accurately recording individuals' votes in the case of both roll-call and non-roll-call votes; in the case of a non-roll-call vote, the minutes must list the names of those voting against a proposal or abstaining, and if no such names are listed, the public may correctly presume that the vote was unanimous, but if such names are listed, a member of the public need only look at the list of voting officials in attendance at the meeting to determine who voted for a proposal. Cardinale v. City of Atlanta, 290 Ga. 521, 722 S.E.2d 732 (2012).

Physical access not required. — Open Meetings Act, O.C.G.A. T. 50, C. 14,

requires adequate, advance notice of a meeting, not physical access to all members of the public. Maxwell v. Carney, 273 Ga. 864, 548 S.E.2d 293 (2001).

Language of this section is clear, the language applies to the meetings of the variously described bodies which are empowered to act officially for the state and at which such official action is taken. McLarty v. Board of Regents of Univ. Sys., 231 Ga. 22, 200 S.E.2d 117 (1973) (decided under former Ga. L. 1972, p. 575).

Unauthorized groups. — This section does not encompass the innumerable groups which are organized and meet for the purpose of collecting information, making recommendations, and rendering advice but which have no authority to make governmental decisions and act for the state. McLarty v. Board of Regents of Univ. Sys., 231 Ga. 22, 200 S.E.2d 117 (1973) (decided under former Ga. L. 1972, p. 575).

Agency did not include employees. — County's sheriff and district attorney were not required to release records relating to an inmate's death in custody under the Open Records Act, O.C.G.A. § 50-14-1 et seq., because the records came within the "pending prosecution" exemption to disclosure in O.C.G.A. § 50-18-72(a)(4). The exception for agencies under investigation did not apply because "agency," as defined in O.C.G.A. §§ 50-14-1(a)(1)(C) and 50-18-70(b), was not synonymous with "employee," and the agency itself was not under investigation. Media Gen. Operations, Inc. v. St. Lawrence, 337 Ga. App. 428, 787 S.E.2d 778 (2016).

Construed with Recall Act. — Conduct of a public official who participates in a closed meeting that is required by law to be open can become a "ground for recall" under the Recall Act, O.C.G.A. § 21-4-1 et seq., if the circumstances of that participation come within the definition of "grounds for recall." Steele v. Honea, 261 Ga. 644, 409 S.E.2d 652 (1991).

"Meeting" defined. — "Meeting," within the definition of the Open Meetings Act, O.C.G.A. T. 50, C. 14, may be conducted by written, telephonic, electronic, wireless, or other virtual means. A designated place may be a postal, Internet, or telephonic address. A designated time may be the date upon which requested responses are due. Claxton Enter. v. Evans County Bd. of Comm'rs, 249 Ga. App. 870, 549 S.E.2d 830 (2001).

Openness of governmental meetings. — The "sunshine law" does not require notice to the public of governmental meetings; rather, the law merely requires meetings to be open to the public. Dozier v. Norris, 241 Ga. 230, 244 S.E.2d 853 (1978) (decided under former Ga. L. 1972, p. 575).

Scope of O.C.G.A. § 50-14-1. — The former statute sought to eliminate closed meetings which engender in the people a distrust of public officials who are clothed with the power to act in the name of the people. McLarty v. Board of Regents of Univ. Sys., 231 Ga. 22, 200 S.E.2d 117 (1973) (decided under former Ga. L. 1972, p. 575).

The former statute dealt with the openness of public meetings, not with notice of such meetings. Harms v. Adams, 238 Ga. 186, 232 S.E.2d 61 (1977) (decided under former Ga. L. 1972, p. 575).

"Official action" defined. — Official action is action which is taken by virtue of power granted by law, or by virtue of the office held, to act for and in behalf of the state. McLarty v. Board of Regents of Univ. Sys., 231 Ga. 22, 200 S.E.2d 117 (1973) (decided under former Ga. L. 1972, p. 575).

Immunity for action within scope of official duties. — Actions taken by members of county airport authority which may have violated the Open Meetings Act, O.C.G.A. T. 50, C. 14, did not lose their character as actions taken within the scope of the members' official duties for purposes of immunity. Atlanta Airmotive, Inc. v. Royal, 214 Ga. App. 760, 449 S.E.2d 315 (1994).

Some meetings closed to public. — County board of education may have unofficial meetings or meetings closed to the public to discuss and decide questions that fall within the enumerated exceptions. Deriso v. Cooper, 245 Ga. 786, 267 S.E.2d 217 (1980) (decided under former Ga. L. 1972, p. 575).

Actions at nonpublic meetings violative of O.C.G.A. § 50-14-1. — When there was conflicting evidence whether

General Consideration (Cont'd)

the substantive merits of a petition for a special land use permit to develop a solid waste landfill were discussed at nonpublic meetings of county board of zoning appeal, summary judgment for the board was precluded. Crosland v. Butts County Bd. of Zoning Appeals, 214 Ga. App. 295, 448 S.E.2d 454 (1994).

Prior improper meetings. — Open Meetings Act, O.C.G.A. T. 50, C. 14, contains no provision authorizing a court to invalidate an ordinance on the ground that the subject matter of the ordinance was previously discussed at meetings that violate the Act. Board of Comm'rs v. Levetan, 270 Ga. 544, 512 S.E.2d 627 (1999).

Injunctive relief not available to invalidate past acts of city council. — City councilmembers' claims against a mayor under the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., for injunctive relief to invalidate certain acts of the council were subject to dismissal because injunctive relief was not available to remedy past actions, and there was an adequate remedy at law under O.C.G.A. § 50-14-1(b)(2). Lue v. Eady, 297 Ga. 321, 773 S.E.2d 679 (2015).

One-year limitation period only applied to suits to invalidate acts. — Trial court erred in dismissing an action by taxpayers alleging violations of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., by a local airport authority in planning and submitting an FAA application because the limitation period in O.C.G.A. § 50-14-1(b)(2) pertained only to suits to invalidate public agency actions, and the taxpayers sought only declaratory relief, injunctive relief, attorney fees, and civil penalties. Avery v. Paulding County Airport Auth., 343 Ga. App. 832, 808 S.E.2d 15 (2017).

Immunity to county commission for alleged open meetings violation. — In a landfill's suit against a county and the county's commission asserting an open meetings violation, the county commission was entitled to statutory immunity because the county commission's actions as alleged in the complaint were within the scope of the commission's official duties and the landfill had not pled sufficient facts to show bad faith. Sweet City Landfill, LLC v. Lyon, 352 Ga. App. 824, 835 S.E.2d 764 (2019).

Cited in Georgia Real Estate Comm'n v. Horne, 141 Ga. App. 226, 233 S.E.2d 16 (1977); Worthy v. Paulding County Hosp. Auth., 243 Ga. 851, 257 S.E.2d 271 (1979); Irvin v. Macon Tel. Publishing Co., 253 Ga. 43, 316 S.E.2d 449 (1984); Atlanta Journal v. Babush, 257 Ga. 790, 364 S.E.2d 560 (1988); Walker v. City of Warner Robins, 262 Ga. 551, 422 S.E.2d 555 (1992); Guthrie v. Dalton City Sch. Dist., 213 Ga. App. 849, 446 S.E.2d 526 (1994); Moon v. Terrell County, 260 Ga. App. 433, 579 S.E.2d 845 (2003); City of Baldwin v. Woodard & Curran, Inc., 293 Ga. 19, 743 S.E.2d 381 (2013).

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Citizen lacked standing to initiate criminal prosecution. — Portion of a citizen's complaint seeking to impose criminal liability on city council members for their violation of the Open Meetings Act, O.C.G.A. § 50-14-1(e)(2), was properly dismissed because the citizen lacked standing to initiate criminal prosecution; at most, only the Act, O.C.G.A. § 50-14-6, is subject to a strict construction. Cardinale v. City of Atlanta, 290 Ga. 521, 722 S.E.2d 732 (2012).

Inadequate notice to landfill operator. — Although the county board of commissioners met the technical requirements of O.C.G.A. § 50-14-1(d), posting notice of the meeting in which the waste ordinance was adopted on the door of the county office building was not adequate as a matter of law since the board knew that the ordinance would affect the landfill operator's business in operating the landfill and notice was not published in the legal organ of the county because the meeting occurred before publication was possible. Diamond Waste, Inc. v. Monroe County, 796 F. Supp. 1511 (M.D. Ga. 1992).

Student groups. — Committee of the University of Georgia which was organized by the dean of student affairs primarily for the purpose of reviewing the student senate's recommended allocation of student activity funds does not come

within the purview of this section. McLarty v. Board of Regents of Univ. Sys., 231 Ga. 22, 200 S.E.2d 117 (1973) (decided under former Ga. L. 1972, p. 575).

Inapplicable to legislature. — This chapter is applicable to the departments, agencies, boards, bureaus, etc. of this state and its political subdivisions. It is not applicable to the General Assembly. Coggin v. Davey, 233 Ga. 407, 211 S.E.2d 708 (1975) (decided under former Ga. L. 1972, p. 575).

Inapplicable to public officer dismissals. — Open Meetings Act, O.C.G.A. T. 50, C. 14, is not applicable when the dismissal of a public officer, such as a county attorney, is under consideration in accordance with O.C.G.A. § 50-14-3(6). Brennan v. Chatham County Comm'rs, 209 Ga. App. 177, 433 S.E.2d 597 (1993).

Inapplicable to advisory group. — Atlanta City Council can not constitutionally delegate subpoena power, power to punish by contempt, and the power to require sworn testimony before a court reporter to a purely private, advisory group (the Administrative Review Panel), and the attempt by the city council to do so is void. Accordingly, since the purported delegation of official power to the panel is constitutionally infirm, the panel has no lawful official power, and is a purely advisory group, not subject to the provisions of O.C.G.A. T. 50, C. 14. Atlanta Journal v. Hill, 257 Ga. 398, 359 S.E.2d 913 (1987) (decided prior to 1988 repeal and reenactment).

Meeting scheduled to avoid holiday. — Owners of property annexed by a city did not show, under O.C.G.A. § 50-14-1(d), that the annexation ordinance was adopted at an improperly rescheduled city meeting held prior to the date on which the meeting would normally be held; the meeting was not rescheduled, as it was noted on the official notice of city government meetings that the meeting would not be held on the meeting's normal day of every other Thursday because that would fall on Christmas, and that the meeting date would be scheduled later, which it was, and the meeting was held on the date scheduled. Bradley Plywood Corp. v. Mayor & Aldermen of Savannah, 271 Ga. App. 828, 611 S.E.2d 105 (2005).

Committee meeting within purview of Act. — Olympic Task Force Selection Committee of the Atlanta Housing Authority (AHA), formed with the knowledge and approval of AHA and consisting of several AHA decisionmakers, was a vehicle for the agency to carry out the agency's responsibilities and, thus, a meeting of the committee was within the purview of the Open Meetings Act, O.C.G.A. T. 50, C. 14. Jersawitz v. Fortson, 213 Ga. App. 796, 446 S.E.2d 206 (1994).

Coroner's inquest constitutes a "meeting" within the meaning of O.C.G.A. § 50-14-1(a)(2). Kilgore v. R.W. Page Corp., 261 Ga. 410, 405 S.E.2d 655 (1991).

Conference of county commissioners and county attorney to discuss zoning ruling was not a meeting. — Conference among county commissioners, the county zoning administrator, the county attorney, and a zoning applicant, held immediately following a superior court ruling invalidating a zoning decision, was not a "meeting" under O.C.G.A. § 50-14-1(a)(2) because it was not held pursuant to schedule, call, or notice at a designated time and place. Even if any business or policy was discussed at the conference, no official action was taken that could be voided under § 50-14-1(b). Gumz v. Irvin, 300 Ga. App. 426, 685 S.E.2d 392 (2009).

Private, nonprofit hospital corporations that served as vehicles through which public hospital authorities carried out their official responsibilities were subject to the Open Meetings Act, O.C.G.A. T. 50, C. 14, and the Open Records Act, O.C.G.A. T. 50, C. 14. Northwest Ga. Health Sys. v. Times-Journal, Inc., 218 Ga. App. 336, 461 S.E.2d 297 (1995).

Student organization court hearings open. — Trial court erred in concluding that the hearings of the student-run organization court were not subject to the Open Meetings Act, O.C.G.A. T. 50, C. 14, given that the court was the official vehicle by which the university carried out the university's responsibility, as directed by the Board of Regents, to regulate social organizations. Red & Black Publishing Co. v. Board of

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Regents, 262 Ga. 848, 427 S.E.2d 257 (1993).

Records of private university's police force. — Records of a campus police force of a private university were not subject to disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., as the university was a private institution that did not receive any funding from the state, the campus police were employees of that entity pursuant to the authority of O.C.G.A. § 20-8-2, and the fact that the police performed a public function did not make their records into public records; the fact that the campus police were given authority to perform certain functions by the Campus Policemen Act, O.C.G.A. § 20-8-1 et seq., and the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., did not make them officers or employees of a public office or agency for purposes of the Open Records Act. The Corp. of Mercer Univ. v. Barrett & Farahany, L.L.P., 271 Ga. App. 501, 610 S.E.2d 138 (2005).

When inquest was closed to public. — Relief sought in a newspaper publisher's suit against a coroner to prohibit the coroner from closing to the public a scheduled inquest was governed by the Open Meetings Law, O.C.G.A. T. 50, C. 14, and the Open Records Law, O.C.G.A. § 50-18-70. Kilgore v. R.W. Page Corp., 259 Ga. 556, 385 S.E.2d 406 (1989).

Provision of videotape of meeting is not compliance. — Atlanta Housing Authority did not substantially comply with the statute by providing a citizen with a videotape of a meeting of the Olympic Task Force Selection Committee after the agency accepted the recommendation of the committee. Jersawitz v. Fortson, 213 Ga. App. 796, 446 S.E.2d 206 (1994).

Open meetings cannot be closed by one citizen. — Because the public has the right to access to a meeting declared open to the public, one citizen cannot elect to close a meeting that should be open. Moon v. Terrell County, 249 Ga. App. 567, 548 S.E.2d 680 (2001).

Error to hold closed executive session. — Grand jury presentments questioning the propriety of certain policies of county commissioners did not amount to pending or potential litigation so the attorney-client privilege did not apply to a meeting conducted to fashion a response to the presentments, and the commissioners violated O.C.G.A. § 50-14-1(b) by conducting an executive session concerning the presentments. Decatur County v. Bainbridge Post Searchlight, Inc., 280 Ga. 706, 632 S.E.2d 113 (2006).

Injunctive relief not available to compel compliance in the future. — Trial court erred in issuing temporary and permanent injunctions ordering a county board of commissioners to comply with the Open Records Act, O.C.G.A. § 50-14-1 et seq., in the future as the board already had a duty to obey the law, and the complaint for injunctive relief, which was filed by the director of a county agency, averred no more than apprehensions of future injury, for which injunctive relief was not available. Wiggins v. Bd. of Comm'rs, 258 Ga. App. 666, 574 S.E.2d 874 (2002).

Violation of agenda-posting requirement not found. — Because no allegation, much less evidence, was presented by a county property buyer that a technical violation of the agenda-posting requirement under O.C.G.A. § 50-14-1(e)(1) deprived the buyer of a fair and open consideration of its claim or in any way impeded the remedial and protective purposes of the Open Meetings Act, the posting of the agenda at the regular meeting place of the county board of commissioners, rather than at the actual meeting site, sufficiently complied with the statute's requirements. EarthResources, LLC v. Morgan County, 281 Ga. 396, 638 S.E.2d 325 (2006).

County could not recover judge's salary paid in violation of act based on 90-day limitations. — In a dispute between a county and a county state court judge over a supplement to the judge's salary, summary judgment for the judge was proper on the county's claim for reimbursement of the judge's salary supplement because the county failed to show that the supplement was paid with the total absence or want of power. Even if the supplement was paid in violation of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., the county's counterclaim was filed

well outside the 90-day limitation period in O.C.G.A. § 50-14-1(b)(2). Heiskell v. Roberts, 342 Ga. App. 109, 802 S.E.2d 385 (2017).

Claims for lack of notice untimely. — Because a citizens group's claims for lack of notice under the Georgia Open and Public Meetings Law, O.C.G.A. § 50-14-1(d), were untimely, and because the group failed to show that the actions by a county and a company in operating a landfill violated O.C.G.A. §§ 12-8-32 and 48-8-121(a)(1), the company was entitled to summary judgment in the group's action for damages and declaratory and injunctive relief. Anti-Landfill Corp. v. North Am. Metal Co., LLC, 299 Ga. App. 509, 683 S.E.2d 88 (2009).

Chairperson of county school board in contempt for interfering with agenda items. — Evidence supported a trial court's conclusion that the chairperson of a county board of education deliberately prevented board members from appealing the chairperson's decisions at a board meeting and would not recognize any appeals of the chairperson's decisions to the other members of the board, and the trial court properly held the chairperson in contempt of the court's order requiring that all board members be entitled to place matters on the agenda consistent with O.C.G.A. § 50-14-1. Cook v. Smith, 288 Ga. 409, 705 S.E.2d 847 (2010).

Voting on employment decision. — Georgia Supreme Court held that the language of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., specifically O.C.G.A. § 50-14-3(b)(2), did not mandate a vote on a relevant employment decision, the statute simply referenced such vote and required that any such vote be taken in public. City of College Park v. Martin, 304 Ga. 488, 818 S.E.2d 620 (2018).

Names of persons voting omitted from minutes of meeting. — Court of appeals erred in affirming the dismissal of a citizen's action alleging that a city and city counsel members violated the Open Meetings Act, O.C.G.A. § 50-14-1(e)(2), because the complaint stated claims for declaratory and injunctive relief under the Act, O.C.G.A. § 50-14-5(a), based upon alleged violations of O.C.G.A. § 50-14-1(e)(2) since the minutes of a counsel meeting omitted the names of council members who voted in the minority to amend certain council rules; the court of appeals erred in interpreting O.C.G.A. § 50-14-1(e)(2) to allow minutes of an agency meeting to omit the names of persons voting against a proposal or abstaining when the vote was not taken by roll-call and was not unanimous. Cardinale v. City of Atlanta, 290 Ga. 521, 722 S.E.2d 732 (2012).

Letter from single county commissioner was not a decision. — Letter from a county to a developer advising that proposals would be considered under an amended ordinance limiting the development of private sewer systems was not a "decision" of the county for purposes of triggering the 30-day period to appeal under O.C.G.A. § 5-3-20; therefore, the developer's claim of inverse condemnation never ripened. Mortgage Alliance Corp. v. Pickens County, 294 Ga. 212, 751 S.E.2d 51 (2013).

Action challenging cell tower construction timely. — Suit challenging the denial of an application to construct a cellular tower was timely because under Georgia's Open Meetings Act, O.C.G.A. § 50-14-1 et seq., the 30-day clock for filing suit under the Telecommunications Act of 1996, 47 U.S.C. § 332, commenced upon the county board's approval of the minutes of its prior meeting denying the tower application, rather than when the county clerk, according to custom, entered a document in the county's books. Athens Cellular, Inc. v. Oconee Cty., 886 F.3d 1094 (11th Cir. 2018).

Action time barred. — Trial court properly denied a challenger's claim for injunctive relief against a city because the challenger failed to file the suit within 90 days of the city council meeting ratifying the purchase of the real property challenged, therefore, the action was untimely under the Open and Public Meetings Act, O.C.G.A. § 50-14-1(b)(2). Tisdale v. City of Cumming, 326 Ga. App. 19, 755 S.E.2d 833 (2014).

Citizen had standing to request civil penalty. — Plaintiff, as an individual, had standing to request that a civil penalty be imposed against the commis-

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sioners under the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., because the provision plainly contemplated that a private person (or firm, corporation, or other entity) can bring an action to enforce the Act to protect the public from closed-door politics. Williams v. DeKalb County, 308 Ga. 265, 840 S.E.2d 423 (2020).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1972, p. 575, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Applicability of O.C.G.A. § 50-14-1. — This section, the "sunshine law," does not cover meetings at which no official action may be taken. 1978 Op. Att'y Gen. No. U78-2 (decided under former Ga. L. 1972, p. 575).

County board of tax assessors and county board of equalization are subject to the Georgia Open Meetings Law, O.C.G.A. T. 50, C. 14. 1995 Op. Att'y Gen. No. U95-22.

Ad hoc "public record" evaluation. — Question of whether specific investigation or inspection report is "public record" must be answered on a case-by-case basis. 1980 Op. Att'y Gen. No. 80-105 (decided under former Ga. L. 1972, p. 575).

Insurer's individual loss ratio experience. — Unless statistical information as to insurer's individual loss ratio experience submitted to Insurance Commissioner constitutes "written memorials of a final action" taken by the Insurance Department, a citizen does not have the right to inspect the information submitted as a public record and the Insurance Commissioner is not required to release the information. 1981 Op. Att'y Gen. No. 81-66.

Meetings of Organized Crime Prevention Council. — Since the Organized Crime Prevention Council is a law enforcement agency, its proceedings and meetings are not required to be open to the public under the Georgia Open Meetings Statute. 1986 Op. Att'y Gen. No. U86-35 (decided under former Ga. L. 1972, p. 575).

Application to the Drug Utilization Review Board. — Open Meetings Act, O.C.G.A. § 50-14-1 et seq., applies to the Drug Utilization Review Board created by the Georgia Department of Community Health. 2010 Op. Att'y Gen. No. U10-1.

School board meetings regarding personnel matters. — School board may not close any meeting devoted to the airing of grievances about school personnel by interested members of the public; further, should the board conduct an inquiry into the actions of school personnel, any evidence or argument presented to the board must be held in an open meeting, but the board may close that portion of the meeting consisting of deliberation or discussion of disciplinary action upon proper compliance with the statutory closure provisions. 1995 Op. Att'y Gen. No. U95-15.

Student disciplinary hearings before local boards of education, including any deliberations of the board at which final action is taken or discussed, are required to be open to the public. 1983 Op. Att'y Gen. No. 83-9.

Meetings by telephone conference call. — Meetings of the Stone Mountain Memorial Association may be conducted by speaker telephone conference when public access is provided. 1985 Op. Att'y Gen. No. 85-26, modifying 1970 Op. Att'y Gen. No. 70-122. (Modified by 1985 Op. Att'y Gen. 85-26).

Utilization of a telephonic conference is permissible for a regular meeting of the State Properties Commission; such a meeting may be conducted to meet the requirements of the Open and Public Meetings Act, O.C.G.A. T. 50, C. 14, and members participating by telephonic means in such a meeting may be counted to reach a quorum. 1994 Op. Att'y Gen. No. 94-11.

State Ethics Commission is an "agency" as contemplated by O.C.G.A. T. 50, C. 14. 1989 Op. Att'y Gen. No. 89-6.

State Ethics Commission activities conducted in accordance with O.C.G.A. § 21-5-6(b)(10)(A), including convening a

quorum to hear testimony, taking evidence, considering argument of the parties, deliberating, and imposing penalties, constitute a "meeting" within the meaning of Open Meetings Law, O.C.G.A. T. 50, C. 14. Accordingly, the commission must conduct all of these activities regarding the resolution of a contested case in accordance with the dictates of the Open Meetings Law. 1989 Op. Att'y Gen. No. 89-6.

Private Industry Councils are "agencies" for purposes of the Open Meetings Law, O.C.G.A. T. 50, C. 14, and records generally maintained by such PIC's are subject to the Open Records Law, O.C.G.A. § 50-18-70. 1989 Op. Att'y Gen. No. 89-5.

Access to deeds, liens, and plats. Georgia Superior Court Clerks' Cooperative Authority is required to produce images and index data in response to Open Records Act, O.C.G.A. § 50-18-70 et seq., requests for information contained on the online information system for deeds, liens, and plats, but may do so in accordance with a fee schedule adopted pursuant to O.C.G.A. § 15-6-94. 2012 Op. Att'y Gen. No. 12-5.

RESEARCH REFERENCES

ALR. — Emergency exception under state law making proceedings by public bodies open to the public, 33 A.L.R.5th 731.

Attorney-client exception under state law making proceedings by public bodies open to the public, 34 A.L.R.5th 591.

50-14-2. Certain privileges not repealed.

This chapter shall not be construed so as to repeal in any way:

(1) The attorney-client privilege recognized by state law to the extent that a meeting otherwise required to be open to the public under this chapter may be closed in order to consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved; provided, however, the meeting may not be closed for advice or consultation on whether to close a meeting; and

(2) Those tax matters which are otherwise made confidential by state law.

History. — Code 1981, § 50-14-2, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 2012, p. 218, § 1/HB 397.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, the subsection designation "(a)" was deleted since this Code section contains no subsection (b).

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

JUDICIAL DECISIONS

Attorney-client exception. — Closed meeting of the board of county commissioners with the county attorney about zoning litigation came within the attorney-client exception of O.C.G.A. § 50-14-2. Schoen v. Cherokee County, 242 Ga. App. 501, 530 S.E.2d 226 (2000).

Meeting may not be closed to discuss

potential litigation under the attorney-client exception unless the governmental entity can show a realistic and tangible threat of legal action against it or its officer or employee. The threat must go beyond a mere fear or suspicion of being sued. Claxton Enter. v. Evans County Bd. of Comm'rs, 249 Ga. App. 870, 549 S.E.2d 830 (2001).

Grand jury presentments questioning the propriety of certain policies of county commissioners did not amount to pending or potential litigation so the attorney-client privilege did not apply to a meeting conducted to fashion a response to the presentments, and the commissioners violated O.C.G.A. § 50-14-1(b) by conducting an executive session concerning the presentments. Decatur County v. Bainbridge Post Searchlight, Inc., 280 Ga. 706, 632 S.E.2d 113 (2006).

Cited in Mullis Tree Serv. v. Bibb County, 828 F. Supp. 53 (M.D. Ga. 1993).

RESEARCH REFERENCES

ALR. — Attorney-client exception under state law making proceedings by public bodies open to the public, 34 A.L.R.5th 591.

50-14-3. Excluded proceedings.

(a) This chapter shall not apply to the following:

(1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;

(2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition such board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;

(3) Meetings of the Georgia Bureau of Investigation or any other law enforcement or prosecutorial agency in the state, including grand jury meetings;

(4) Adoptions and proceedings related thereto;

(5) Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution to the conflict, and any such caucus shall not be subject to the requirements of this chapter. Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement, memorandum of agreement, memorandum of understanding, or other similar document, however denominated, in which an agency has formally resolved a claim or dispute shall be subject to the provisions of Article 4 of Chapter 18 of this title;

(6) Meetings:

(A) Of any medical staff committee of a public hospital;

(B) Of the governing authority of a public hospital or any committee thereof when performing a peer review or medical review function as set forth in Code Section 31-7-15, Articles 6 and 6A of Chapter 7 of Title 31, or under any other applicable federal or state statute or regulation; and

(C) Of the governing authority of a public hospital or any committee thereof in which the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law is discussed, considered, or voted upon;

(7) Incidental conversation unrelated to the business of the agency; or

(8) E-mail communications among members of an agency; provided, however, that such communications shall be subject to disclosure pursuant to Article 4 of Chapter 18 of this title.

(b) Subject to compliance with the other provisions of this chapter, executive sessions shall be permitted for:

(1) Meetings when any agency is discussing or voting to:

(A) Authorize the settlement of any matter which may be properly discussed in executive session in accordance with paragraph (1) of Code Section 50-14-2;

(B) Authorize negotiations to purchase, dispose of, or lease property;

(C) Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;

(D) Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or

(E) Enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote.

No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote;

(2) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dis-

missal, or periodic evaluation or rating of a public officer or employee or interviewing applicants for the position of the executive head of an agency. This exception shall not apply to the receipt of evidence or when hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;

(3) Meetings of the board of trustees or the investment committee of any public retirement system created by or subject to Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition;

(4) Portions of meetings during which that portion of a record made exempt from public inspection or disclosure pursuant to Article 4 of Chapter 18 of this title is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed; and

(5) Meetings when discussing or deliberating upon cybersecurity plans, procedures, and contracts regarding the provision of cybersecurity services. No vote in executive session to enter into a cybersecurity contract shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the contractor and the terms of the agreement that are not subject to paragraph (25) of subsection (a) of Code Section 50-18-72 are disclosed before the vote.

History. — Code 1981, § 50-14-3, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1992, p. 1061, § 3; Ga. L. 1997, p. 44, § 2; Ga. L. 2003, p. 880, § 1; Ga. L. 2006, p. 560, § 4/SB 462; Ga. L. 2012, p. 218, § 1/HB 397; Ga. L. 2021, p. 110, § 1/HB 134.

The 2021 amendment, effective April 29, 2021, deleted "and" at the end of paragraph (b)(3), substituted "; and" for a period at the end of paragraph (b)(4), and added paragraph (b)(5).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "paragraph" was substituted for "subsection" in paragraph (6).

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012). For annual survey on local government law, see 71 Mercer L. Rev. 189 (2019).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992).

JUDICIAL DECISIONS

There is no exception for pending criminal investigations. Kilgore v. R.W. Page Corp., 261 Ga. 410, 405 S.E.2d 655 (1991).

Dismissal of a public officer. — O.C.G.A. T. 50, C. 14 is not applicable when the dismissal of a public officer is under consideration. Brennan v. Chatham County Comm'rs, 209 Ga. App. 177, 433 S.E.2d 597 (1993).

Coroner does not constitute a "law enforcement agency" within the meaning of O.C.G.A. § 50-14-3(3). Kilgore v. R.W. Page Corp., 261 Ga. 410, 405 S.E.2d 655 (1991).

Meeting to discuss dismissal of employee. — When the county commission discussed an employee's job performance at meetings and did not take any vote or other official action on the employee's employment, the commission did not violate the Open Meetings Law, O.C.G.A. T. 50, C. 14. Camden County v. Haddock, 271 Ga. 664, 523 S.E.2d 291 (1999).

Open Meetings Law, O.C.G.A. T. 50, C. 14, applied to a meeting of county commissioners called to determine whether a deputy warden of a corrections institute would continue to be employed because the board acted pursuant to a letter from the DOC, which was clearly considered because it was the stated basis for the warden's termination. Moon v. Terrell County, 249 Ga. App. 567, 548 S.E.2d 680 (2001).

Voting on employment decision. — Georgia Supreme Court held that the language of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., specifically O.C.G.A. § 50-14-3(b)(2), did not mandate a vote on a relevant employment decision, the statute simply referenced such vote and required that any such vote be taken in public. City of College Park v. Martin, 304 Ga. 488, 818 S.E.2d 620 (2018).

County equalization board deliberations not exempt from Act. — County equalization board held an open meeting to take evidence on the disputed tax assessment value of property but then violated the Georgia Open Meetings Act, O.C.G.A. § 50-14-1 et seq., when the board closed the meeting and deliberated and voted in private. Bryan County Bd. of Equalization v. Bryan County Bd. of Tax Assessors, 253 Ga. App. 831, 560 S.E.2d 719 (2002), cert. denied, 537 U.S. 1190, 123 S. Ct. 1260, 154 L. Ed. 2d 1023 (2003).

Acquisition of real estate. — Trial court did not err in dismissing the citizens' action alleging that a county board of commissioners violated the Georgia Open Meetings Act, O.C.G.A. § 50-14-1 et seq., by voting in closed meetings to pursue the acquisition of land because the complaint failed to aver any violation of the Act; because the exception to the open meetings requirement, O.C.G.A. § 50-14-3(4), does not specifically provide that a vote on the excepted issue must be taken in public, a vote can be taken in closed session. Johnson v. Bd. of Comm'rs, 302 Ga. App. 266, 690 S.E.2d 912 (2010).

Cited in Athens Observer, Inc. v. Anderson, 245 Ga. 63, 263 S.E.2d 128 (1980); Saleem v. Snow, 217 Ga. App. 883, 460 S.E.2d 104 (1995); Wiggins v. Bd. of Comm'rs, 258 Ga. App. 666, 574 S.E.2d 874 (2002); City of Baldwin v. Woodard & Curran, Inc., 293 Ga. 19, 743 S.E.2d 381 (2013); Rosser v. Clyatt, 348 Ga. App. 40, 821 S.E.2d 140 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1972, p. 575, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Applicability. — Provisions on open and public meetings was not meant to apply and does not apply to every governmental entity. 1979 Op. Att'y Gen. No. 79-25.

Provisions on open and public meetings did not apply to entities within the judicial branch of state government as nothing in the law contradicted this conclusion; the law contained no reference to the judicial branch, any of its parts, or any

judicial function. 1979 Op. Att'y Gen. No. 79-25 (decided under former Ga. L. 1972, p. 575).

State Ethics Commission sessions not excluded. — There is no statutory provision in O.C.G.A. § 50-14-3 or the Georgia Administrative Procedure Act, O.C.G.A. T. 50, C. 13, which would authorize the State Ethics Commission to deliberate in closed session after hearing evidence in a contested case. 1989 Op. Att'y Gen. No. 89-6.

O.C.G.A. T. 50, C. 14 does not apply to Board of Court Reporting or any other agency. — Provisions on open and public meetings did not apply to Board of Court Reporting or any other agency of the judicial branch of government. 1979 Op. Att'y Gen. No. 79-25 (decided under former Ga. L. 1972, p. 575).

Advisory Committee on Area Planning and Development is subject to Georgia's Open Meetings Law, O.C.G.A. T. 50, C. 14. 1985 Op. Att'y Gen. No. U85-42 (decided under former Ga. L. 1972, p. 575).

Subsequent Injury Trust Fund Board meetings. — Portion of Subsequent Injury Trust Fund Board meetings in which the medical and rehabilitation records of an individual are discussed are not subject to the Open Meetings Law, O.C.G.A. T. 50, C. 14. 1991 Op. Att'y Gen. No. 91-8.

Portions of the Subsequent Injury Trust Fund Board meetings in which personnel matters are discussed are not subject to the Open Meetings Law, O.C.G.A. T. 50, C. 14, unless the board is conducting an evidentiary hearing or entertaining argument in a disciplinary proceeding. 1991 Op. Att'y Gen. 91-8.

Notice of closure of public meeting. — Prior public notice that a portion of a properly advertised open meeting will be closed is not required. 1998 Op. Att'y Gen. No. U98-3.

Executive sessions. — Portions of the official meeting may be closed or conducted in "executive" sessions under specific circumstances if the proper procedures are followed. 1998 Op. Att'y Gen. No. U98-3.

There is no limitation on who may be invited into executive sessions. 1998 Op. Att'y Gen. No. U98-3.

County board can discuss or deliberate on the appointment of a county attorney, county physician, or county administrator in closed session, but must vote on the appointment in public. 1998 Op. Att'y Gen. No. U98-3.

Provisions as to executive sessions apply to cities and to public hospital authorities when those entities are conducting "strategic planning sessions." 1998 Op. Att'y Gen. No. U98-3.

There are no requirements regarding the taking of minutes of proceedings in an executive session. 1998 Op. Att'y Gen. No. U98-3.

50-14-4. Procedure when meeting closed.

(a) When any meeting of an agency is closed to the public pursuant to any provision of this chapter, the specific reasons for such closure shall be entered upon the official minutes, the meeting shall not be closed to the public except by a majority vote of a quorum present for the meeting, the minutes shall reflect the names of the members present and the names of those voting for closure, and that part of the minutes shall be made available to the public as any other minutes. Where a meeting of an agency is devoted in part to matters within the exceptions provided by law, any portion of the meeting not subject to any such exception, privilege, or confidentiality shall be open to the public, and the minutes of such portions not subject to any such exception shall be taken, recorded, and open to public inspection as provided in subsection (e) of Code Section 50-14-1.

(b)(1) When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

(2) In the event that one or more persons in an executive session initiates a discussion that is not authorized pursuant to Code Section 50-14-3, the presiding officer shall immediately rule the discussion out of order and all present shall cease the questioned conversation. If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer shall immediately adjourn the executive session.

History. — Code 1981, § 50-14-4, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1999, p. 549, § 3; Ga. L. 2012, p. 218, § 1/HB 397.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 256 (1999).

JUDICIAL DECISIONS

Compliance with requirements as to minutes. — Trial court erred in holding that minutes complied with the requirements of O.C.G.A. § 50-14-4(a) since the minutes did not reflect "the names of the members present and the names of those voting for closure," but only indicated the names of commissioners moving and seconding a motion to go into closed session. Moon v. Terrell County, 249 Ga. App. 567, 548 S.E.2d 680 (2001).

Filing of minutes and affidavits. — Because minutes and affidavits are required to be timely recorded and made open to public inspection so that the general public knows when and where to find an official accounting of the business that transpired, the trial court erred in failing to find that the failure of the county board of commissioners to timely file an affidavit and minutes pertaining to a particular meeting constituted a violation. Claxton Enter. v. Evans County Bd. of Comm'rs, 249 Ga. App. 870, 549 S.E.2d 830 (2001).

Open Meetings Law does not apply to judicial branch. — Legislature did not intend for the Open Meetings Law, O.C.G.A. T. 50, C. 14, to apply to the judicial branch of government. Therefore, a judicial commission is not subject to that chapter. Fathers Are Parents Too, Inc. v. Hunstein, 202 Ga. App. 716, 415 S.E.2d 322 (1992).

Act not violated when subsequent meeting was open. — Because a bond and a supplemental resolution to the bond were considered at a subsequent meeting at which no closed executive session occurred, and the bond action was discussed and acted upon at the subsequent open meeting, the contentions regarding problems with the prior meeting did not affect the validity of the airport authority's ultimate decision to issue the revised bond, and the airport authority did not violate the Georgia Open Meetings Act, O.C.G.A. § 50-14-1 et seq. Avery v. State of Ga., 295 Ga. 630, 761 S.E.2d 56 (2014).

Cited in Atlanta Journal v. Babush, 257 Ga. 790, 364 S.E.2d 560 (1988).

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Notice provisions for closed meetings. — Agency must comply with the notice provisions of the Open Meetings Law, O.C.G.A. T. 50, C.14, when a meeting, as defined in the law, is to be held in closed session. Minutes available to the public are limited to the reasons for closure, the names of the members present, and the names of those voting for closure. 1988 Op. Att'y Gen. No. U88-30.

Closure of meetings held by Drug Utilization Review Board. — Drug Utilization Review Board may close the Board's meetings in accordance with the procedures outlined in O.C.G.A. § 50-14-4. That being said, it is up to the Department of Community Health to make the decision regarding whether to close any Board meeting. The decision to close a meeting, however, must be made on a case-by-case basis and supported both by the facts of the particular situation and the affidavit of the presiding officer justifying the closure. 2010 Op. Att'y Gen. No. U10-1.

RESEARCH REFERENCES

ALR. — Emergency exception under state law making proceedings by public bodies open to the public, 33 A.L.R.5th 731.

50-14-5. Jurisdiction to enforce chapter.

(a) The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this chapter, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person, firm, corporation, or other entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this chapter.

(b) In any action brought to enforce the provisions of this chapter in which the court determines that an agency acted without substantial justification in not complying with this chapter, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of having provided access to such information.

History. — Code 1981, § 50-14-5, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1992, p. 1061, § 4; Ga. L. 1998, p. 595, § 1; Ga. L. 2012, p. 218, § 1/HB 397.

Law reviews. — For review of 1998 legislation relating to state government, see 15 Ga. St. U.L. Rev. 242 (1998).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992).

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Special circumstance. — That no official action is taken at a closed meeting is not necessarily a "special circumstance" for purposes of reducing or eliminating liability for a fee award under O.C.G.A. § 50-14-5(b) of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., because the need for open government is not limited to meetings in which formal measures are taken. Evans County Bd. of Comm'rs v. Claxton Enter., 255 Ga. App. 656, 566 S.E.2d 399 (2002).

One-year limitation period only applied to suits to invalidate acts. — Trial court erred in dismissing an action by the taxpayers alleging violations of the Open Meetings Act, O.C.G.A. § 50-14-1, et seq., by a local airport authority in planning and submitting an FAA application because the limitation period in O.C.G.A. § 50-14-1(b)(2) pertained only to suits to invalidate public agency actions, and the taxpayers sought only declaratory relief, injunctive relief, attorney fees, and civil penalties. Avery v. Paulding County Airport Auth., 343 Ga. App. 832, 808 S.E.2d 15 (2017).

Attorney's fees. — If the trial court determines that noncompliance with the Open Meetings Act, O.C.G.A. T. 50, C. 14, lacked substantial justification, the court must award attorney fees; then the court may reduce or eliminate the award completely upon a finding of special circumstances. Claxton Enter. v. Evans County Bd. of Comm'rs, 249 Ga. App. 870, 549 S.E.2d 830 (2001).

Acting without substantial justification and acting in bad faith are not synonymous for purposes of an attorney fee award under O.C.G.A. § 50-14-5(b) of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq. Evans County Bd. of Comm'rs v. Claxton Enter., 255 Ga. App. 656, 566 S.E.2d 399 (2002).

City councilmembers' claims against a mayor under the Open Meetings Act for a civil penalty, O.C.G.A. § 50-14-6, were subject to dismissal because the complaint only named the mayor in the mayor's official capacity, and § 50-14-6 applied to "persons"; the claim for attorney's fees, O.C.G.A. § 15-14-5(b), was in essence against the city and was not subject to dismissal. Lue v. Eady, 297 Ga. 321, 773 S.E.2d 679 (2015).

Complaint stated claims for declaratory and injunctive relief under the act. — Court of appeals erred in affirming the dismissal of a citizen's action alleging that a city and city counsel members violated the Open Meetings Act, O.C.G.A. § 50-14-1(e)(2), because the complaint stated claims for declaratory and injunctive relief under the Act, O.C.G.A. § 50-14-5(a), based upon alleged violations of § 50-14-1(e)(2) since the minutes of a counsel meeting omitted the names of council members who voted in the minority to amend certain council rules; the court of appeals erred in interpreting § 50-14-1(e)(2) to allow minutes of an agency meeting to omit the names of persons voting against a proposal or abstaining when the vote was not taken by roll-call and was not unanimous. Cardinale v. City of Atlanta, 290 Ga. 521, 722 S.E.2d 732 (2012).

Cited in Schoen v. Cherokee County, 242 Ga. App. 501, 530 S.E.2d 226 (2000); Moon v. Terrell County, 260 Ga. App. 433, 579 S.E.2d 845 (2003); Heiskell v. Roberts, 342 Ga. App. 109, 802 S.E.2d 385 (2017).

50-14-6. Penalty for violation; defense.

Any person knowingly and willfully conducting or participating in a meeting in violation of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $1,000.00. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this chapter against any person who negligently violates the terms of this chapter in an amount not to exceed $1,000.00 for the first violation. A civil penalty or criminal fine

not to exceed $2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions.

History. — Code 1981, § 50-14-6, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 2012, p. 218, § 1/HB 397.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012). For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018).

JUDICIAL DECISIONS

Citizen lacked standing to initiate criminal prosecution. — Portion of a citizen's complaint seeking to impose criminal liability on city council members for the members' violation of the Open Meetings Act, O.C.G.A. § 50-14-1(e)(2), was properly dismissed because the citizen lacked standing to initiate criminal prosecution; at most, only the Act, O.C.G.A. § 50-14-6, is subject to a strict construction. Cardinale v. City of Atlanta, 290 Ga. 521, 722 S.E.2d 732 (2012).

Suit for civil penalty to be brought against individual. — City councilmembers' claims against a mayor under the Open Meetings Act for a civil penalty under O.C.G.A. § 50-14-6 were subject to dismissal because the complaint only named the mayor in the mayor's official capacity; § 50-14-6 recognized that decisions to comply with the Act were made by individuals, or "persons". The claim for attorney's fees, O.C.G.A. § 15-14-5(b), was in essence against the city and was not subject to dismissal. Lue v. Eady, 297 Ga. 321, 773 S.E.2d 679 (2015).

Citizen had standing to request civil penalty. — Plaintiff, as an individual, had standing to request that a civil penalty be imposed against the commissioners under the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., because the provision plainly contemplated that a private person (or firm, corporation, or other entity) can bring an action to enforce the Act to protect the public from closed-door politics. Williams v. DeKalb County, 308 Ga. 265, 840 S.E.2d 423 (2020).

Impact on type of damages sought. — Trial court erred in dismissing an action by the taxpayers alleging violations of the Open Meetings Act, O.C.G.A. § 50-14-1, et seq., by a local airport authority in planning and submitting an FAA application because the limitation period in O.C.G.A. § 50-14-1(b)(2) pertained only to suits to invalidate public agency actions, and the taxpayers sought only declaratory relief, injunctive relief, attorney fees, and civil penalties. Avery v. Paulding County Airport Auth., 343 Ga. App. 832, 808 S.E.2d 15 (2017).

Cited in Wiggins v. Bd. of Comm'rs, 258 Ga. App. 666, 574 S.E.2d 874 (2002); Heiskell v. Roberts, 342 Ga. App. 109, 802 S.E.2d 385 (2017).

CHAPTER 15

PUBLIC LAWSUITS

Sec.
50-15-1. Definitions.
50-15-2. Petition by political subdivision for posting of bond by opposing party or intervenor; hearing; dismissal upon failure to file bond; appeal.
50-15-3. Expeditious hearing and determination of lawsuits and appeals.
50-15-4. Commencement of subsequent actions.

Cross references. — Reimbursement of expenses of state officers generally, § 45-7-20 et seq.

Law reviews. — For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

50-15-1. Definitions.

As used in this chapter, the term:

(1) "Political subdivision" means the state or any local subdivision of the state or public instrumentality or public corporate body created by or under authority of state law, including, but not limited to, municipalities, counties, school districts, special taxing districts, conservation districts, authorities, and any other state or local public instrumentality or corporation which has the right to bring and defend actions or to issue its bonds or other obligations as evidence of indebtedness under any provision of law and also means any corporate or other entity which leases a public improvement to such political subdivision; and the term also means the governing body of such political subdivision and its members and officers in their official capacity.

(2) "Public lawsuit" means any action whereby the validity, reasonability, soundness, location, wisdom, feasibility, extent, or character of construction, improvement, financing, or leasing of any public improvement, project, or facility by any political subdivision, as owner or as lessee, is questioned directly or indirectly, including, but not limited to, actions for declaratory judgments or injunctions or interventions to declare invalid or to enjoin or to prevent such construction, improvement, financing, or leasing as lessor or as lessee and means any action to prevent or declare invalid or enjoin the creation, organization, or formation of any such political subdivision. This definition as used in this chapter shall not be construed to broaden any right of action as is validly limited by applicable law.

History. — Ga. L. 1969, p. 815, § 1.

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Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 53.

50-15-2. Petition by political subdivision for posting of bond by opposing party or intervenor; hearing; dismissal upon failure to file bond; appeal.

At any time prior to the final determination of a public lawsuit in the trial court or on appeal, any political subdivision which is a party to the action may petition for an order of the court that the opposing party or parties or intervenors be dismissed unless such opposing party or parties or intervenors post a bond with surety to be approved by the court payable to the moving party for the payment of all damages and costs which may accrue by reason of such opposition or intervention in the event the moving party prevails. The moving party shall obtain from a judge of the court an order requiring the opposing party or parties or intervenors to appear at such time and place within 20 days from the filing of the petition as the judge may direct and to show cause, if any exists, why the prayers of the petition should not be granted. The petition and order shall be served in the manner provided by law for the service of orders and pleadings subsequent to the original complaint. If, at the hearing of the petition on the order to show cause, the court determines that it is in the public interest to do so, the court shall set the amount of bond to be filed by the opposing party or parties or intervenors in an amount found by the court to cover all damage and costs which may accrue to the political subdivision by reason of the opposition or intervention in the event the political subdivision prevails. In the event the bond is not filed by the opposing party or parties or intervenors with surety approved by the court within ten days after the order is entered, the opposing party or parties or intervenors shall be dismissed by operation of law. Either the opposing party or parties or intervenors or the political subdivision may appeal the order under the procedure provided by law in cases of injunction. The appellate court may stay the lower court order pending its own decision, may set a bond to be filed by the opposing party or parties or intervenors in connection therewith, may modify the order of the lower court, or may enter its order as a final order in the case. In the event no bond is filed as provided in this Code section, the opposing party or parties or intervenors shall be dismissed by operation of law; and, upon final determination of the case, no court shall have further jurisdiction of any action involving any issue which was or could have been raised therein.

History. — Ga. L. 1969, p. 815, § 2.
Law reviews. — For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

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Requirement for bond not in the "public interest." — Trial court abused the court's discretion in requiring the intervenors to post a surety bond when meritorious claims were raised concerning whether proposed contracts met constitutional requirements for intergovernmental contracts that are not subject to the constitutional debt clause and whether a proposed project promoted the development of trade, commerce, and industry under Ga. Const. 1983, Art. IX, Sec. VI, Para. III and the Development Authority Law, O.C.G.A. § 36-62-1 et seq. Haney v. Development Auth., 271 Ga. 403, 519 S.E.2d 665 (1999).

Appeal bond properly ordered in action challenging SPLOST. — Action challenging the validity and implementation of a special purpose local option sales tax (SPLOST) resolution passed by a county was a public lawsuit and was not meritorious; therefore, the trial court did not err in requiring the taxpayer to post a $2.1 million appeal bond under O.C.G.A. § 50-15-2. Mattox v. Franklin County, 316 Ga. App. 181, 728 S.E.2d 813 (2012).

Validation upheld. — After a trial court required two intervenors to post a bond of $625,000 with regard to the intervenors' challenge to the public improvement bond approved by a city's building authority for a sewer project, the trial court property validated the bond by following all necessary procedural requirements and the bond did not violate Ga. Const. 1983, Art. IX, Sec. V, Para. I(a) since the city's payment for the use of the sewer project was a debt specifically authorized under the constitution pursuant to Ga. Const. 1983, Art. IX, Sec. III, Para. I(a). Berry v. City of E. Point, 277 Ga. App. 649, 627 S.E.2d 391 (2006).

RESEARCH REFERENCES

C.J.S. — 11 C.J.S., Bonds, § 9.
ALR. — Constitutionality, construction, and application of statutes requiring bond or other security in taxpayers' action, 41 A.L.R.5th 47.

50-15-3. Expeditious hearing and determination of lawsuits and appeals.

The trial of a public lawsuit, the hearing of any appeal therefrom, and the determination of such lawsuit and appeal shall be advanced by the trial court and by the appellate court respectively, without request of any party, as expeditiously as is reasonably possible.

History. — Ga. L. 1969, p. 815, § 3.

50-15-4. Commencement of subsequent actions.

After a public lawsuit is commenced, no other action relating to the same subject matter shall be commenced, and no trial court shall have jurisdiction of any such subsequent action. This provision, however, shall not diminish any right of intervention of any person or the right of any person to become a named party in a public lawsuit; and nothing

herein contained shall be construed as adversely affecting the constitutional rights of any citizen or taxpayer.

History. — Ga. L. 1969, p. 815, § 4.

CHAPTER 16

PUBLIC PROPERTY

Article 1

General Provisions

Sec.

50-16-1. Land reserved to the state.
50-16-2. State owned stock.
50-16-3. Property of state boards and departments.
50-16-3.1. State authorities prohibited from selling real property; exceptions.
50-16-4. Use and keeper of capitol buildings and grounds.
50-16-5. Defacing or injuring capitol building or grounds.
50-16-5.1. Commission on the Preservation of the State Capitol.
50-16-5.2. Georgia Art Policy Committee created; composition; terms; annual meetings; expense allowance; powers and duties [Repealed].
50-16-6. Janitors and watchmen of public buildings and grounds to make arrests, prevent abuse, suppress disorderly conduct, and protect property [Repealed].
50-16-7. Improvement of real estate held by state in fee simple with reversionary interest in federal government or under long-term federal license.
50-16-8. Insurance of state property required; self-insurance program authorized.
50-16-9. Formulation of self-insurance plan for state's properties; incentive programs authorized.
50-16-10. Formulation of self-insurance plan for public school buildings [Repealed].
50-16-11. Employment of personnel to carry out self-insurance plans.
50-16-11.1. Commercial property policies for coverage of buildings, contents, and other property owned by community service boards.
50-16-12. Authorization for state insurance and hazard reserve fund to retain certain moneys for the payment of liabilities and expenses; deposit of investment funds with Office of the State Treasurer.
50-16-13. Authorization for state insurance and hazard reserve fund to contract for fire protection systems; cost limitation; approval by legislative subcommittees.
50-16-14. Authorization of law enforcement officers and security personnel to deny entrance and remove persons from state property; assistance.
50-16-15. Adjutant general authorized to empower contract security guards to make arrests and carry firearms upon and surrounding National Guard facilities.
50-16-16. Penalty for refusal to obey security personnel or law enforcement officer.
50-16-17. Rights and remedies of state and other governmental entities relating to property ownership.
50-16-18. Writing off small amounts due to state.
50-16-19. State development projects; landscape plan requirements.
50-16-20. Timing of official designations in honor of state agency or state officials [Repealed].

Article 2

State Properties Code

50-16-30. Short title.

Sec.
50-16-31. Definitions.
50-16-32. Creation, membership, and organization of State Properties Commission; transfer of assets, obligations, responsibilities, funds, personnel, equipment, and facilities from the Department of Administrative Services.
50-16-33. Assignment of State Properties Commission to Department of Administrative Services [Repealed].
50-16-34. Powers and duties of State Properties Commission generally.
50-16-34.1. Acquisition of property within railroad lines abandoned as operating rail lines.
50-16-35. State Property Officer; employment of personnel by the commission; merit system; rights under Employees' Retirement System of Georgia.
50-16-36. Maintenance of records by State Properties Commission; open to public inspection.
50-16-37. Adoption of rules and regulations by State Properties Commission; penalty for violation.
50-16-38. All state entities to acquire real property through commission; exceptions; procedure for handling acquisition requests; funds for acquisitions; donations; conveyance of title.
50-16-39. Public competitive bidding procedure for sales and leases; acceptance or rejection of bids by commission, General Assembly, or Governor; execution of leases and deeds.
50-16-40. Consideration of conveyances by the General Assembly.
50-16-41. Rental agreements without competitive bidding authorized; limitations; commission charged with managing administrative space of all state entities; standards governing the utilization and reassignment of administrative space; rules and regulations.
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50-16-43. Leasing of state owned lands for exploration and extraction of mineral resources.
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50-16-45. Department of Natural Resources authorized to convey certain property without commission approval.
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Article 3

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50-16-64. Authority for Governor to purchase property at sheriff's sale under execution in favor of state.
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chased at sheriff's sale; manner of sales.
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50-16-68. Use and title of property purchased at sheriff's sale.

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Miscellaneous Sale and Purchase Provisions

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50-16-81. Contracts by state or subdivision for purchase, lease, or acquisition of United States equipment, supplies, materials, or other property.
50-16-82. Effect of payment of purchase money or other consideration causing property to be transferred to state.

Article 5

Western and Atlantic Railroad

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50-16-102. All railroad laws to apply.
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Article 6

Inventory of Property

PART 1

INVENTORY OF REAL PROPERTY

50-16-120. Definitions.

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PART 2

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50-16-141. Inventory required of state and county officers; entry of inventory into book.
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50-16-143. Examination of predecessor's inventories; report.
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50-16-145. Actions against public officers for violations of part.

PART 3

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50-16-160. Department of Administrative Services to establish and maintain inventory; state employees to furnish information; inspection and copies of records.
50-16-161. Part applicable to movable personal property; determination to include or exclude items from inventory binding [Repealed].

Sec.
50-16-161.1. "Movable personal property" defined; inclusion or exclusion of items from inventory.
50-16-162. Rules and regulations.
50-16-163. Power to examine books, records, papers, or personal property of state entities to ensure compliance.

Article 7

Commission on Condemnation of Public Property

50-16-180. Definitions.
50-16-181. Creation; membership; officers; quorum; voting requirements; call, notice, and minutes or transcripts of meetings; seal; bylaws; expenses.
50-16-182. Powers and duties.
50-16-183. Procedure for acquisition of public property by condemnation.

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Compliance with Environmental Policy Act. — State Properties Commission may require state agencies to demonstrate compliance with the Environmental Policy Act, O.C.G.A. T. 12, C. 16, before acquiring real property for activities which will be subject to the Act. 1992 Op. Att'y Gen. No. 92-5.

ARTICLE 1

GENERAL PROVISIONS

50-16-1. Land reserved to the state.

The lands heretofore specially reserved to the state are: the lands known as the McIntosh Reserve, on which is situated the Indian spring; a quantity of land on Flint River, opposite the old Indian agency; one square mile on the Chattahoochee River at McIntosh Ferry; five square miles on the Chattahoochee River at Cusseta Falls, including the falls; all islands contained in any of the navigable waters of the state and not disposed of, and the western bank of the Chattahoochee River to high-water mark where it forms the boundary between Georgia and Alabama; the fractional parts of surveys created by the different land divisions which are not granted or otherwise disposed of; and all lands omitted to be surveyed, granted, or sold.

History. — Orig. Code 1863, § 887; Code 1868, § 966; Code 1873, § 962; Code 1882, § 962; Ga. L. 1889, p. 171, § 1; Civil Code 1895, § 1018; Civil Code 1910, § 1285; Code 1933, § 91-102.

50-16-2. State owned stock.

The state owns 3,636 shares of stock in the Georgia Railroad and Banking Company.

History. — Orig. Code 1863, § 936; Code 1868, § 1017; Code 1873, § 1013; Code 1882, § 1013; Civil Code 1895, § 1019; Civil Code 1910, § 1286; Code 1933, § 91-103.

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Only General Assembly is authorized to sell intangible property owned by state. 1969 Op. Att'y Gen. No. 69-257.

50-16-3. Property of state boards and departments.

The state holds the legal title to or is the beneficial owner of:

(1) The several institutions operated by the Board of Regents of the University System of Georgia, including all real and personal property belonging to the several institutions or used in connection therewith, and all other property conveyed to the board for the use of any of the institutions or for educational purposes or conveyed to any of the boards of trustees of which the board of regents is the successor or to any of the institutions under its control;

(2) The several institutions operated by the Department of Human Services, the Department of Public Health, or the Department of Behavioral Health and Developmental Disabilities, including all real and personal property belonging to the several institutions or used in connection therewith, and all other property conveyed to any such department for the use of any of the institutions or conveyed to any of the boards of trustees of which such department is the successor or to any of the institutions under its control;

(3) The rights of way of the state highway system and all buildings, lands, quarries, equipment, and other property of the Department of Transportation; and

(4) All lands and other property conveyed to or held by the Department of Natural Resources and the State Forestry Commission, or their predecessors, for forestry or park purposes.

History. — Orig. Code 1863, § 886; Code 1868, § 965; Code 1873, § 961; Code 1882, § 961; Civil Code 1895, § 1015; Civil Code 1910, § 1282; Ga. L. 1919, p. 242, § 1; Ga. L. 1931, p. 7, §§ 26-89; Code 1933, § 91-104; Ga. L. 2009, p. 453, § 1-58/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Holdings of Regents of the University System. — State is equitable and beneficial owner of all property now vested in Regents of the University System of Georgia, and the corporation by that name is the holder only of legal title;

but it does not follow that the corporation may not enter into any contract which in its reasonable discretion is necessary for the usefulness of the institution, or may not incur liabilities in its own name for that purpose. Being a distinct legal entity, any such liability would be a debt of the corporation and not a debt of the state. State v. Regents of Univ. Sys., 179 Ga. 210, 175 S.E. 567 (1934).

Cited in Williams v. McIntosh County, 179 Ga. 735, 177 S.E. 248 (1934); Southeastern Pipe Line Co. v. Garrett ex rel. Le Sueur, 192 Ga. 817, 16 S.E.2d 753 (1941); State v. Davison, 198 Ga. 27, 31 S.E.2d 225 (1944).

50-16-3.1. State authorities prohibited from selling real property; exceptions.

(a) As used in this Code section, the term "state authority" means:

(1) The Jekyll Island—State Park Authority provided for in Part 1 of Article 7 of Chapter 3 of Title 12; or

(2) The Stone Mountain Memorial Association provided for in Part 4 of Article 6 of Chapter 3 of Title 12.

(b) The provisions of any other laws of this state to the contrary notwithstanding, no state authority shall be authorized to sell real property; provided, however, this prohibition shall not apply to the sale or other disposition of real property by a state authority when such real property is necessary for a public road right of way.

History. — Code 1981, § 50-16-3.1, enacted by Ga. L. 1988, p. 1635, § 1; Ga. L. 2013, p. 141, § 50/HB 79.

50-16-4. Use and keeper of capitol buildings and grounds.

The use of the capitol building and grounds shall be limited to departments of the state government and to state and national political organizations, and the keeper of public buildings and grounds shall not grant the use of either the capitol buildings or grounds for any other purposes, except that the Georgia Building Authority as keeper of public buildings and grounds is authorized to provide space in the capitol building for use as a vending stand, as described by Article 2 of Chapter 9 of Title 49, for the use of state officials and employees and their invited guests.

History. — Ga. L. 1882-83, p. 18, §§ 1-16; Ga. L. 1884-85, p. 27, § 1; Ga. L. 1888, p. 14, §§ 1-3; Ga. L. 1892, p. 95, §§ 1, 2; Civil Code 1895, § 1017; Civil Code 1910, § 1284; Code 1933, § 91-105; Ga. L. 1961, p. 218, § 1; Ga. L. 2000, p. 1137, § 9; Ga. L. 2012, p. 303, § 8/HB 1146.

Cross references. — Assignment of office space in state capitol, §§ 28-4-2, 50-16-61. Prohibition against panhandling, solicitation, or vending in capitol building and on capitol grounds, § 50-9-9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "Article 2" was substituted for "Article 3" in this Code section.

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Use as fall-out shelter. — Department of Administrative Services is precluded by law from allowing the use of capitol grounds for a fall-out shelter. 1962 Op. Att'y Gen. p. 471.

50-16-5. Defacing or injuring capitol building or grounds.

If any person shall mar, deface, or in any way injure the capitol building, the approaches thereto, the trees, shrubbery, or grounds belonging to same, or any of the furniture, fixtures, or property therein, he shall be guilty of a misdemeanor.

History. — Ga. L. 1892, p. 100, § 1; Penal Code 1895, § 222; Penal Code 1910, § 219; Code 1933, § 91-9901.

Cross references. — Criminal penalty for interference with government property, § 16-7-24.

50-16-5.1. Commission on the Preservation of the State Capitol.

(a) The General Assembly makes the following findings:

(1) The Georgia capitol is a unique national and state treasure;

(2) The United States government has recognized the capitol's significance by designating it a National Historic Landmark, the nation's highest level of recognition; and

(3) The Commission on the Preservation of the State Capitol would assist in the protection of this important state building by the development of a master plan for the state capitol, which would include the history of the building, its existing conditions, its evolution, and a plan for its future that would provide an integrated design. The Commission on the Preservation of the State Capitol could also encourage the making of gifts and grants to the capitol.

(b) For purposes of this Code section, the term "commission" means the Commission on the Preservation of the State Capitol created under subsection (c) of this Code section.

(c) The Commission on the Preservation of the State Capitol is created to advise the Governor and the Legislative Services Committee on matters relating to the preservation of the architectural and historical character of the state capitol.

(d) The commission shall consist of nine members, one of whom shall be the director of the Georgia Capitol Museum, four of whom shall be appointed by the Governor, two of whom shall be appointed by the President of the Senate, and two of whom shall be appointed by the Speaker of the House of Representatives. The members shall serve at the pleasure of their appointing authority. The commission shall also consist of the following four ex officio members:

(1) The Secretary of State;

(2) The executive director of the Georgia Building Authority;

(3) The executive director of the Georgia Council for the Arts; and

(4) The state historic preservation officer of the Department of Community Affairs.

(e) The commission shall have the following powers and duties:

(1) To develop a master plan for the Georgia state capitol;

(2) To make such other studies, reports, and recommendations as it deems advisable with respect to the restoration, rehabilitation, preservation, improvement, and utilization of the capitol buildings and grounds;

(3) To advise the Georgia Building Authority on the specialized maintenance needs of the capitol to assure continued preservation of historically and architecturally important spaces in the building;

(4) To advise the Georgia Building Authority in the development of plans and specifications for all projects which should be approved, such projects to be carried out as provided in the master plan, including assisting the authority in the selection of qualified architects engaged for these purposes;

(5) To provide, in concert with the Georgia Building Authority, the director of the Georgia Capitol Museum, and other agencies of the state, as appropriate, an interpretive program which explores the architectural, historic, artistic, social, political, and cultural themes associated with the capitol;

(6) To encourage the making of gifts and grants to the state to assist the commission in the performance of its powers, duties, and responsibilities and for the implementation of master plan projects or other recommendations of the commission as may be approved by the Governor and the General Assembly;

(7) To provide advice and guidance to the director of the Georgia Capitol Museum with respect to the care, conservation, and exhibition of the collections as may be housed in the capitol and to develop and promote additional exhibits to be displayed at the capitol from time to time when the General Assembly is not in session;

(8) To render such other advice and assistance as the Governor, President of the Senate, and Speaker of the House of Representatives may from time to time request; and

(9) To hire, staff, and develop an annual work program and budget for carrying out phases of the master plan.

(f) The commission shall be assigned to the office of the Governor for administrative purposes only and members shall receive the same per diem and expenses provided for state boards and commissions under Code Section 45-7-21.

History. — Code 1981, § 50-16-5.1, enacted by Ga. L. 1993, p. 1541, § 1; Ga. L. 2020, p. 38, § 9/SB 473.

The 2020 amendment, effective July 1, 2020, substituted "Department of Community Affairs" for "Department of Natural Resources" in paragraph (d)(4).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "Georgia Capitol Museum" was substituted for "Georgia State Museum of Science and Industry" in the introductory language of subsection (d) and paragraphs (e)(5) and (e)(7).

50-16-5.2. Georgia Art Policy Committee created; composition; terms; annual meetings; expense allowance; powers and duties.

Repealed by Ga. L. 2006, p. 149 § 2/HB 978, effective July 1, 2006.

Editor's notes. — This Code section was based on Code 1981, § 50-16-5.2, enacted by Ga. L. 2000, p. 1332, § 2.

50-16-6. Janitors and watchmen of public buildings and grounds to make arrests, prevent abuse, suppress disorderly conduct, and protect property.

Reserved. Repealed by Ga. L. 2010, p. 137, § 4/HB 1074, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1892, p. 100, § 3; Penal Code 1895, § 224; Penal Code 1910, § 221; Code 1933, § 91-107.

50-16-7. Improvement of real estate held by state in fee simple with reversionary interest in federal government or under long-term federal license.

(a) As used in this Code section, the term "long-term federal license" means a license under which the state holds real estate belonging to the federal government for a period of ten years or longer.

(b) Any real estate held by the state in fee simple or under a quitclaim deed with a reversionary interest in the federal government or under a long-term federal license with a reversionary interest in the federal government may be improved with funds appropriated for a state department, provided the commissioner of the department affected and the Office of Planning and Budget, consisting of the Governor and state auditor, consent to the use of such funds if the amount of funds to be appropriated exceeds $1,000.00. If the amount of the improvement funds to be appropriated is $1,000.00 or less, the commis-

sioner of the department shall have the authority to approve the appropriation without the approval of the Office of Planning and Budget; provided, however, nothing in this Code section shall prevent or prohibit a state department from constructing with appropriated state funds a public ramp for the launching and retrieving of watercraft and other facilities for use in connection therewith, including, but not limited to, paved parking areas and access roads, upon real estate owned by the state adjoining lakes, reservoirs, rivers, or other bodies of water available for free use by the public, the title to which real estate is burdened by a flood easement, license, permit, or reservation running in favor of an electric utility company regulated by the state or the United States, or any public corporation or authority declared by law to be an instrumentality of the state or the United States, or any agency or department of the United States; provided, further, nothing in this Code section shall prevent the expenditure of appropriated state funds to construct access roads or ways for ingress and egress or the construction or placement of utilities in, on, through, over, or under real property in which the state holds a legal interest or estate less than fee simple if the roads, ways, or utilities are constructed to serve facilities located on or to be located on real property held by the state in fee simple or under a quitclaim deed with a reversionary interest in the federal government or under a long-term federal license with a reversionary interest in the federal government.

History. — Ga. L. 1961, p. 47, §§ 1, 2; Ga. L. 1972, p. 927, § 1; Ga. L. 1977, p. 872, § 1.

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Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former law are included in the annotations for this Code section.

Incidental expenditures on leased property. — Legislature did not intend that the statute be so strictly construed that the state is powerless to make incidental expenditures on leased property, which expenditures are dictated by practical business considerations and which, if not made by the state, would deny the state the maximum benefits of the use of the premises or would result in considerably greater loss to the state before the premises could be used for the purposes intended. 1963-65 Op. Att'y Gen. p. 306.

Expenditures on "permanent facilities." — State could not spend money on leased property to construct "permanent facilities"; only structures which as a practical matter may be removed from the premises as a unit, or dismantled and removed without substantial loss or damage may be considered as temporary or removable structures. 1965-66 Op. Att'y Gen. No. 66-70.

State acceptance of property lease. — State may accept lease on property when no valuable permanent improvements are to be placed on land, and a policy of title insurance is procured. 1954-56 Op. Att'y Gen. p. 655 (decided under former law).

Restrictions on county-owned real estate. — State funds appropriated by a state agency from the Governor's Emergency Fund may be utilized for improvements to real estate held by the state in fee simple, but may not be used for such improvements to real property owned by individual counties; the expenditures for

improvements to state-owned property must be consistent with and authorized by the enumerated powers of the governmental agency proposing the improvements. 1974 Op. Att'y Gen. No. 74-158.

Construction of radio beacons. — Although the Department of Industry and Trade may lawfully accept a grant from the Governor's Emergency Fund, such grant may not be utilized, by contract or otherwise, for the purpose of constructing a radio beacon at a municipal airport. 1967 Op. Att'y Gen. No. 67-322.

Property not owned by state. — Authorization to participate in the operation of a welcome center would not be inclusive of an authorization to utilize state funds for the construction of a welcome center on property not owned by the state or otherwise permitted under this section. 1973 Op. Att'y Gen. No. 73-30.

Leased property of other branch of state government. — Regents may legally expend appropriated state funds for improvements on property leased from another branch of state government, the title to which is held by the state. 1967 Op. Att'y Gen. No. 67-450.

Title to land required. — State must have title to land before permanent improvements may be made thereon. 1954-56 Op. Att'y Gen. p. 574 (decided under former law).

Reversionary clause in deed. — No state funds can be expended to place any permanent improvements on property transferred to the state as long as a reversionary clause is in the deed of conveyance. 1954-56 Op. Att'y Gen. p. 573 (decided under former law).

State should not accept a deed of real property when the deed contains a reversionary clause. 1963-65 Op. Att'y Gen. p. 755.

Improvements to leased property. — State funds may be used for improvement of leased property when improvements are of such a nature as to be easily removable and the lease provides that the state may remove such improvements upon termination or when the state no longer requires use of the property. 1962 Op. Att'y Gen. p. 398.

Property held in fee simple or quitclaim deed. — State funds may be used for property held by the state in fee simple or under quitclaim deed with a reversionary interest in United States government upon approval of proper state officials. 1962 Op. Att'y Gen. p. 396.

Acceptance of property with reversionary clause. 1960-61 Op. Att'y Gen. p. 386.

Department of Natural Resources cannot accept deed from city containing reversionary clause for land on which state funds are to be used. 1962 Op. Att'y Gen. p. 395.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 259 et seq.

ALR. — How far is public property subject to mechanics' liens, 26 A.L.R. 326.

50-16-8. Insurance of state property required; self-insurance program authorized.

The Governor shall keep insured all the insurable property of the state including, but not limited to, the public buildings and the contents thereof. The Governor is authorized to draw his warrant upon the state treasury annually for such sums as may be necessary to keep the insurable property of the state adequately protected by insurance. The Governor, in keeping the state's property insured, shall implement a sound program of self-insurance as provided in Code Sections 50-16-9 through 50-16-11 which may include assuming by the state some, or all, of the various risks or hazards under such plan of self-insurance.

History. — Ga. L. 1960, p. 1160, § 1.

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Comprehensive insurance plan contemplated. — Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11) contemplate one overall comprehensive plan covering all of the state's insurable property, and not a plan broken up into components of the various state departments and authorities. 1960-61 Op. Att'y Gen. p. 12.

State authority-owned property comes within purview of Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11). 1960-61 Op. Att'y Gen. p. 12.

RESEARCH REFERENCES

ALR. — Availability of proceeds of insurance on public building for purpose other than restoring or replacing the building damaged or destroyed, 65 A.L.R. 1124.

Right or duty to carry insurance on public property, 100 A.L.R. 600.

50-16-9. Formulation of self-insurance plan for state's properties; incentive programs authorized.

(a) The Department of Administrative Services may formulate and initiate a plan of self-insurance for the state's properties. The department shall cause:

(1) A complete appraisal to be made of all the state's insurable property as to value;

(2) A complete classification to be made of all the state's insurable property by type of risk; and

(3) A determination and recommendation to be made of the amount and extent of self-insurance which the state can assume, the necessary reserves needed, the minimum claim to be paid on each risk, the type of additional or excess insurance coverage that may be required, the premiums to be charged, and any deductibles to be paid by state agencies and authorities.

(b) The department is further authorized to establish incentive programs, including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the state insurance and hazard reserve fund provided for in this chapter.

(c) Upon the formulation of a plan of self-insurance based on the foregoing determinations made and submitted by the Department of Administrative Services, the Governor, by executive order, may establish and effectuate a plan of self-insurance; and the General Assembly from time to time shall provide and maintain by appropriation an insurance reserve fund.

History. — Ga. L. 1960, p. 1160, § 2; Ga. L. 2008, p. 245, § 9/SB 425.

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Scope of self-insurance plan. — This section contemplates a self-insurance plan for all of the state's insurable property including the property owned by the various authorities which have been created by the legislature. 1960-61 Op. Att'y Gen. p. 12.

Use of discretion and judgment in formulation of plan. — This section contemplates that the supervisor of purchases (now commissioner of administrative services) use the supervisor's (now commissioner's) best discretion and judgment in the formulation of the self-insurance plan which the supervisor (now commissioner) recommends to the Governor for adoption; and that in formulating such plan of self-insurance the supervisor (now commissioner) analyze the property of each authority and determine what, in the supervisor's (now commissioner's) best judgment, is in the best interest of the particular authority and the people (taxpayers) of Georgia; in formulating the plan it is suggested that the supervisor of purchases (now commissioner) confer with the members of each authority. 1960-61 Op. Att'y Gen. p. 12.

Comprehensive insurance plan. — Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11) contemplate one overall comprehensive plan covering all of the state's insurable property, and not a plan broken up into components of the various state departments and authorities. 1960-61 Op. Att'y Gen. p. 12.

Relation to O.C.G.A. §§ 50-16-8 and 50-16-11. — State authority-owned property comes within the purview of Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11). 1960-61 Op. Att'y Gen. p. 12.

RESEARCH REFERENCES

ALR. — Right or duty to carry insurance on public property, 100 A.L.R. 600.

50-16-10. Formulation of self-insurance plan for public school buildings.

Reserved. Repealed by Ga. L. 2008, p. 245, § 10/SB 425, effective July 1, 2008.

Editor's notes. — This Code section was based on Ga. L. 1971, p. 206, § 1.

50-16-11. Employment of personnel to carry out self-insurance plans.

The Department of Administrative Services is authorized and empowered to employ, as a regular member of its staff, persons with expert knowledge, training, and experience in underwriting and planning and such other personnel, including temporary professional insurance engineers and actuaries, as are necessary to carry out the details provided in Code Section 50-16-9.

History. — Ga. L. 1960, p. 1160, § 3; Ga. L. 2008, p. 245, § 11/SB 425.

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Comprehensive insurance plan. — Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11) contemplate one overall comprehensive plan covering all of the state's insurable property, and not a plan broken up into components of the various state departments and authorities. 1960-61 Op. Att'y Gen. p. 12.

Relation to O.C.G.A. §§ 50-16-8 and 50-16-9. — State authority-owned property comes within the purview of Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11). 1960-61 Op. Att'y Gen. p. 12.

RESEARCH REFERENCES

ALR. — Right or duty to carry insurance on public property, 100 A.L.R. 600.

50-16-11.1. Commercial property policies for coverage of buildings, contents, and other property owned by community service boards.

The Department of Administrative Services is authorized to assist and coordinate the purchase of a commercial property policy for coverage for the buildings, contents, and other property owned by community service boards. The payment of the premium to the commercial carrier shall be the responsibility of the community service boards.

History. — Code 1981, § 50-16-11.1, enacted by Ga. L. 1994, p. 1717, § 8.

50-16-12. Authorization for state insurance and hazard reserve fund to retain certain moneys for the payment of liabilities and expenses; deposit of investment funds with Office of the State Treasurer.

In order to finance the continuing liability established with other agencies of state government, the state insurance and hazard reserve fund is authorized to retain all moneys paid into the fund as premiums on policies of insurance, all moneys received as interest, and all moneys received from other sources as a reserve for the payment of such liability and the expenses necessary to the proper conduct of such insurance program administered by the fund. Any amounts held by the state insurance and hazard reserve fund which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in a trust account for credit only to the state insurance and hazard reserve fund. The state treasurer shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the state insurance and hazard reserve fund. When moneys are paid over to the Office of the State Treasurer, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the state treasurer.

History. — Ga. L. 1972, p. 296, § 1; Ga. L. 2000, p. 1474, § 10; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.

RESEARCH REFERENCES

ALR. — Right or duty to carry insurance on public property, 100 A.L.R. 600.

50-16-13. Authorization for state insurance and hazard reserve fund to contract for fire protection systems; cost limitation; approval by legislative subcommittees.

The state insurance and hazard reserve fund is authorized to execute contracts with reliable manufacturers of automatic sprinkler systems and other fixed fire protection systems for the installation of approved fire protection systems for all properties of the state, authorities, instrumentalities, bureaus, and commissions which are insured or which may become insured in the future under the state self-insurance program. The cost shall be borne by the state insurance and hazard reserve fund and may not exceed $100,000.00 in any one fiscal year. The fund shall be the sole judge as to where and to what extent such fire

protection systems need to be installed for the protection of lives and property. All expenditures for the installation of fire protection systems and equipment shall be approved by the fiscal affairs subcommittees of the Senate and House of Representatives.

History. — Ga. L. 1974, p. 530, § 1.

RESEARCH REFERENCES

ALR. — Right or duty to carry insurance on public property, 100 A.L.R. 600.

50-16-14. Authorization of law enforcement officers and security personnel to deny entrance and remove persons from state property; assistance.

Certified law enforcement officers of the Department of Public Safety and the Georgia Bureau of Investigation and security personnel employed by or under contract with the Department of Public Safety are authorized and empowered to deny the entrance of any person into or upon any property or building of the Georgia Building Authority or the state when the person's activities are intended to disrupt or interfere with the normal activities and functions carried on in such property or building or have the potential of violating the security of the personnel therein. Certified officers of the Department of Public Safety and the Georgia Bureau of Investigation and security personnel employed by or under contract with the Department of Public Safety are authorized and empowered to deny entrance into or upon any such property or building of any person displaying any sign, banner, placard, poster, or similar device. Certified officers of the Department of Public Safety and the Georgia Bureau of Investigation and security personnel employed by or under contract with the Department of Public Safety are authorized and empowered to remove any person from any such property or building when the person's activities interfere with or disrupt the activities and the operations carried on in such property or building or constitute a safety hazard to the property or building or the inhabitants thereof. The authority and power provided in this Code section and Code Section 50-16-15 shall also extend to any property or building utilized by the state or any agency thereof. Any law enforcement officer assisting the certified officers of the Department of Public Safety and the Georgia Bureau of Investigation or the security personnel employed by or under contract with the Department of Public Safety shall have the same authority and power as provided by this Code section and Code Section 50-16-15.

History. — Ga. L. 1976, p. 471, § 1; Ga. L. 1978, p. 850, § 1; Ga. L. 2010, p. 137, § 5/HB 1074.

Cross references. — Employment of nonuniformed investigators to protect state property, § 35-1-6. Authority of Georgia Building Authority to employ security guards, § 50-9-9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, a second occurrence of "the" was deleted preceding "certified officers" in the last sentence.

JUDICIAL DECISIONS

Constitutionality. — No constitutional infirmity is created by language in this section authorizing exclusion of those persons whom a guard, by the exercise of subjective evaluation, determines has the potential of violating the security of personnel or whose activities are intended to disrupt or interfere with the normal activities and functions carried on in the building. State v. Boone, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

Ga. L. 1976, p. 471, §§ 1 and 3 (see O.C.G.A. §§ 50-16-14 and 50-16-16) are not facially overbroad nor so vague as to violate First Amendment freedoms of assembly or speech. State v. Boone, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

Ga. L. 1976, p. 471, §§ 1 and 3 (see O.C.G.A. §§ 50-16-14 and 50-16-16) are not overbroad as "sweeping within their prohibitions" that may not be punished under the First and Fourteenth Amendments. State v. Boone, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

Ga. L. 1976, p. 471, §§ 1 and 3 (see O.C.G.A. §§ 50-16-14 and 50-16-16) are not violative of due process or equal protection guarantees. State v. Boone, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

O.C.G.A. §§ 50-16-14 and 50-16-16 do not violate First Amendment guarantees of freedom of speech and the right to assemble peaceably and petition the government for redress of their grievances. State v. Storey, 181 Ga. App. 161, 351 S.E.2d 502 (1986), cert. denied, 481 U.S. 1017, 107 S. Ct. 1895, 95 L. Ed. 2d 501 (1987).

Language broadly construed. — Language of this section authorizing denial of entrance into or upon state property to "any person displaying any sign, banner, placard, poster or similar device" is not to be narrowly construed as prohibiting entry merely because such signs or placards are present. State v. Boone, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

Threat of harm or disruption of operations required. — Actual or imminent threat of harm or of disruption of on-going operations on state property or in buildings housing state agencies is required. State v. Boone, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Arrests on state property. — Within the limits of their respective territorial or statutory jurisdiction, local law enforcement authorities may arrest offenders upon state property for violations of state laws including property under the jurisdiction of the Georgia Building Authority Police. 1992 Op. Att'y Gen. No. 92-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 16A Am. Jur. 2d, Constitutional Law, §§ 556, 560, 562, 571, 572.

C.J.S. — 16A C.J.S., Constitutional Law, §§ 378, 379. 81A C.J.S., States, § 261.

50-16-15. Adjutant general authorized to empower contract security guards to make arrests and carry firearms upon and surrounding National Guard facilities.

The adjutant general is authorized to empower service contract security guards employed by the Department of Defense with the power and authority to make summary arrests of persons violating the laws of this state or the United States upon and surrounding any Georgia Air National Guard or Georgia Army National Guard facility. In case of such arrests, the service contract security guard shall as soon as possible deliver the arrested person or persons to the custody of the sheriff of the county wherein the offense was committed. The adjutant general shall also have the power and authority to authorize service contract security guards to carry firearms in the official performance of their duties.

History. — Ga. L. 1976, p. 471, § 2.

Cross references. — Employment of nonuniformed investigators to protect state property, § 35-1-6. Duties of adjutant general generally, § 38-2-151.

50-16-16. Penalty for refusal to obey security personnel or law enforcement officer.

Any person who refuses to obey any lawful order of any security personnel or law enforcement officer issued pursuant to Code Section 50-16-14 or 50-16-15 or any person who refuses to vacate any such property or building when requested to do so shall be guilty of a misdemeanor.

History. — Ga. L. 1976, p. 471, § 3; Ga. L. 1982, p. 3, § 50.

Cross references. — Employment of nonuniformed investigators to protect state property, § 35-1-6.

JUDICIAL DECISIONS

Constitutionality. — Ga. L. 1976, p. 476, §§ 1 and 3 (see O.C.G.A. §§ 50-16-14 and 50-16-16) are not violative of due process or equal protection guarantees. State v. Boone, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

Ga. L. 1976, p. 476, §§ 1 and 3 (see O.C.G.A. §§ 50-16-14 and 50-16-16) are not facially overbroad nor so vague as to violate First Amendment freedoms of assembly or speech. State v. Boone, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

O.C.G.A. §§ 50-16-14 and 50-16-16 do not violate First Amendment guarantees of freedom of speech and the right to assemble peaceably and petition the government for redress of their grievances. State v. Storey, 181 Ga. App. 161, 351 S.E.2d 502 (1986), cert. denied, 481 U.S. 1017, 107 S. Ct. 1895, 95 L. Ed. 2d 501 (1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 58 Am. Jur. 2d, Obstructing Justice, § 62.
C.J.S. — 67 C.J.S., Obstructing Justice or Governmental Administration, § 24 et seq.

50-16-17. Rights and remedies of state and other governmental entities relating to property ownership.

(a) Cumulative of any other prerogatives or powers, any unit or instrumentality of government within this state is empowered and authorized to assert any cause of action, initiate any proceeding, seek any remedy, and request or demand any judicial relief which pertains to real property and which is available under the general law of this state to nongovernmental parties in like circumstances. Without limitation this law shall apply to matters in law and equity, matters of general civil procedure, and to special statutory proceedings. This law shall be construed liberally as a remedial law, and it shall be applicable to all claims, whether heretofore or hereafter accruing and regardless of whether proceedings concerning such claims have commenced or may hereafter be commenced. Neither this law nor any actions taken by a governmental unit or instrumentality within its terms shall be deemed or construed as waiving sovereign immunity under state law or waiving any immunities under the Eleventh Amendment of the Constitution of the United States.

(b) For purposes of this Code section, the term "real property" shall have the same meaning as "realty" and "real estate" in Code Section 44-1-2.

(c) For purposes of this Code section, the term "unit or instrumentality of government" shall mean the state, its constituent agencies, associations, authorities, boards, bureaus, commissions, departments, instrumentalities, officers, and public corporations, and all like units and instrumentalities of local government, including, without limitation, counties and municipal corporations, other political subdivisions, their school boards, the boards of independent school systems, authorities and other instrumentalities, and any other entities or instrumentalities of state and local government created under or pursuant to state law and performing governmental functions.

History. — Code 1981, § 50-16-17, enacted by Ga. L. 1986, p. 316, § 1; Ga. L. 1987, p. 1064, § 1.
Code Commission notes. — Ga. L. 1986, p. 316, § 1 and Ga. L. 1986, p. 506, § 1 both enacted Code sections designated as 50-16-17. The Code section enacted by the latter Act was redesignated as Code Section 50-16-18 pursuant to Code Section 28-9-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 130 et seq.

C.J.S. — 73B C.J.S., Public Lands, § 2 et seq.

ALR. — Right of one governmental subdivision to sue another such subdivision for damages, 11 A.L.R.5th 630.

50-16-18. Writing off small amounts due to state.

(a) It is the intent of this Code section to implement the provisions of Article III, Section VI, Paragraph VI of the Constitution of the State of Georgia which generally prohibit gratuities by devising an administrative mechanism which will ensure that any obligation due the state is not pursued when it is manifest that the account is uncollectable or when the costs of pursuing a moderate indebtedness would create a greater obligation on the treasury than the amount claimed and that there will be an established procedure to scrutinize modest debts individually and, when collection appears to be unlikely, to make a formal administrative determination to conserve public moneys which would otherwise be expended for unfruitful collection efforts.

(b)(1) (Repealed effective July 1, 2026.) All state agencies and departments, in order to preserve public funds, shall be authorized to develop appropriate standards that comply with the policies prescribed by the state accounting officer which will provide a mechanism to consider administratively discharging any obligation or charge in favor of such agency or department when such obligation or charge is $100.00 or any lesser amount unless the agency or department belongs to the Board of Regents of the University System of Georgia or the Technical College System of Georgia in which case the obligation or charge in favor of the institution under the Board of Regents of the University System of Georgia or the institution of the Technical College System of Georgia may be $3,000.00 or any lesser amount. This procedure shall not be available to such agency or department in those instances where the obligor has more than one such debt or obligation in any given fiscal year, and this provision shall be construed in favor of the state agency or department so as not to alter the unquestioned ability of such state agency or department to pursue any debt, obligation, or claim in any amount whatsoever. In those instances where a debt or obligation of $100.00 or less, or $3,000.00 or less for the institutions of the Board of Regents of the University System of Georgia or the Technical College System of Georgia, has been deemed to be uncollectable, the proper individual making such determination shall transmit a recapitulation of the efforts made to collect the debt together with all other appropriate information, which shall include a reasonable estimate of the cost to pursue administratively or judicially the account, together with a

recommendation to the commissioner of such state agency or department. In those instances where the commissioner makes a determination that further collection efforts would be detrimental to the public's financial interest, a certificate reflecting this determination shall be executed, and this certificate shall serve as the authority to remove such uncollectable accounts from the financial records of such state agency or department. Such certificates shall be forwarded to the state accounting officer in a manner and at such times as are reflected in the standards developed by the state accounting officer and the state agency or department. This paragraph shall stand repealed and reserved effective July 1, 2026.

(2) On and after July 1, 2026, all state agencies and departments, in order to preserve public funds, shall be authorized to develop appropriate standards that comply with the policies prescribed by the state accounting officer which will provide a mechanism to consider administratively discharging any obligation or charge in favor of such agency or department when such obligation or charge is $100.00 or any lesser amount. This procedure shall not be available to such agency or department in those instances where the obligor has more than one such debt or obligation in any given fiscal year, and this provision shall be construed in favor of the state agency or department so as not to alter the unquestioned ability of such state agency or department to pursue any debt, obligation, or claim in any amount whatsoever. In those instances where a debt or obligation of $100.00 or less has been deemed to be uncollectable, the proper individual making such determination shall transmit a recapitulation of the efforts made to collect the debt together with all other appropriate information, which shall include a reasonable estimate of the cost to pursue administratively or judicially the account, together with a recommendation to the commissioner of such state agency or department. In those instances where the commissioner makes a determination that further collection efforts would be detrimental to the public's financial interest, a certificate reflecting this determination shall be executed, and this certificate shall serve as the authority to remove such uncollectable accounts from the financial records of such state agency or department. Such certificates shall be forwarded to the state accounting officer in a manner and at such times as are reflected in the standards developed by the state accounting officer and the state agency or department.

History. — Code 1981, § 50-16-18, enacted by Ga. L. 1986, p. 506, § 1; Ga. L. 2003, p. 313, § 4; Ga. L. 2004, p. 1078, § 1; Ga. L. 2005, p. 694, §§ 10, 11/HB 293; Ga. L. 2006, 686, § 1/HB 1294; Ga. L. 2008, p. 884, § 1-2/HB 1183; Ga. L. 2010, p. 576, § 1-1/HB 1128; Ga. L. 2013, p. 747, § 1-1/HB 45; Ga. L. 2016, p. 371, § 1-1/HB 745; Ga. L. 2021, p. 571, § 2-1/SB 81.

The 2021 amendment, effective May 6, 2021, in subsection (b), substituted "July 1, 2026" for "July 1, 2021" at the end of the last sentence of paragraph (1) and

near the beginning of the first sentence of paragraph (b)(2).

Code Commission notes. — Ga. L. 1986, p. 316, § 1 and Ga. L. 1986, p. 506, § 1 both enacted Code sections designated Code Section 50-16-17. The Code section enacted by the latter Act was redesignated as Code Section 50-16-18 pursuant to Code Section 28-9-5.

Pursuant to Code Section 28-9-5, in 2008, in paragraph (b)(1), "Technical College System of Georgia" was substituted for "Department of Technical and Adult Education" twice in the first sentence and once in the third sentence.

Editor's notes. — Ga. L. 2003, p. 313, § 6, not codified by the General Assembly, provides that the amendment by that Act shall be repealed in its entirety on June 30, 2008.

Ga. L. 2004, p. 1078, § 2, not codified by the General Assembly, provides that the amendment by that act shall be repealed in its entirety on June 30, 2006.

Ga. L. 2005, p. 694, § 42(c)/HB 293, not codified by the General Assembly, provides that the amendment by that Act shall be repealed in its entirety on June 30, 2006.

Ga. L. 2006, p. 686, § 1/HB 1294, not codified by the General Assembly, amended Ga. L. 2003, p. 313, § 6, so as to delay the repeal of the 2003 amendment to subsection (b) of Code Section 50-16-18 until June 30, 2008.

Ga. L. 2008, p. 884, § 1-1/HB 1183, not codified by the General Assembly, amended Ga. L. 2006, p. 686, § 1, so as to eliminate the repeal of the 2003 amendment by Ga. L. 2003, p. 313 to subsection (b) of this Code section.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 335 et seq.

50-16-19. State development projects; landscape plan requirements.

(a) As used in this Code section, the term "development activity" means the construction of a structure having an area occupied and defined by the exterior of such structure of at least 1,000 square feet or of a parking lot, other than roadway, street, or bridge construction.

(b) Any project for development activity by the state on or after December 31, 2001, shall be designed in such a manner so as to minimize the loss or destruction of trees on the site of such construction and shall include a landscape plan providing, to the greatest extent practicable, for the retention of trees located on the site, for the replacement of trees lost with trees indigenous to the region, and for the planting of new indigenous trees.

History. — Code 1981, § 50-16-19, enacted by Ga. L. 2001, p. 299, § 1.

Law reviews. — For note on the 2001 enactment of this Code section, see 18 Ga. St. U.L. Rev. 322 (2001).

50-16-20. Timing of official designations in honor of state agency or state officials.

Repealed by Ga. L. 2003, p. 313, § 6, effective June 30, 2005.

Editor's notes. — This Code section was based on Ga. L. 2003, p. 313, § 1.

ARTICLE 2

STATE PROPERTIES CODE

50-16-30. Short title.

This article shall be known and may be cited as the "State Properties Code."

History. — Code 1933, § 91-101A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-101a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1.

50-16-31. Definitions.

As used in this article, the term:

(1) "Acquire," "acquisition," and "acquiring" mean the obtaining of real property by any method including, but not limited to, gift, purchase, condemnation, devise, court order, and exchange.

(1.1) "Administrative space" means any space, whether existing or to be constructed, that is required by a state entity for office, storage, or special purposes and that is required for the core mission of such state entity. In order to be required, the space must be necessary for and utilized in either:

(A) The performance of the duties that the state entity is obligated by law to perform; or

(B) The delivery of the services that the state entity is authorized or required by law to provide.

(2) "Commission" means the State Properties Commission created by Code Section 50-16-32. The commission was formerly known as the State Properties Control Commission and is the successor in law to the State Properties Control Commission, State Properties Acquisition Commission, and the Mineral Leasing Commission.

(2.1) "Conveyance" means the sale or other disposition of real property including a transfer of fee simple title, lease, and easement.

(3) "Deed" means either a fee simple deed without warranty or a quitclaim deed.

(3.1) "Entities" or "entity" means any and all constitutional offices, as well as all authorities, departments, divisions, boards, bureaus, commissions, agencies, instrumentalities, or institutions of the state.

(4) "Lease" means a written instrument under the terms and conditions of which one party (lessor) out of its own estate grants and

conveys to another party or parties (lessee) an estate for years retaining a reversion in itself after such grant and conveyance.

(5) "Mineral resources" means, but is not limited to, sand, sulfur, phosphate, oil, and gas.

(6) "Person" means any individual; general or limited partnership; joint venture; firm; private, public, or public service corporation; association; authority; fiduciary; governmental body, instrumentality, or other organization of the state; county of the state; municipal corporation of the state; political subdivision of the state; governmental subdivision of the state; and any other legal entity doing business in the state.

(7) "Power," "empower(ed)," "authority," and "authorized" are synonymous and when each is used it shall include the other, the same as if the other had been fully expressed. When the commission has the power or is empowered, it has the authority and is authorized. "Authorized" and "may" shall imply discretion and not requirement.

(8) "Property" means:

(A) The Western and Atlantic Railroad including all the property associated with the railroad as of December 26, 1969, unless the same has otherwise been provided for by Act or resolution of the General Assembly;

(B) All the property owned by the state in Tennessee other than that property included in subparagraph (A) of this paragraph;

(C) The state owned property facing Peachtree, Cain, and Spring streets in the City of Atlanta, Fulton County, Georgia, upon which the Governor's mansion once stood and which is commonly referred to and known as the "Henry Grady Hotel property" or "old Governor's mansion site property";

(D) Any state owned real property the custody and control of which has been transferred to the commission by executive order of the Governor;

(E) Any state owned real property the custody and control of which has been transferred to the commission by an Act or resolution of the General Assembly without specific instructions as to its disposition; and

(F) Any real property interest titled in the name of the state.

(9) "Rental agreement" means a written instrument the terms and conditions of which create the relationship of landlord and tenant. Under such relationship no estate passes out of the landlord and the tenant has only usufruct.

(10) "Revocable license" means the granting, subject to certain terms and conditions contained in a written revocable license agreement, to a named person or persons (licensee), and to that person or persons only, of a revocable personal privilege to use a certain described parcel or tract of the property to be known as the licensed premises for a named purpose. Regardless of any and all improvements and investments made, consideration paid, or expenses and harm incurred or encountered by the licensee, a revocable license shall not confer upon the licensee any right, title, interest, or estate in the licensed premises, nor shall a revocable license confer upon the licensee a license coupled with an interest or an easement. A revocable license may be revoked, canceled, or terminated, with or without cause, at any time by the licensor (commission).

(11) "Revocable license agreement" means a written instrument which embodies a revocable license and which sets forth the names of the parties thereto and the terms and conditions upon which the revocable license is granted.

(12) "State" means the State of Georgia.

(13) "State agency" or "state agencies" means any department, division, bureau, board, commission, including the State Properties Commission created by Code Section 50-16-32, or agency within the executive branch of state government.

(14) "Terms and conditions" shall include stipulations, provisions, agreements, and covenants.

History. — Code 1933, § 91-102A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 663, § 1; Code 1933, § 91-102a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 2005, p. 100, §§ 7, 8/SB 158; Ga. L. 2014, p. 467, § 1/HB 495.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, the term "state owned" was substituted for "state-owned" in subparagraphs (8)(C) through (8)(E).

JUDICIAL DECISIONS

Cited in Georgia-Pacific Corp. v. Sayler Marine Corp., 246 Ga. 133, 269 S.E.2d 24 (1980); City of Marietta v. CSX Transp., Inc., 272 Ga. 612, 533 S.E.2d 372 (2000).

50-16-32. Creation, membership, and organization of State Properties Commission; transfer of assets, obligations, responsibilities, funds, personnel, equipment, and facilities from the Department of Administrative Services.

(a) There is created within the executive branch of state government a public body which shall be known as the State Properties Commission

and which shall consist of seven members and be composed of the Governor; the Secretary of State; one citizen appointed by the Governor for terms ending on April 1 in each odd-numbered year; the state treasurer; the state accounting officer; one citizen appointed by the Speaker of the House of Representatives for terms ending on April 1 in each odd-numbered year; and one citizen appointed by the Lieutenant Governor for terms ending on April 1 in each odd-numbered year. The term of office of the appointed members of the commission is continued until their successors are duly appointed and qualified. The Lieutenant Governor may serve as an appointed citizen member.

(b) The Governor shall be the chairperson of the commission, the state accounting officer shall be its vice chairperson, and the Secretary of State shall be its secretary. Four members of the commission shall constitute a quorum. No vacancy on the commission shall impair the right of the quorum to exercise the powers and perform the duties of the commission. With the sole exception of acquisitions of real property, which acquisitions shall require four affirmative votes of the membership of the commission present and voting at any meeting, the business, powers, and duties of the commission may be transacted, exercised, and performed by a majority vote of the commission members present and voting at a meeting when more than a quorum is present and voting or by a majority vote of a quorum when only a quorum is present and voting at a meeting. An abstention in voting shall be considered as that member not being present and not voting in the matter on which the vote is taken. No person may be appointed, elected, or serve on the commission who is a member of the legislative or judicial branch of government. In the event any ex officio member is determined to be in either the legislative or judicial branch of government, the General Assembly declares that it would have passed this article without such ex officio position on the commission and would have reduced the quorum and vote required of the commission on all actions accordingly.

(c) Meetings shall be held on the call of the chairperson, vice chairperson, or two commission members whenever necessary to the performance of the duties of the commission. Minutes or transcripts shall be kept of all meetings of the commission and in the minutes or transcripts there shall be kept a record of the vote of each commission member on all questions, acquisitions, transactions, and all other matters coming before the commission. The secretary shall give or cause to be given to each commission member, not less than three days prior to the meeting, written notice of the date, time, and place of each meeting of the commission.

(d) The commission shall adopt a seal for its use and may adopt bylaws for its internal government and procedures.

(e) Members of the commission who are also state officials shall receive only their traveling and other actual expenses incurred in the

performance of their official duties as commission members. Citizen members shall receive the same expense allowance per day as that received by a member of the General Assembly for each day any such member of the commission is in attendance at a meeting or carrying out official duties of the commission inside or outside the state, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile inside or outside the state while attending meetings or carrying out their official duties as members of the commission.

(f) The commission shall receive all assets of and the commission shall be responsible for any contracts, leases, agreements, or other obligations of the Department of Administrative Services under the former provisions of Article 2 of Chapter 5 of this title, the "State Space Management Act of 1976." The commission is substituted as a party to any such contract, agreement, lease, or other obligation and the same responsibilities respecting such matters as if it had been the original party and is entitled to all prerogatives, benefits, and rights of enforcement by the commissioner of administrative services and Department of Administrative Services. Appropriations and other funds of the Department of Administrative Services encumbered, required, or held for functions transferred to the commission shall be transferred to the commission as provided for in Code Section 45-12-90, relating to disposition of appropriations for duties, purposes, and objects which have been transferred. Personnel, equipment, and facilities previously employed by the Department of Administrative Services for such transferred functions shall likewise be transferred to the commission. On April 12, 2005, all personnel positions authorized by the Department of Administrative Services in fiscal year 2006 for such functions shall be transferred to the commission, and all employees of the department whose positions are transferred by the Department of Administrative Services to the commission shall become employees of the commission in the unclassified service as defined by Code Section 45-20-6.

History. — Code 1933, § 91-103A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 249, § 1; Ga. L. 1965, p. 663, § 2; Code 1933, § 91-104a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1977, p. 685, § 1; Ga. L. 1978, p. 1047, § 1; Ga. L. 1987, p. 347, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1995, p. 1066, § 1; Ga. L. 1999, p. 653, § 1; Ga. L. 2005, p. 100, § 9/SB 158; Ga. L. 2005, p. 694, § 12/HB 293; Ga. L. 2010, p. 863, § 3/SB 296.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "On April 12, 2005" was substituted for "Upon the effective date of this Code section" at the beginning of the fifth sentence in subsection (f).

Pursuant to Code Section 28-9-5, in 2006, the single quotes around "State Space Management Act of 1976." were changed to double quotes in subsection (f).

JUDICIAL DECISIONS

Execution of functions. — Most functions of commission must be performed by executive branch of government. Murphy v. State, 233 Ga. 681, 212 S.E.2d 839 (1975).

50-16-33. Assignment of State Properties Commission to Department of Administrative Services.

Reserved. Repealed by Ga. L. 2005, p. 100, § 21/SB 158, effective April 12, 2005.

Editor's notes. — This Code section was based on Ga. L. 1972, p. 1015, § 410.

50-16-34. Powers and duties of State Properties Commission generally.

The commission, in addition to other powers and duties set forth in other Code sections of this article, shall have the power and duty to:

(1) Inspect, control, manage, oversee, and preserve the property;

(2) Maintain at all times a current inventory of the property;

(3) Authorize the payment of any tax or assessment legally levied by the State of Tennessee or any governmental subdivision thereof upon any part of the property situated within the State of Tennessee;

(4) Prepare lease or sale proposals affecting the property for submission to the General Assembly;

(5) Approve a conveyance of state property; provided, however, that the commission shall not be authorized to approve a conveyance of state property that exceeds a value of $500,000.00 as determined by an appraisal or opinion of value;

(6) Subject to the limitation contained in this article, determine all of the terms and conditions of each instrument prepared or executed by it;

(7) Have prepared a thorough report of such data as will enable the commission to arrive at a fair valuation of the property; and to include within the report either an opinion of the value if the conveyance is to a public entity or for the purposes of constructing, installing, operating, and maintaining utilities which solely and directly benefit the state or at least one written appraisal of the value of the property if the conveyance is to a private entity, which appraisal shall be made by a person or persons familiar with property values in the area where the property is situated and who is a member of a nationally recognized appraisal organization. If the

written appraisal values the property in excess of $100,000.00, then a second written appraisal shall be required. In the case of the Western and Atlantic Railroad, at least two written appraisals shall be required, one of which may be the latest valuation report of the Western and Atlantic Railroad prepared by the Interstate Commerce Commission or successor agency;

(8) Contract with any person for the preparation of studies or reports as to:

(A) The value of such property including, but not limited to, sale value, lease value, and insurance value;

(B) The proper utilization to be made of such property; and

(C) Any other data necessary or desirable to assist the commission in the execution and performance of its duties;

(9) Insure the improvements on all or any part of the property against loss or damage by fire, lightning, tornado, or other insurable casualty; and insure the contents of the improvements against any such loss or damage;

(10) Inspect as necessary any of the property which may be under a lease, rental agreement, or revocable license agreement in order to determine whether the property is being kept, preserved, cared for, repaired, maintained, used, and operated in accordance with the terms and conditions of the lease, rental agreement, or revocable license agreement and to take such action necessary to correct any violation of the terms and conditions of the lease, rental agreement, or revocable license agreement;

(11) Deal with and dispose of any unauthorized encroachment upon, or use or occupancy of, any part of the property, whether the encroachment, use, or occupancy is permissive or adverse, or whether with or without claim of right therefor; to determine whether the encroachment, use, or occupancy shall be removed or discontinued or whether it shall be permitted to continue and, if so, to what extent and upon what terms and conditions; to adjust, settle, and finally dispose of any controversy that may exist or arise with respect to any such encroachment, use, or occupancy in such manner and upon such terms and conditions as the commission may deem to be in the best interest of the state; to take such action as the commission may deem proper and expedient to cause the removal or discontinuance of any such encroachment, use, or occupancy; and to institute and prosecute for and on behalf of and in the name of the state such actions and other legal proceedings as the commission may deem appropriate for the protection of the state's interest in or the assertion of the state's title to such property;

(12) Settle, adjust, and finally dispose of any claim, dispute, or controversy of any kind whatsoever arising out of the terms and conditions, operation, or expiration of any lease of the property or grant of rights in the property;

(13) Negotiate and prepare for submission to the General Assembly amendments to any existing lease, which amendments shall not, for the purposes of paragraph (4) of this Code section and Code Section 50-16-39, be interpreted as lease proposals or proposals to lease, provided:

(A) That the lessee of the lease as it is to be amended shall be either the lessee, a successor, an assignee, or a sublessee as to all or a portion of the property described in the lease as first executed or as heretofore amended; and

(B) On or before December 31 in each year the executive director of the State Properties Commission shall submit a report describing all conveyances and proposed conveyances negotiated during that year or under negotiation at the date of the report to the chairpersons of the Senate State Institutions and Property Committee and the House Committee on State Properties or such other standing committee that routinely considers state property related issues as designated by the President of the Senate or the Speaker of the House of Representatives;

(14) Exercise such other powers and perform such other duties as may be necessary or desirable to inspect, control, manage, oversee, and preserve the property;

(15) Do all things and perform all acts necessary or convenient to carry out the powers and fulfill the duties given to the commission in this article;

(16) Perform all terms including, but not limited to, termination, satisfy all conditions, fulfill all requirements, and discharge all obligations and duties contained in all conveyances which provide that the commission is empowered to act or shall act for and on behalf of the state and which conveyances have heretofore been approved and adopted by a resolution of the General Assembly or which conveyances may be approved and adopted by a resolution of the General Assembly approved by the Governor;

(17) Perform all terms, satisfy all conditions, fulfill all requirements, discharge all obligations, and otherwise implement the disposition of real property for and on behalf of the state when the General Assembly so provides in any enactment, including Acts or resolutions, authorizing or directing a disposition of real property of the state or of any instrumentality of the state; and

(18) Provide or perform acquisition related services to or for all state entities.

History. — Code 1933, § 91-104A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 663, § 3; Ga. L. 1970, p. 455, § 1; Code 1933, § 91-105a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1974, p. 1035, § 1; Ga. L. 1974, p. 1040, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1979, p. 816, §§ 1, 2; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 1408, § 1; Ga. L. 1985, p. 1423, § 1; Ga. L. 1986, p. 10, § 50; Ga. L. 1988, p. 554, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 97, § 50; Ga. L. 2005, p. 100, § 11/SB 158; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2009, p. 303, § 11/HB 117; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2014, p. 467, § 2/HB 495; Ga. L. 2020, p. 319, § 1/HB 780.

The 2020 amendment, effective January 1, 2021, in paragraph (7), inserted "or for the purposes of constructing, installing, operating, and maintaining utilities which solely and directly benefit the state" in the first sentence, and inserted commas following "$100,000.00" in the second sentence and following "required" in the last sentence.

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

JUDICIAL DECISIONS

Primary function of commission is acquisition of property on behalf of the state through condemnation or otherwise. Murphy v. State, 233 Ga. 681, 212 S.E.2d 839 (1975).

Execution of functions. — Most functions of commission must be performed by executive branch of government. Murphy v. State, 233 Ga. 681, 212 S.E.2d 839 (1975).

Power over Western and Atlantic Railroad right-of-way. — Because there can be no adverse possession or implied dedication of state property to a municipal corporation, which is a creature of the state, a city could not acquire a right to use pedestrian crossings over the Western & Atlantic Railroad right-of-way without the state's express consent. City of Marietta v. CSX Transp., Inc., 272 Ga. 612, 533 S.E.2d 372 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, §§ 118, 126. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 69, 70.

C.J.S. — 73B C.J.S., Public Lands, §§ 249 et seq., 287 et seq. 81A C.J.S., States, §§ 256, 263 et seq.

ALR. — Constitutionality and construction of statutes relating to grazing and pasturing sheep or goats on public land, 70 A.L.R. 410.

50-16-34.1. Acquisition of property within railroad lines abandoned as operating rail lines.

(a) The State Properties Commission is empowered and may acquire from a railroad company the real property, including the right of way, and any other properties, personal or otherwise, associated therewith, encompassed within any railroad line that has been abandoned as an

operating rail line by said railroad company if the commission first determines that preserving ownership of the said railroad corridor, in whole or in part, may be useful for the present or future needs of public transportation in this state.

(b) Such an acquisition as described in subsection (a) of this Code section shall be in the name of the state, custody in the commission, a "property" similar to the state owned properties described in subparagraphs (A), (B), and (C) of paragraph (8) of Code Section 50-16-31, and may be made by the commission without a request to acquire from another state agency, or without a request from another state agency, state authority, or other instrumentality of the state to provide or perform acquisition related services. Any property owned by the state as described in subsection (a) or in subparagraph (A) of paragraph (8) of Code Section 50-16-31 shall be exempt from any fees imposed by any county or municipality for the management, collection, or disposal of storm water, without regard to whether the property is subject to a lease.

(c) Notwithstanding any provisions and requirements of law to the contrary and particularly notwithstanding the requirements of Code Section 50-16-39, the commission, acting for and on behalf of and in the name of the state, is empowered and may deed, lease, rent, or license any such acquired property to any state authority or other instrumentality of the state for public transportation use.

(d) Except as otherwise provided for in this Code section, the powers set forth in subsections (a), (b), and (c) of this Code section are cumulative, and not in derogation, of other powers of the commission as set forth in the "State Properties Code."

(e) The powers set forth in subsections (a), (b), and (c) of this Code section are intended to be exercised independently of any power or action by any other state agency, state authority, or other unit or instrumentality of government, but said powers are not intended to repeal similar or related powers in any other state agency, state authority, or other unit or instrumentality of government.

History. — Code 1981, § 50-16-34.1, enacted by Ga. L. 1989, p. 1238, § 1; Ga. L. 2018, p. 944, § 4/HB 735.

RESEARCH REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d, Railroads, § 51 et seq.

C.J.S. — 73B C.J.S., Public Lands, §§ 251, 252.

50-16-35. State Property Officer; employment of personnel by the commission; merit system; rights under Employees' Retirement System of Georgia.

(a)(1) The Governor shall appoint a state property officer who shall serve as the executive director of the commission. The state property officer shall:

(A) Advise the Governor on opportunities to achieve the goal of state-wide real property management;

(B) Develop policies and procedures for state-wide real property management;

(C) Maintain a state-wide real property management system that has consolidated real property, building, and lease information for state entities;

(D) Develop and maintain a centralized repository of comprehensive space needs for all state entities including up-to-date space and resource utilization, anticipated needs, and recommended options;

(E) With the advice and counsel of state entities, board members, and industry groups, provide state-wide policy leadership, recommending legislative, policy, and other similar changes and coordinating master planning to guide and organize capital asset management;

(F) As needed, secure portfolio management expertise to accomplish the desired policy outcomes;

(G) Seek the cooperation of all state entities to increase the effectiveness of the portfolio management approach; and

(H) Provide assistance to all entities in achieving space and real property reporting requirements, in accordance with state law, in the acquisition and disposition of real property and leases, and in evaluating compliance and operational practices.

(2) The commission is authorized to employ such other employees, on either a full-time or part-time basis, as may be necessary to discharge the duties of the commission. The executive director shall supervise and conduct the activities of the commission under the commission's direction. Unless the commission or chairperson otherwise directs, the executive director may execute and attest on behalf of the commission any instrument in furtherance of an activity authorized by the commission. Unless the commission, chairperson, or secretary otherwise instructs, the executive director may report the minutes of the commission, keep and affix its seal, attest its instruments, and keep and certify its records.

(b) The commission is authorized to promulgate a merit system of employment under which the executive director and such other employees shall be selected and promoted on the basis of merit.

(c) The executive director and all other employees of the commission are authorized to be members of the Employees' Retirement System of Georgia. All rights, credits, and funds in the retirement system which are possessed by any person at the time of his employment with the commission are continued and preserved, it being the intention of the General Assembly that the person shall not lose any rights, credit, or funds to which he may be entitled prior to being employed by the commission.

History. — Code 1933, § 91-106A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-115a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1995, p. 1066, § 2; Ga. L. 2005, p. 100, § 12/SB 158.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following "credit" in the second sentence of subsection (c).

50-16-36. Maintenance of records by State Properties Commission; open to public inspection.

The commission shall cause all of its records including, but not limited to, minutes or transcripts, reports, studies, forms of instruments, bidding papers, notices, advertisements, invitation for bids, bids, executed instruments, and correspondence to be kept and maintained permanently. Such records shall be open to public inspection and may be inspected by any citizen of the state during usual business hours unless the same are being used by the commission or by its employees in the performance of its or their duties in reference thereto.

History. — Code 1933, § 91-112A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-116a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 1, 3, 7.

50-16-37. Adoption of rules and regulations by State Properties Commission; penalty for violation.

(a) The commission is authorized to adopt, after reasonable notice and hearing thereon, such rules and regulations as it may deem appropriate in exercising its powers and performing its duties under this article. The rules and regulations so adopted by the commission shall have the same dignity and standing as if their provisions were specifically stated in this article.

(b) Any person who violates any rule or regulation adopted by the commission or who procures, aids, or abets therein shall be guilty of a misdemeanor.

History. — Code 1933, § 91-107A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-117a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1.

50-16-38. All state entities to acquire real property through commission; exceptions; procedure for handling acquisition requests; funds for acquisitions; donations; conveyance of title.

(a) Except for:

(1) All acquisitions of real property by the Department of Transportation and the Board of Regents of the University System of Georgia;

(2) The Department of Natural Resources acquiring by gift parcels of real property, not exceeding three acres each, to be used for the construction and operation thereon of boat-launching ramps;

(3) Acquisitions of real property by the Technical College System of Georgia in connection with student live work projects funded through moneys generated as a result of the sale of such projects, donations, or student supply fees;

(4) Aquisitions of real property by the commission resulting from transfers of custody and control of real property to the commission by executive order of the Governor or by Act or resolution of the General Assembly;

(5) Aquisitions of real property by authorities or similar instrumentalities of the state unless otherwise required by law to have approval of the commission; and

(6) Acquisitions otherwise provided for by law or required by the nature of the transaction conveying real property to the state or any entity thereof,

all state entities shall acquire real property through the commission, and the title to all real property acquired shall be in the name of the state. The conveyance shall have written or printed in the upper right-hand corner of the initial page thereof the name of the state entity for which acquired who is the custodian thereof.

(b) The commission is authorized to establish, and amend when the commission deems it necessary, a procedure to facilitate the handling by the commission of requests for acquisition of real property.

(c) The state entity requesting acquisition of real property shall provide all of the funds necessary to acquire the real property.

(d) The commission is authorized to accept a donation or conveyance for nominal consideration of real property from a local governing authority with a reversionary interest therein, provided that the donation or conveyance shall only be accepted on the condition that such real property shall not revert while the property is being used for a public purpose as determined by the commission. This subsection shall not be construed as repealing any provisions of Code Section 12-6-9 or 35-2-41.

(e) Upon reversion of the state's interest in real property or a determination by the State Attorney General that the state no longer has an interest in real property, the commission is authorized to execute an appropriate instrument of conveyance to clear the record title. The commission shall not convey any interest in real property out of this state and any instrument purporting to make an out of state conveyance shall be null and void.

History. — Code 1933, § 91-112a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1988, p. 1252, § 6; Ga. L. 2005, p. 100, § 13/SB 158; Ga. L. 2008, p. 335, § 10/SB 435; Ga. L. 2010, p. 836, § 1/SB 455; Ga. L. 2012, p. 775, § 50/HB 942.

Cross references. — Authority of department to convey property for purpose of constructing and operating boat-launching ramps thereon, § 50-16-45.

OPINIONS OF THE ATTORNEY GENERAL

Compliance with Environmental Policy Act. — State Properties Commission may require state agencies to demonstrate compliance with the Environmental Policy Act, O.C.G.A., T. 12, C. 16, before acquiring real property for activities which will be subject to the Act. 1992 Op. Att'y Gen. No. 92-5.

JUDICIAL DECISIONS

Cited in Busbee v. Continental Ins. Co., 526 F. Supp. 1243 (N.D. Ga. 1981).

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, § 251.

50-16-39. Public competitive bidding procedure for sales and leases; acceptance or rejection of bids by commission, General Assembly, or Governor; execution of leases and deeds.

(a) Subject to authorization by the General Assembly as provided in Code Section 50-16-40, any conveyance, other than a grant of easement,

lease, or exchange of real property, shall be initiated and carried out in accordance with this Code section.

(b) A conveyance to a private entity shall be made only upon a public competitive process in accordance with rules established by the commission. The commission shall be authorized to accept sealed bids and best and final offers for any conveyance of property.

(c) When a conveyance is based upon the acceptance of sealed bids, the bids shall be submitted to the executive director of the commission, or his or her designee, and each bid shall be accompanied by a bid bond or such other security as may be prescribed by the commission. All bids shall be opened in public on the date and at the time and place specified in the invitation for bids. The commission shall formally determine and announce which bid and bidder it considers to be most advantageous to the state. The commission shall have the right to reject any or all bids and bidders and the right to waive formalities in bidding.

(d) The commission shall give no less than 30 days' prior written notice of its intention to convey property which has been declared surplus. Notice shall be made by registered or certified mail or statutory overnight delivery and electronic transmission. The notice shall include a description of the property including the size, location, and prior use. The notice shall be mailed and electronically transmitted to the Office of Legislative Counsel, the Speaker of the House of Representatives, the President of the Senate, and the chairpersons of the standing committees of the Senate and the House of Representatives which regularly consider proposed legislation related to state property, and all members of the General Assembly whose legislative district contains all or a portion of the property that is the subject of a proposed conveyance. If any member of the General Assembly whose legislative district contains all or a portion of the property that is a subject of a proposed conveyance objects to such conveyance in writing to the commission not later than 30 days following the mailing of the notice required by this subsection, then the commission shall no longer be authorized to convey such property without the approval of the General Assembly as provided in Code Section 50-16-40.

(e) When the commission formally determines and announces which bid and bidder or offer and offeror it considers to be most advantageous to the state, the commission shall then prepare the instrument of lease or contract of sale and deed. The chairperson of the commission, in his or her capacity as Governor of the state or, with the permission of the Governor, the executive director, shall execute and deliver to the purchaser the contract of sale for and on behalf of and in the name of the state, and thereupon both parties to the agreement shall be bound thereby. The Governor's signature or the signature of the executive director shall be attested by the secretary of the commission in his or

her capacity as Secretary of State. The Secretary of State or the executive director shall also affix the great seal of the state to the contract of sale. Whenever, in the judgment of the chairperson of the commission, all of the terms and conditions of the contract of sale, or all of the precedent terms and conditions of the contract of sale, or all of the precedent terms and conditions of the lease have been fulfilled or complied with, the chairperson of the commission in his or her capacity as Governor of the state shall execute and deliver to the purchaser or lessee the deed or lease for and on behalf of and in the name of the state. The Governor's or executive director's signature shall be attested by the secretary of the commission in his or her capacity as Secretary of State. The Secretary of State or executive director shall also affix the great seal of the state to the deed or lease.

History. — Code 1933, § 91-109A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 663, §§ 4, 5; Code 1933, § 91-106a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2014, p. 467, § 3/HB 495; Ga. L. 2015, p. 828, § 1/HB 104.

Cross references. — Public competitive bidding for purchases by state, § 50-5-67.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, §§ 118, 126.

C.J.S. — 73B C.J.S., Public Lands, §§ 249 et seq., 287 et seq. 81A C.J.S., States, § 263 et seq.

50-16-40. Consideration of conveyances by the General Assembly.

(a) Approval by the General Assembly of conveyances generally.

(1) The commission shall prepare each conveyance of property with a value of $500,000.00 or more for consideration by the General Assembly and the Governor as provided in this Code section.

(2) The commission shall not submit to the General Assembly for its consideration any conveyance which provides that either:

(A) The conveyee will not obtain possession of the leased premises within a period of five years from the commencement date of the regular session of the General Assembly to which the conveyance is submitted for consideration; or

(B) The term of the conveyance will not commence within a period of five years from the commencement date of the regular session of the General Assembly to which the conveyance is submitted for consideration.

(b) **Conveyances submitted to the General Assembly during regular session.**

(1) A resolution containing a general description of the proposed conveyance shall be introduced in the General Assembly in either the Senate, the House of Representatives, or both, if then in regular session, or if not in regular session at such time, at the next regular session of the General Assembly; provided, however, that conveyances may be considered outside the regular session of the General Assembly in a manner provided in subsection (c) of this Code section. Such resolution shall be prepared with the assistance of the Office of Legislative Counsel and shall not be submitted until approved by that office. The resolution shall authorize the commission to convey the property by appropriate instrument for fair market value or other consideration and provisions as the commission shall in its discretion determine to be in the best interest of the State of Georgia. The resolution, in order to become effective, shall receive the same number of readings and in both the Senate and the House of Representatives go through the same processes and procedures as a bill:

(A) If either the Senate or the House of Representatives fails to adopt the resolution during the regular session by a majority vote in each house, the conveyance shall be considered rejected by the General Assembly;

(B) If the resolution is adopted during the regular session by a majority vote of both the Senate and the House of Representatives but is not approved by the Governor, the conveyance shall be considered rejected by the Governor; and

(C) If the resolution is adopted during the regular session by a majority vote of both the Senate and the House of Representatives and is approved by the Governor, whenever in the judgment of the chairperson of the commission all of the precedent terms and conditions of the resolution, if there are any, have been fulfilled or complied with, the chairperson of the commission, in his or her capacity as Governor of the state, or the executive director shall execute and deliver to the conveyee the agreement for and on behalf of and in the name of the State of Georgia. The Governor's or executive director's signature shall be attested by the secretary of the commission in his or her capacity as Secretary of State. The Secretary of State or executive director shall also affix the great seal of the state to the amendment.

(2) A conveyance resolution submitted to the General Assembly during the regular legislative session pursuant to this subsection shall not be amended or considered for amendment after more than

20 days of its original filing in either the Senate or the House of Representatives. In addition, such bill shall not have any amendment at any time that pertains to matters unrelated to a state property conveyance.

(c) **Conveyances initiated prior to regular session of the General Assembly.**

(1) Not more than twice outside of the regular session of the General Assembly the commission may prepare a resolution containing a description of proposed conveyances which shall be submitted to the President of the Senate and the Speaker of the House of Representatives and to the chairpersons of the standing committees of the Senate and of the House of Representatives which regularly consider proposed legislation related to state property. The resolution shall be prepared with the assistance of the Office of Legislative Counsel and shall not be submitted until approved by that office. A copy of the proposed resolution shall also be provided to each member whose legislative district contains all or a portion of the property that is the subject of a proposed conveyance.

(2) The standing committees that regularly consider matters related to state property in the Senate and the House of Representatives may meet not more than twice a year at a time outside of the regular legislative session of the General Assembly, on or about July and October of each year. At such meeting the committees shall only consider property conveyance resolutions submitted by the commission and shall vote to approve or disapprove of such resolution. If a committee in the Senate or the House of Representatives approves a resolution by a majority vote, then a committee report shall be prepared reflecting the committee's approval of the resolution. If both the Senate and the House of Representatives committees approve a resolution, then the resolution shall be filed at the next regular session of the General Assembly with a copy of both committee reports attached. The resolution, in order to become effective, shall receive the same number of readings in both the Senate and the House of Representatives and shall then be voted on as any other bill; provided, however, that such bills shall not be subject to assignment to any committee or subcommittee of either the Senate or the House of Representatives and shall not be subject to any amendment.

History. — Code 1933, § 91-108A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-107a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 2014, p. 467, § 4/HB 495.

RESEARCH REFERENCES

Am. Jur. 2d. — 49 Am. Jur. 2d, Landlord and Tenant, §§ 14, 62.

50-16-41. Rental agreements without competitive bidding authorized; limitations; commission charged with managing administrative space of all state entities; standards governing the utilization and reassignment of administrative space; rules and regulations.

(a) Notwithstanding any provisions and requirements of law to the contrary, the commission is authorized to negotiate, prepare, and enter into in its own name rental agreements whereby a part of the property is rented, without public competitive bidding, to a person for a length of time not to exceed one year and for adequate monetary consideration (in no instance to be less than a rate of $250.00 per year), which shall be determined by the commission, and pursuant to such terms and conditions as the commission shall determine to be in the best interest of the state. The same property or any part thereof shall not be the subject matter of more than one such rental agreement to the same person unless the commission shall determine that there are extenuating circumstances present which would make additional one-year rental agreements beneficial to the state; provided, however, the same property or any part thereof shall not after April 24, 1975, be the subject matter of more than a total of three such one-year rental agreements to the same person.

(b) The commission is given the authority and charged with the duty of managing the utilization of administrative space by all state entities, except that the Board of Regents of the University System of Georgia may manage its own space but only for leases that are for a term of one year or less, within the State of Georgia, and required for its core mission. The commission shall manage the utilization of administrative space for all multiyear lease agreements entered into on behalf of any state entity, including the Board of Regents of the University System of Georgia. The commission shall manage in a manner that is the most cost efficient and operationally effective and which provides decentralization of state government. Such management shall include the authority to assign and reassign administrative space to state entities based on the needs of the entities as determined by standards for administrative space utilization promulgated by the commission pursuant to subsection (g) of this Code section and shall include the obligation to advise the Office of Planning and Budget and state entities of cost-effective, decentralized alternatives.

(c) The management of the utilization of administrative space by the commission shall include entering into any necessary agreements to rent or lease administrative space, whether existing or to be constructed, and shall include administrative space rented or leased by a state entity from the Georgia Building Authority or from any other public or private person, firm, or corporation. When it becomes neces-

sary to rent or lease administrative space, the space shall be rented or leased by the commission for a term not to exceed 20 years. The space shall be assigned to the state entity or entities requiring the space. A multiyear lease resulting from a sale and lease back shall be treated as a conveyance of real property by the state and shall be reviewed for approval or disapproval by the General Assembly and Governor in the same manner as a conveyance of state properties provided for in Code Section 50-16-39.

(d) If the commission reassigns all or any portion of any administrative space which is leased or rented by one state entity to another state entity, the state entity to which the administrative space is reassigned may pay to the commission rental charges, as determined by the commission, for the utilization of the space; and the commission may, in turn, use the rental charges so paid for the purpose of paying or partially paying, as the case may be, the rent or lease payments due the lessor of the administrative space in accordance with the terms of the lease or rent contract existing at the time of the reassignment of the administrative space. Any such payments to a lessor by the commission shall be on behalf of the state entity which is the lessee of the administrative space reassigned as provided in this Code section.

(e) The management of the utilization of administrative space given to the commission by this Code section shall not be construed to impair the obligation of any contract executed before July 1, 1976, between any state entity and the Georgia Building Authority or between any state entity and any other public or private person, firm, or corporation; and the powers given to the commission by this Code section shall not be implemented or carried out in such a manner as to impair the obligation of any such contract.

(f) The commission is authorized and directed to develop and promulgate standards governing the utilization of administrative space by all state entities which require emphasis on cost effectiveness and decentralization. The standards shall be uniformly applied to all state entities except as otherwise provided by subsection (g) of this Code section, but the standards shall recognize and provide for different types of administrative space required by the various state entities and the different types of administrative space that may be required by a single state entity.

(g) The commission shall be authorized to reassign administrative space to the various state entities in order to bring the utilization of administrative space into conformity with the standards promulgated under subsection (f) of this Code section. Any additional administrative space required by a state entity shall be approved by and obtained through the commission. The commission shall be authorized to grant exceptions to the standards governing the utilization of administrative

space when the reassignment of such space would involve unnecessary expenses or the disruption of services being provided by a state entity. The commission shall adopt and promulgate rules and regulations governing the granting of such exceptions, and the rules and regulations shall be uniformly applied by the commission to all state entities requesting an exception to the standards.

(h) For purposes of cost effectiveness and decentralization, the following factors, among other factors, shall be considered:

(1) Dual location of programs within a city should be considered in order to take advantage of possible economies of scale and as a matter of convenience to the general public; or

(2) When all factors are reasonably equivalent, preferences will be given to location of state government programs and facilities in those counties which are determined by the Department of Community Affairs to be the most economically depressed, meaning those 71 tier 1 counties of the state designated as least developed under paragraph (2) of subsection (b) of Code Section 48-7-40.

(i) The commission is authorized and directed to promulgate rules and regulations governing budgetary requirements for administrative space utilized by state entities in cooperation with the Office of Planning and Budget whereby the entities shall be accountable in the budgetary process for administrative space assigned to and utilized by them. The budgetary requirements may provide for the payment of rent to the commission by state entities or may otherwise provide procedures for the assessment of rent charges for administrative space utilized by state entities or any combination of the foregoing.

(j) The commission shall provide a multiyear leasing report annually, no later than September 1 of each year, to the Governor, President of the Senate, Speaker of the House of Representatives, chairpersons of the Senate Appropriations Committee and the House Committee on Appropriations, and chairpersons of the Senate State Institutions and Property Committee and the House Committee on State Properties. The report shall provide the total sum of all leasing obligations to be paid by the state for the upcoming fiscal year. Such report shall include an itemization and total of all revenues collected from the previous fiscal year and provide an itemized budget allocation for the upcoming fiscal year. The report shall also provide a list of all existing multiyear lease agreements and the identity of the contracting parties for each.

(k) In addition to the standards and rules and regulations specifically provided for by this Code section, the commission is authorized to adopt such other rules and regulations as may be required to carry out this Code section efficiently and effectively.

(l)(1) The Georgia State Financing and Investment Commission is authorized to establish fiscal policies regarding multiyear lease and

rental agreements and, each fiscal year, may establish a total multiyear contract value authority. During the fiscal year, the multiyear contract value authority may be revised as determined necessary by the Georgia State Financing and Investment Commission. The total multiyear contract value authority may be based upon the Governor's revenue estimate for subsequent fiscal years and other information as determined by the Georgia State Financing and Investment Commission.

(2) No multiyear lease or rental agreement shall be entered into under the provisions of this Code section until the Georgia State Financing and Investment Commission has established the fiscal policies and multiyear contract value authority for the current and future fiscal years. Any multiyear lease or rental agreement entered into that is not in compliance with such fiscal policies and multiyear contract value authority shall be void and of no effect.

(3) At the beginning of each fiscal year, a budget unit's appropriations shall be encumbered for the estimated payments for any multiyear lease and rental agreements in that fiscal year. The commission shall have the right to terminate, without further obligation, any multiyear lease or rental agreement if the commission determines that adequate funds will not be available for the payment obligations of the commission under the agreement. The commission's determination regarding the availability of funds for its obligations shall be conclusive and binding on all parties to the multiyear lease or rental agreement.

History. — Code 1933, § 91-108a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 2005, p. 100, § 14/SB 158; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2012, p. 989, § 1/SB 37; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2013, p. 685, § 3/SB 177; Ga. L. 2015, p. 828, § 2/HB 104.

Editor's notes. — Ga. L. 2012, p. 989, § 1/SB 37, provided that the 2012 amendment would become effective on January 1, 2013, upon ratification of a resolution at the November, 2012, state-wide general election providing for the authorization of agencies to enter into lease and rental contracts exceeding one year. Ga. L. 2012, p. 1363/SR 84 was ratified at the general election held on November 6, 2012.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

JUDICIAL DECISIONS

Cited in Murphy v. State, 233 Ga. 681, 212 S.E.2d 839 (1975).

RESEARCH REFERENCES

ALR. — Validity of lease of standing timber on state land by entryman upon public land before patent, 83 A.L.R. 1347.

50-16-42. Revocable license agreements without competitive bidding authorized; terms and conditions; telephone lines construction provisions unaffected; exception.

(a) Notwithstanding any provisions and requirements of law to the contrary, the commission shall have the exclusive power to negotiate, prepare, and grant in its own name, without public competitive bidding, a revocable license to any person to enter upon, extend from, cross through, over, or under, or otherwise to encroach upon any of the property under the custody and control of the commission or under the custody and control of any state agency which is subject to the requirements of Code Section 50-16-38.

(b) Any grant of revocable license by the commission to any person shall be in writing and shall contain such terms and conditions as the commission shall determine to be in the best interest of the state, provided that:

(1) Each grant of revocable license, if not revoked prior to, shall stand revoked, canceled, and terminated as of the third anniversary of the date of the revocable license agreement;

(2) Each grant of revocable license shall provide that, regardless of any and all improvements and investments made, consideration paid, or expenses and harm incurred or encountered by the licensee, the same shall not confer upon the licensee any right, title, interest, or estate in the licensed premises nor confer upon the licensee a license coupled with an interest or an easement, such grant of a revocable license conferring upon the licensee and only the licensee a mere personal privilege revocable by the commission, with or without cause, at any time during the life of the revocable license;

(3) Each grant of revocable license shall be made for an adequate monetary consideration of not less than $650.00, the adequacy of which shall be determined by the commission in considering the factors involved in each grant, particularly for whose principal benefit the revocable license is being granted; however, if the commission determines that the revocable license directly benefits the state, then any monetary consideration set by the commission shall be deemed adequate; and

(4) Any grant of revocable license shall be subject to approval by any appropriate state regulatory agency that the proposed use of the

licensed property meets all applicable safety and regulatory standards and requirements.

(c) This Code section shall not be construed or interpreted as amending, conflicting with, or superseding any or all of Code Section 46-5-1, relating to the construction of telephone lines.

(d) This Code section shall not apply to the issuance or renewal of revocable licenses or permits for the construction and maintenance of boat docks on High Falls Lake. Such revocable licenses or permits shall be issued by the Department of Natural Resources pursuant to Code Section 12-3-34.

History. — Code 1933, § 91-109A.1, enacted by Ga. L. 1971, p. 578, § 1; Code 1933, § 91-109.1A, as redesignated by Ga. L. 1972, p. 429, § 1; Code 1933, § 91-109a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1990, p. 1489, § 1; Ga. L. 1993, p. 396, § 2; Ga. L. 2012, p. 847, § 12/HB 1115; Ga. L. 2015, p. 828, § 3/HB 104.

Editor's notes. — Ga. L. 1993, p. 396, § 3, effective July 1, 1993, not codified by the General Assembly, provided: "Under the provisions of law in effect on January 1, 1993, and contained in Code Section 50-16-42, any owner or lessee of property abutting the high-water mark of a state owned lake at a state park who wishes to build a boat dock on such lake must obtain a revocable license from the state at a cost of not less than $650.00. It is the purpose of this Act to provide a different method of allowing the construction of boat docks on High Falls Lake at a more reasonable cost to adjoining property owners and to provide a source of funds to operate the High Falls Lake docks permitting program."

JUDICIAL DECISIONS

Cited in Murphy v. State, 233 Ga. 681, 212 S.E.2d 839 (1975).

50-16-43. Leasing of state owned lands for exploration and extraction of mineral resources.

(a) The commission for and on behalf of and in the name of the state is authorized to enter into, without the necessity of prior public competitive bidding, a written contract with any person, whereby such person is permitted to explore any state owned lands for indications of mineral resources.

(b) The commission for and on behalf of and in the name of the state is further authorized to lease to any person the mineral resources located on state owned lands and to execute, grant, and convey to such person a lease upon such terms and conditions and permitting such operations as the commission shall determine to be in the best interest of the state including, but not limited to:

(1) The exclusive right to drill, dredge, and mine on the leased premises for mineral resources and to produce and appropriate any and all of the same therefrom;

(2) The right to use, free of charge, mineral resources and water from the leased premises in conducting operations thereon and in treating to make marketable the products therefrom;

(3) The right to construct and use on the leased premises telephone and telegraph facilities, pipelines, and other facilities necessary for the transportation and storage of mineral resources produced therefrom;

(4) The right to construct and use such canals and roads as are necessary for lessee's operations under the lease; and

(5) The right to remove at any time from the leased premises any property placed thereon by lessee.

(c) When any person shall desire to lease any state owned lands pursuant to this Code section, application therefor shall be made to the commission in writing. The application shall include an accurate legal description and a locational, dimensional, and directional sketch acceptable to the commission or a plat of survey of the land sought to be leased and such other information as the commission may require and shall further include a certified check for $50.00 which shall be deposited with the commission as evidence of the good faith of the applicant, which sum shall only be returned to an applicant who bids for but fails to secure a lease.

(d) When the commission shall desire to lease state owned lands, or upon receipt of an application by any person desiring to lease any state owned lands, the commission shall make an inspection of the land sought to be leased and such geophysical and geological surveys thereof as the commission may deem necessary. The commission, after receiving a report as to the nature, character, surroundings, and mineral resource value of the land, may offer for lease, through public competitive bidding, all or any portion of the land described in the application. The commission shall cause to be published once a week for two consecutive weeks in the legal organ and in one or more newspapers of general circulation in the county or counties wherein is situated the land to be bid upon and in the legal organ of Fulton County an advertisement of an invitation for bids setting forth therein an accurate legal description of the land proposed to be leased; the date, time, and place when and where bids therefor will be received; and such other information as the commission may deem necessary. Prior to the advertising, the commission shall prepare a proposed form of lease and appropriate instructions which shall be furnished to prospective bidders under such conditions as the commission may prescribe. Sealed bids shall be submitted to the secretary of the commission and each bid shall be accompanied by a bid bond or such other security as may be prescribed by the commission.

(e) All bids shall be opened in public on the date and at the time and place specified in the advertisement of the invitation for bids. The commission shall formally determine and announce which bid and bidder it considers to be most advantageous to the state. The commission shall have the right to reject any or all bids and bidders and the right to waive formalities in bidding.

(f) The commission, acting for and on behalf of and in the name of the state, is authorized to execute, grant, and convey a lease pursuant to this Code section on any state owned land to any state agency without the necessity of complying with the public competitive bid procedure stated in this Code section; provided, however, the mineral resources so mined, dredged, and removed from the state owned land must be utilized on projects of the state agency.

(g) Each lease granted under this Code section after competitive bidding shall provide for a primary term of not more than ten years and shall provide for a royalty on production therefrom of not less than one-eighth part of any oil produced and saved, or the value of same, and one-eighth part of the gas, or the value of same, that may be produced from and is sold or used off the premises. The lease shall provide for delay rentals in the sum of at least 10¢ per net mineral acre payable on or before the first anniversary date of the lease, 25¢ per net mineral acre payable on or before the second anniversary date of the lease, 50¢ per net mineral acre payable on or before the third anniversary date of the lease, and at least $1.00 per net mineral acre payable on or before each subsequent anniversary date during the primary term of the lease. The lease may contain such other provisions, including provisions for offset drilling, protection from drainage, pooling, and lease maintenance by resumption of interrupted delay rental payments, operations for drilling, production, and force majeure, as may be desired or determined appropriate by the commission.

(h) An electric log of each development well shall be filed with the commission and with the Department of Natural Resources within 30 days after the well has been completed or abandoned. An electric log of each exploratory well shall be filed with the commission and with the director within six months after the completion or abandonment of the well; but, if the operator of the well requests that the log be treated as confidential, the request for confidentiality shall be honored strictly for an additional period of six months; provided, however, that nothing in this article shall be construed so as to repeal any requirement of Part 2 of Article 2 of Chapter 4 of Title 12.

(i) The development and operation of oil and gas wells on state owned lands shall be done, so far as practicable, in such manner as to prevent the pollution of water; destruction of fish, oysters, and marine life; and the obstruction of navigation.

(j) Notwithstanding any other provisions of this Code section to the contrary, when it is determined to be in the best interest of the state, the commission, acting for and on behalf of and in the name of the state, is further authorized and empowered to grant and convey to any person a lease which authorizes the person to dredge a portion of the bottom or bank of a state owned waterway or waters and to appropriate any and all products from such dredging, subject to the following conditions:

(1) A written request for a lease and a locational, dimensional, and directional sketch or a plat of survey of the proposed lease premises, prepared at the sole cost and expense of the person requesting the lease, in form and content acceptable to and approved by the commission, and showing and describing thereon the lease premises of the lease, must be received by the commission detailing therein the reason and all the particulars for the request and outlining the purpose and use to be made of any and all products derived from such dredging. If a sketch is submitted to and is approved and accepted by the commission, paragraph (3) of subsection (b) of Code Section 50-16-122, relating to the requirement of the filing with the Secretary of State of a plat of survey with a conveyance disposing of real property, shall be relaxed; and the Secretary of State in such a transaction shall accept in lieu of the required plat of survey the sketch which was approved and accepted by the commission;

(2) The executive director of the commission shall forward for comment and advice to the Department of Natural Resources and to the state agency, department, authority, commission (excluding the commission), official, or board (if other than the Department of Natural Resources) that has current custody and control of the proposed lease premises, the written request and sketch or plat of survey received by the commission;

(3) The commission shall investigate, require compliance with all conditions laid down by the commission, and determine the form and all of the terms, conditions, provisions, and considerations of, incorporations in, and attachments to each such lease negotiated, prepared, executed, and issued (granted and conveyed) by the commission; provided, however, that the term of any such lease shall not exceed a period of time of five years and provided, further, that any such lease shall contain a provision requiring that any activity undertaken pursuant to the lease be in compliance with the applicable provisions of all state environmental or natural resources laws administered or enforced by the Department of Natural Resources or its successor and with all applicable policies of the Georgia Coastal Management Board or its successor;

(4) Both the Department of Natural Resources and any state agency, department, authority, commission (excluding the commis-

sion), official, or board that has current custody and control of the proposed lease premises must execute the written grant and conveyance of lease, each indicating by the execution that it or he has no objection to the granting and conveying of the lease; and

(5) The form of execution by the commission which is acting for and on behalf of and in the name of the state of each such lease shall be as follows:

STATE OF GEORGIA

Acting By And Through The
State Properties Commission

By: _____ (Seal)

Name: _____

Title: Governor as chairperson
of the State
Properties Commission

Attest: _____ (Seal)

Name: _____

Title: Secretary of State as
secretary of the
State Properties
Commission

(Commission Seal)

(State Seal)

Signed, sealed, and
delivered (as to
both the Governor
as chairperson and the
Secretary of State
as secretary)
in the presence of:

_____
Witness

_____
Notary public

My commission expires _____.
(Notary public seal impressed here)

(k) Notwithstanding any other provisions of this Code section to the contrary, when it is determined by the commission to be in the best

interests of the State of Georgia, the commission, acting for and on behalf of and in the name of the State of Georgia, is authorized to grant and convey to any eligible person, as defined herein, an oil and gas lease which authorizes such person to extract and remove from state owned lands all oil, gas, and affiliated hydrocarbons and gases without the necessity of complying with the public competitive bid procedure set forth in this Code section, subject to and upon the following conditions:

(1) "Eligible person" shall be defined as any person who is the owner of the oil and gas interests in lands adjoining the state owned land sought to be leased by said person such that at least 75 percent of the boundary of the state owned land sought to be leased is bordered by said adjoining lands. "Owner of the oil and gas interests in lands" shall mean the person or persons who have the right to drill for oil and gas on those lands and appropriate the production either for himself or themselves and another or others. "Oil and gas" shall include affiliated hydrocarbons and gases;

(2) Upon application by any interested person for an oil and gas lease pursuant to this subsection, the commission shall determine whether or not the applicant is an eligible person. If the commission determines that the applicant is an eligible person, then the commission is authorized to grant and convey to the applicant an oil and gas lease covering the state owned land sought to be leased and described in the application without the necessity of complying with the public competitive bid procedure set forth in this Code section. Nothing in this subsection shall prevent the commission from complying with the public competitive bid procedure set forth in this Code section when leasing the state owned land described in the application or any other state owned land if it finds such procedure to be in the best interests of the State of Georgia;

(3) The application for the oil and gas lease shall be in writing and shall contain a request for an oil and gas lease; a description of the state owned land sought to be leased; a locational, dimensional, and directional sketch in a form acceptable to the commission or a plat of survey of the state owned land sought to be leased; a true statement that the applicant is the owner of the oil and gas interests in lands adjoining the state owned land sought to be leased such that at least 75 percent of the boundary of the state owned land sought to be leased is bordered by said adjoining lands; copies of all oil and gas leases or deeds to the lands adjoining the state owned lands sought to be leased and by which the applicant claims the ownership of the oil and gas interests; and a list of the names and addresses of all owners of the oil and gas interests in the lands adjoining the state owned land sought to be leased describing the nature of their interest. The entire application must be in a form acceptable to the commission;

(4) Any lease granted to any person pursuant to this subsection shall be subject to subsection (g) of this Code section;

(5) Prior to the execution of any oil and gas lease pursuant to this subsection, the commission shall enter into an agreement with the department or agency which has legal title to or custody of the state owned lands sought to be leased. The agreement shall contain the department's or agency's certification that the state owned land is available for leasing and such other terms and provisions which the parties to the agreement deem necessary to protect the state owned land; and

(6) The form of execution by the commission, who is acting for and on behalf of and in the name of the State of Georgia, of each oil and gas lease shall be as set forth in paragraph (5) of subsection (j) of this Code section.

History. — Code 1933, § 91-110a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1977, p. 762, §§ 1, 2; Ga. L. 1979, p. 1028, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 1982, p. 857, §§ 1-6; Ga. L. 1985, p. 149, § 50; Ga. L. 2005, p. 100, § 16A/SB 158; Ga. L. 2006, p. 72, § 50/SB 465.

Cross references. — Projects involving deepening, widening, and improving of river channels for navigational and other purposes, T. 52, C. 9.

JUDICIAL DECISIONS

Cited in Georgia-Pacific Corp. v. Sayler Marine Corp., 246 Ga. 133, 269 S.E.2d 24 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, § 31 et seq. 63C Am. Jur. 2d, Public Lands, § 126 et seq.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 28, 29, 30, 33, 35. 73B C.J.S., Public Lands, § 287 et seq. 81A C.J.S., States, § 264.

ALR. — "Discovery," under mining laws, of radioactive minerals such as uranium, 66 A.L.R.2d 560.

50-16-44. Power of eminent domain; provisions cumulative and not to supersede other powers; form of proceedings; acquisition of public property or interest.

(a) The commission, acting for and on behalf of and in the name of the state, is empowered to take or damage by condemnation and the power of eminent domain for the public purposes of the state any private property upon first paying or tendering just and adequate compensation to the owner of such private property. The power of eminent domain shall be cumulative of any other power of eminent domain provided by law. Condemnation proceedings by the commission, acting for and on behalf of and in the name of the state, shall take the

form provided in Chapter 1 of Title 22 and Articles 1 and 2 of Chapter 2 of Title 22 or the form provided in Article 3 of Chapter 2 of Title 22. The power of condemnation and eminent domain to take or damage private property authorized by this Code section shall neither supersede nor abridge the powers of condemnation and eminent domain to take or damage private property given severally to the Department of Transportation and the Board of Regents of the University System of Georgia.

(b) The commission, acting for and on behalf of and in the name of the state, is also authorized to acquire public property or an interest therein by condemnation and the power of eminent domain when such acquisition is approved by the State Commission on the Condemnation of Public Property as provided in Code Section 50-16-183. Condemnation proceedings by the commission shall take the form provided in Article 3 of Chapter 2 of Title 22. As used in this subsection, the term "public property" has the same meaning provided for in Code Section 50-16-180.

History. — Code 1933, § 91-105A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-111a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1986, p. 1187, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, § 21 et seq.

C.J.S. — 29A C.J.S., Eminent Domain, § 24 et seq.

50-16-45. Department of Natural Resources authorized to convey certain property without commission approval.

The Department of Natural Resources is authorized to convey to municipalities, counties, or combinations thereof, in the name of the state, by appropriate instrument, all of the state's interest in any real property donated to the department at any time, in parcels not exceeding three acres, to be used for the construction and operation thereon of boat-launching ramps without the prior approval of the commission. The conveyance may be made without prior appraisal, without a plat, and without public bidding procedures and shall be made for nominal consideration or such consideration as may be agreed upon between the department and the other party or parties to the conveyance.

History. — Ga. L. 1979, p. 816, § 3; Ga. L. 1980, p. 587, § 1.

50-16-46. State agencies directed to provide State Properties Commission with technical assistance.

The Department of Natural Resources, the Public Service Commission, and all other state agencies are requested and directed to provide such technical assistance and services as shall be requested and needed by the commission in the execution and performance of its duties under this article.

History. — Code 1933, § 91-113a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1.

50-16-47. Article to be construed liberally.

This article shall be liberally construed so as to effectuate the purposes of the article.

History. — Code 1933, § 91-119a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1.

ARTICLE 3

GOVERNOR'S POWERS GENERALLY

50-16-60. Governor to issue land grants.

The Governor shall issue all grants to lands under the laws of this state; such shall not be conclusive but subject to the investigation of the courts. Whenever such grants are declared by the proper court to have been issued wrongly, it shall be the Governor's duty to issue another grant in accordance with such decision, if the decision of the court so requires.

History. — Orig. Code 1863, § 70; Code 1868, § 64; Code 1873, § 61; Code 1882, § 61; Civil Code 1895, § 122; Civil Code 1910, § 145; Code 1933, § 91-401.

Cross references. — Duties of Secretary of State with regard to land grants issued by Governor, § 45-13-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 118.

C.J.S. — 73B C.J.S., Public Lands, § 249 et seq. 81A C.J.S., States, § 263.

50-16-61. General supervision and office assignment.

The Governor shall have general supervision over all property of the state with power to make all necessary regulations for the protection

thereof, when not otherwise provided for. He shall assign rooms in the capitol to all officers who are required to hold their offices there and, in the absence of any legislative provision, designate the purpose to which other rooms shall be applied.

History. — Orig. Code 1863, § 71; Code 1868, § 65; Code 1873, § 62; Code 1882, § 62; Civil Code 1895, § 123; Civil Code 1910, § 146; Code 1933, § 91-402.

Cross references. — Authority of Legislative Services Committee with regard to assignment of space in state capitol, § 28-4-2.

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Protection of state property. — Governor has no right to contract away the state's property at the Governor's pleasure or discretion. It is the Governor's duty to protect the property of the state, but the Governor is not given any authority to sell the state's property, or to contract with reference thereto. Western Union Tel. Co. v. Western & A.R.R., 142 Ga. 532, 83 S.E. 135 (1914).

Allocating use of state-owned water bottoms. — State owns fee simple title to the foreshore on navigable tidal waters and, as a result, owns the river's water bottoms up to the high water mark and may regulate the use of these tidelands for the public good. Dorroh v. McCarthy, 265 Ga. 750, 462 S.E.2d 708 (1995).

Member of highway board could not be forcibly removed from office under authority of this section; a public office is a franchise, and not a mere tangible combination of rooms, tables, books, and papers, and loss of the physical possession of such tangible property does not necessarily dispossess the officer of the intangible franchise entrusted by law to the individual as a public officer. Patten v. Miller, 190 Ga. 105, 8 S.E.2d 776 (1940).

Cited in Womack v. U.S. Fid. & Guar. Co., 85 Ga. App. 564, 69 S.E.2d 812 (1952); Rolleston v. State, 245 Ga. 576, 266 S.E.2d 189 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Governor's limited authority. — Authority given in this section is broad enough to give the Governor power to insure property for the protection of the state, but this section is not broad enough to give the right or authority to insure property for the protection of others. Since the state is not liable to suit without the state's consent, and is not liable for the torts of the state's officers, agents, and employees, unless made so by law, there does not appear to be any legal duty resting on the state to insure the state's operations for protection of others. 1945-47 Op. Att'y Gen. p. 550.

Protection of property is a matter within duties of Governor. 1945-47 Op. Att'y Gen. p. 542.

Allocating use of state-owned waterbottoms. — In managing tidelands, the Department of Natural Resources acts under the authority of O.C.G.A. § 50-16-61 and the Department's employment of the extension of property lines method of allocating use of state-owned waterbottoms may be generally acceptable, but rigid adherence to such a policy when the policy denies deep water access to a riparian or littoral owner, may cause inequitable results. 1993 Op. Att'y Gen. No. 93-25.

Sale of property or granting of permanent easement. — This section is not construed to authorize the general sale of property, such sale of state property must be specifically authorized by the General Assembly; therefore, if the Governor does not have the authority to sell any real estate belonging to the state, the Governor would also be without power to encumber such real estate by the grant of a

permanent easement across the real estate. 1948-49 Op. Att'y Gen. p. 230.

Power to grant easement to utility company. — Governor is empowered to grant an easement to the Georgia Power Company for the purpose of erecting poles to be used in transmitting electric current to the state prison, if the Governor so desires. 1948-49 Op. Att'y Gen. p. 349.

Department of Human Resources does not have authority to grant easement over state property for sewer installation by county since any such disposition of state property is the exclusive province of the General Assembly. 1962 Op. Att'y Gen. 404.

Procedure for transfers of property between departments. — Governing board of the department wishing to relinquish control over the property should forward a resolution to the Governor requesting the transfer and stating that the property can no longer be used advantageously by that department; the Governor should also be furnished with a resolution from the proposed department-transferee, stating that it is willing to accept and advantageously use the property in accordance with a specifically stated purpose. 1967 Op. Att'y Gen. No. 67-75.

50-16-62. Actions for recovery of state debts.

Whenever the Governor, after consulting with the Attorney General, shall deem it proper to institute an action for the recovery of a debt due the state or money or property belonging to the state, he is authorized and required to institute the action in the proper court of this state, with the same rights as any citizen, and to require the aid of the Attorney General to begin and carry on the action.

History. — Ga. L. 1872, p. 39, § 1; Code 1873, § 63; Code 1882, § 63; Civil Code 1895, § 126; Civil Code 1910, § 149; Code 1933, § 91-405; Ga. L. 1982, p. 3, § 50.

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Effect on determination of real party in interest. — Assuming that O.C.G.A. § 50-16-62 applies to suits in federal court, it has no effect on the question of identity of real party in interest, a determination made under federal law. Busbee v. Continental Ins. Co., 526 F. Supp. 1243 (N.D. Ga. 1981).

Action by state official in own name for benefit of state is properly characterized as action by state. Busbee v. Continental Ins. Co., 526 F. Supp. 1243 (N.D. Ga. 1981).

Recovery of money. — Governor has authority to institute suit for recovery of money of which state has been defrauded, under the general power granted to the Governor of supervising the property of the state. Alexander v. State, 56 Ga. 478 (1876).

Governor may maintain action on bond made to predecessor. Anderson v. Brumby, 115 Ga. 644, 42 S.E. 77 (1902).

Governor's authority limited. — Governor has no power to compromise claims due the state penitentiary because of negligent escapes. Penitentiary Co. No. 2 v. Gordon, 85 Ga. 159, 11 S.E. 584 (1890).

Presumption of attorney's authority to institute suit. — When a declaration in favor of the state is signed by attorneys, the legal presumption, upon demurrer (now motion to dismiss), is that the attorneys had the authority of the Governor to institute the suit. Alexander v. State, 56 Ga. 478 (1876).

OPINIONS OF THE ATTORNEY GENERAL

Attorney General's potential authority. — Authority of Attorney General to manage state's legal affairs to protect interests of people of state might provide authority to prohibit collection of Department of Medical Assistance (now Department of Community Health) overpayments in a specific situation. 1980 Op. Att'y Gen. No. 80-89.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 89 et seq.

C.J.S. — 81A C.J.S., States, § 529 et seq.

50-16-63. Governor authorized to lend art objects, pictures, and other personal property to institutions for display.

The Governor is authorized to lend to public and private institutions pictures, objects of art, and other nonessential personal property of the state for the purpose of display by such institutions under such proper safeguards relating to ownership and preservation as the Governor, in his judgment, shall designate.

History. — Ga. L. 1972, p. 837, § 1.

50-16-64. Authority for Governor to purchase property at sheriff's sale under execution in favor of state.

At all sheriff's sales under any execution in favor of the state or the Governor, the Governor, or anyone authorized by him, may purchase the property so sold, provided that in no case shall more be bid for such property than the amount due the state upon the execution.

History. — Ga. L. 1873, p. 49, § 1; Code 1873, § 64; Code 1882, § 64; Civil Code 1895, § 127; Civil Code 1910, § 150; Code 1933, § 91-501.

OPINIONS OF THE ATTORNEY GENERAL

Transfer of property purchased at sheriff's sale to department. — Department need not request that the Governor prepare a deed conveying property purchased by the state through a sheriff's sale to a department; a department must request that the Governor execute an executive order transferring the use of the property to a department. 1970 Op. Att'y Gen. No. 70-15.

Disposition of acquired property. — Property acquired by Highway Board (now Transportation Board) pursuant to issuance of fi. fa. must be sold or rented by board and cannot be appropriated to use of board. 1962 Op. Att'y Gen. p. 275.

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions and Enforcement of Judgments, § 276.

C.J.S. — 33 C.J.S., Executions, § 366 et seq.

50-16-65. Authority for Governor to rent or sell property purchased at sheriff's sale; manner of sales.

The Governor may rent out property purchased pursuant to Code Section 50-16-64 or sell the same at public outcry to the highest bidder, upon such terms as he may deem to be in the interests of the state, and may make the necessary conveyances for the same, provided that such sale shall be advertised in the same manner and for the same time as sheriff's sales.

History. — Ga. L. 1873, p. 49, § 3; Code 1873, § 66; Code 1882, § 66; Civil Code 1895, § 129; Civil Code 1910, § 152; Code 1933, § 91-503.

OPINIONS OF THE ATTORNEY GENERAL

Disposition of acquired property. — Property acquired by Highway Board (now Transportation Board) pursuant to issuance of fi. fa. must be sold or rented by board and cannot be appropriated to use of board. 1962 Op. Att'y Gen. p. 275.

RESEARCH REFERENCES

ALR. — Validity of lease of standing timber on state land by entryman before patent, 83 A.L.R. 1347.

Rights, duties, and remedy in respect of leasing or hiring public property to private person for occasional use, 86 A.L.R. 1175.

50-16-66. Authority to pay exemptions and superior liens and encumbrances on property purchased at sheriff's sale.

If there is any exemption of any part of the property purchased pursuant to Code Section 50-16-64, or the proceeds thereof, or any lien or encumbrance which is of superior dignity to the lien of the state, the Governor may pay the amount so exempted, or the lien or encumbrance, to the person entitled thereto.

History. — Ga. L. 1873, p. 49, § 4; Code 1873, § 67; Code 1882, § 67; Civil Code 1895, § 130; Civil Code 1910, § 153; Code 1933, § 51-504.

50-16-67. Report to General Assembly of transactions involving property purchased at sheriff's sale.

The Governor shall report to the General Assembly at its following session any purchase, lease, or sale made under Code Sections

50-16-64, 50-16-65, 50-16-66, and 50-16-68 giving full particulars of the transaction.

History. — Ga. L. 1873, p. 49, § 5; Code 1873, § 68; Code 1882, § 68; Civil Code 1895, § 131; Civil Code 1910, § 154; Code 1933, § 91-505.

OPINIONS OF THE ATTORNEY GENERAL

Disposition of acquired property. — Property acquired by Highway Board (now Transportation Board) pursuant to issuance of fi. fa. must be sold or rented by board and cannot be appropriated to use of board. 1962 Op. Att'y Gen. p. 275.

RESEARCH REFERENCES

ALR. — Lien of attorney on public fund or property, 2 A.L.R. 274; 24 A.L.R. 933.

50-16-68. Use and title of property purchased at sheriff's sale.

The property purchased as provided in Code Section 50-16-64 shall be for the use of the state, and the title thereto shall be made to the Governor and his successors in office and assigns.

History. — Ga. L. 1873, p. 49, § 2; Code 1873, § 65; Code 1882, § 65; Civil Code 1895, § 128; Civil Code 1910, § 151; Code 1933, § 91-502.

OPINIONS OF THE ATTORNEY GENERAL

Transfer of property purchased at sheriff's sale to department. — Department need not request that the Governor prepare a deed conveying property purchased by the state through a sheriff's sale to a department; a department must request that the Governor execute an executive order transferring the use of the property to a department. 1970 Op. Att'y Gen. No. 70-15.

Disposition of acquired property. — Property acquired by Highway Board (now Transportation Board) pursuant to issuance of fi. fa. must be sold or rented by board and cannot be appropriated to use of board. 1962 Op. Att'y Gen. p. 275.

ARTICLE 4

MISCELLANEOUS SALE AND PURCHASE PROVISIONS

50-16-80. Sale or disposition of state livestock or swine.

(a) No livestock or swine belonging to the state, or to any agency, board, or department of this state shall be sold or otherwise disposed of, except as provided in subsections (b) and (c) of this Code section.

(b) Livestock and swine belonging to the state or to any agency, board, or department of this state, whenever sold, shall be advertised for sale in a newspaper of general circulation, including the *Farmers*

and Consumers Market Bulletin, for ten days and all livestock and swine shall be sold at public auction only to farmers of this state.

(c) All livestock or swine belonging to the state or to any agency or department of this state, whenever disposed of, other than by sale, shall be slaughtered for the use and benefit of state institutions.

(d) This Code section shall not apply to the University System of Georgia since the animals are used for educational instruction, scientific information, and research work.

(e) Any official or employee of the state or of any agency, board, or department of the state who violates any of the provisions of this Code section shall be guilty of a misdemeanor. In addition, the person shall be discharged from the services of the state or of any agency, board, or department of the state.

History. — Ga. L. 1945, p. 339, §§ 1-5; Ga. L. 1982, p. 3, § 50; Ga. L. 2002, p. 415, § 50.

Cross references. — Livestock dealers and auctions, T. 4, C. 6.

OPINIONS OF THE ATTORNEY GENERAL

Disposition of livestock owned by state. — Livestock on state property belonging to the state can be sold only through the purchasing department (now Department of Administrative Services), or slaughtered only for the use and benefit of state institutions. 1954-56 Op. Att'y Gen. p. 659.

RESEARCH REFERENCES

ALR. — Withdrawal of property from auction sale, 37 A.L.R.2d 1049.

50-16-81. Contracts by state or subdivision for purchase, lease, or acquisition of United States equipment, supplies, materials, or other property.

(a) The state or any department, agency, political subdivision, or municipality of the state may enter into and make any contract with the United States or with any department or agency thereof for the purchase, lease, or other acquisition of any equipment, supplies, material, or other property, both real and personal; and any political subdivision or municipality of the state may contract with the state or any department or agency thereof for the purchase, lease, or other acquisition of any such equipment, supplies, materials, or other property, both real and personal. Either of such contracts may be made without:

(1) Publicly advertising for bids or posting notices of expenditures;

(2) Inviting or receiving competitive bids; or

(3) Requiring delivery of purchases before payment.

(b) The appropriate authority of the state, department, agency, political subdivision, or municipality may designate an employee or officeholder to enter bids at sales of equipment, supplies, material, or other property, both real and personal, owned by the United States or an agency thereof. The person may be authorized to make any payments required in connection with the bidding and sale.

(c) This Code section shall apply only to contracts made with the United States or with any department or agency thereof by the state or any department, agency, political subdivision, or municipality of the state or to any contracts made with the state by any political subdivision or municipality thereof.

(d) This Code section shall not be construed to repeal, alter, amend, change, or modify in any manner whatsoever any general, local, or special law as to the method of procedure or requirements provided for the making of any contract by any of the stated authorities other than the kind of contracts set forth in this Code section.

History. — Ga. L. 1945, p. 394, §§ 1-4; Ga. L. 1982, p. 3, § 50.

Editor's notes. — Ga. L. 1945, p. 394, § 5, not codified by the General Assembly, provides that any provisions of the law, charter, ordinance, resolution, by-law, rule, or regulation which are inconsistent with the provisions of that Act be and the same are hereby suspended to the extent that such provisions are inconsistent with the provisions of the Act.

Law reviews. — For article surveying general legal principles of municipal and county government purchasing and contracting in Georgia, see 16 Mercer L. Rev. 371 (1965).

OPINIONS OF THE ATTORNEY GENERAL

Exception for federal purchases. — Purchase of federal property under this section is an exception to general purchasing laws of state. 1960-61 Op. Att'y Gen. p. 442.

50-16-82. Effect of payment of purchase money or other consideration causing property to be transferred to state.

(a) As used in this Code section, the term:

(1) "Person" means any individual; general or limited partnership; joint venture; firm; private, public, or public service corporation; association; unincorporated association; fiduciary; or any other entity other than the state.

(2) "State" means the State of Georgia, its agencies, departments, divisions, bureaus, boards, commissions, authorities, and associations.

(b) Payment of purchase money or any other consideration by any person, which payment causes or partially causes property, real or

personal or mixed, to be transferred to the state shall not result in nor imply a trust, nor permit the inference that a trust was created, nor permit the inference that any other interest, legal or equitable, was created either in favor of the person making the payment or in favor of any other person unless the trust or other interest is established expressly in writing.

(c) Payment of purchase money or any other consideration by any person, which payment causes or partially causes property, real or personal or mixed, to be transferred to the state, shall be conclusively presumed to be a gift to the state.

History. — Ga. L. 1976, p. 193, §§ 1-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 76 Am. Jur. 2d, Trusts, §§ 196, 206.
C.J.S. — 90 C.J.S., Trusts, §§ 95, 97.

ARTICLE 5

WESTERN AND ATLANTIC RAILROAD

50-16-100. Exclusive state property.

The railroad from Atlanta to Chattanooga is the property of this state exclusively and shall be known as the Western and Atlantic Railroad.

History. — Orig. Code 1863, § 888; Code 1868, § 96; Code 1873, § 963; Code 1882, § 963; Ga. L. 1889, p. 362, § 1; Civil Code 1895, § 1020; Civil Code 1910, § 1287; Code 1933, § 91-201.

JUDICIAL DECISIONS

Lease of railroad by state. — State owns a railroad known as the Western & Atlantic Railroad extending from Atlanta to Chattanooga. In November, 1889 (Ga. L. 1889, p. 362), an Act was passed by the General Assembly providing for the railroad's lease. Western & Atl. R.R. v. Roberson, 61 F. 592 (6th Cir. 1894); State v. Western & A.R.R., 136 Ga. 619, 71 S.E. 1055 (1911).

Relation of state to lessee of the state's railroads is that of landlord and tenant. The lessee has but a usufructuary interest in the possession of the leased premises for the specific uses named in the lease. State v. Western & A.R.R., 136 Ga. 619, 71 S.E. 1055 (1911).

Condemnation proceedings against state and lessee. — Because of the landlord/tenant relation, any condemnation proceeding must be instituted jointly against the state and the lessee, unless the state gives to a telegraph company permission to occupy the state's railroad without condemnation, which it had not done. Western & A.R.R. v. Western Union Tel. Co., 138 Ga. 420, 75 S.E. 471, 42 L.R.A. (n.s.) 225 (1912).

Rights acquired under lease between state and railroad. — Under the lease contract entered into between the state as the owner of the Western & Atlantic Railroad, and the Nashville, Chattanooga & St. Louis Railway, on May 11,

1917, the lessee acquired a right to the use of the underground and overhead space on the portion of the land lying between streets in the City of Atlanta constituting a part of the right of way of the Western & Atlantic Railroad with the right to sublet any part thereof not needed for railroad purposes without the consent of the Governor. State v. Western & A.R.R., 185 Ga. 658, 196 S.E. 392 (1938).

Right of city to pedestrian crossings. — Because there can be no adverse possession or implied dedication of state property to a municipal corporation, which is a creature of the state, a city could not acquire a right to use pedestrian crossings over the Western & Atlantic Railroad right-of-way without the state's express consent. City of Marietta v. CSX Transp., Inc., 272 Ga. 612, 533 S.E.2d 372 (2000).

Cited in Seignious v. Metropolitan Atlanta Rapid Transit Auth., 252 Ga. 69, 311 S.E.2d 808 (1984).

50-16-101. Relationship of state as owner of railroad.

The state occupies the same relation to the railroad, as owner, that any company or corporation does to its railroad; and the obligations of the state to the public concerning the railroad, and of the public to the railroad, are the same as govern the other railroads of this state, so far as is consistent with the sovereign attributes of this state and the laws of force for its conduct.

History. — Orig. Code 1863, § 889; Code 1868, § 968; Code 1873, § 964; Code 1882, § 964; Civil Code 1895, § 1021; Civil Code 1910, § 1288; Code 1933, § 91-202.

JUDICIAL DECISIONS

Cited in Western & A.R.R. v. Gray, 172 Ga. 286, 157 S.E. 482 (1931); City of Marietta v. CSX Transp., Inc., 272 Ga. 612, 533 S.E.2d 372 (2000).

50-16-102. All railroad laws to apply.

All the public road laws and penal laws touching the railroads of this state, whether to obligate or protect, apply to the state railroad unless specially excepted or some other provision is prescribed in lieu of some one or more thereof.

History. — Orig. Code 1863, § 890; Code 1868, § 969; Code 1873, § 965; Code 1882, § 965; Civil Code 1895, § 1022; Civil Code 1910, § 1289; Code 1933, § 91-203.

Cross references. — Regulation of railroads generally, T. 46, C. 8 and 9.

JUDICIAL DECISIONS

Railroad's public liability. — Western & Atlantic Railroad is not absolved from liability to public which arises from the exercise of the railroad's franchise to operate a railroad and to run trains along its tracks by leasing, with legislative authority and approval, the use of the railroads tracks to another railroad company, when there is no legislative exemption of the Western & Atlantic Railroad from any

liability to the public arising from the use of the railroad's tracks by the lessee railroad. Bennett v. Western & A.R.R., 42 Ga. App. 821, 157 S.E. 365 (1931).

Cited in Western & A.R.R. v. Gray, 172 Ga. 286, 157 S.E. 482 (1931).

50-16-103. Landowners authorized to build stock gaps.

All persons in this state owning land through which the Western and Atlantic Railroad passes may build stock gaps on the railroad when the line of their fences may cross the same and may join their fences to such stock gaps, provided the landowners shall not improperly interfere with the bed of the railroad, render it less safe, or interfere with the running of the trains thereon.

History. — Ga. L. 1865-66, p. 261, § 1; Code 1868, § 1016; Code 1873, § 1012; Code 1882, § 1012; Civil Code 1895, § 1069; Civil Code 1910, § 1336; Code 1933, § 91-204; Ga. L. 1982, p. 3, § 50.

50-16-104. Power of condemnation authorized.

The Western and Atlantic Railroad (the corporation existing by virtue of the lease of the Western and Atlantic Railroad property from the State of Georgia by the Louisville and Nashville Railroad Company, made March 4, 1968) is authorized and empowered to acquire by condemnation the title to all such real estate and other property as may be necessary or proper for the construction or maintenance of main line tracks, sidetracks, spur tracks, passing tracks, stations or station facilities, shops, section houses, pumping houses, roundhouses, pipelines, signal telegraph or telephone lines, or for the maintenance of the track or tracks of the railroad or other railroad uses, in connection with the maintenance or operation of the Western and Atlantic Railroad properties.

History. — Ga. L. 1918, p. 253, § 1; Ga. L. 1918, p. 254, § 1; Code 1933, § 91-301.

Editor's notes. — The lease of the Western & Atlantic Railroad property by the Louisville & Nashville Railroad Company, made March 4, 1968, referred to above, is found at Ga. L. 1968, p. 54, as amended by Ga. L. 1986, p. 231.

RESEARCH REFERENCES

C.J.S. — 29A C.J.S., Eminent Domain, § 23 et seq.

ALR. — Condemnation of premises or part thereof as affecting rights of landlord and tenant inter se, 163 A.L.R. 679.

Compensation for, or extent of rights acquired by, taking of land, as affected by condemner's promissory statements as to character of use or undertakings to be performed by it, 7 A.L.R.2d 364.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property during pendency of the proceeding, 55 A.L.R.2d 781.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 55 A.L.R.2d 791.

Eminent domain: possibility of overcoming specific obstacles to contemplated

use as element in determining existence of necessary public use, 22 A.L.R.4th 840.

State statute of limitations applicable to inverse condemnation or similar proceedings by landowner to obtain compensation for direct appropriation of land without the institution or conclusion of formal proceedings against specific owner, 26 A.L.R.4th 68.

50-16-105. Width of land taken by condemnation.

The land which may be acquired by condemnation under and by virtue of this Code section and Code Sections 50-16-104, 50-16-106, and 50-16-107 for the construction of a track or tracks shall not exceed 200 feet in width.

History. — Ga. L. 1918, p. 253, § 2; Code 1933, § 91-302.

50-16-106. Manner for determining rights and compensation in condemnation proceeding.

In the event the Western and Atlantic Railroad is unable to obtain title to real estate or other property from the owner or owners thereof by contract, lease, or purchase, it may obtain such title by condemnation, the rights to be acquired by it and the amount of compensation to be paid by it therefor to be assessed and determined in the manner provided in Parts 2 through 5 of Article 1 of Chapter 2 of Title 22.

History. — Ga. L. 1918, p. 253, § 3; Ga. L. 1918, p. 254, § 2; Code 1933, § 91-303.

RESEARCH REFERENCES

C.J.S. — 29A C.J.S., Eminent Domain, § 24 et seq.

ALR. — Compensation for, or extent of rights acquired by, taking of land, as affected by condemner's promissory statements as to character of use or undertakings to be performed by it, 7 A.L.R.2d 364.

Right to intervene in court review of zoning proceeding, 46 A.L.R.2d 1059.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property during pendency of the proceeding, 55 A.L.R.2d 781.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 55 A.L.R.2d 791.

Eminent domain: right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land — state cases, 95 A.L.R.3d 752.

Eminent domain: recovery of value of improvements made with knowledge of impending condemnation, 98 A.L.R.3d 504.

State statute of limitations applicable to inverse condemnation or similar proceedings by landowner to obtain compensation for direct appropriation of land without the institution or conclusion of formal proceedings against specific owner, 26 A.L.R.4th 68.

50-16-107. Rights acquired by condemnation to vest in state.

At the termination of the lease of the Western and Atlantic Railroad property, the property rights acquired by condemnation under Code Sections 50-16-104 through 50-16-106 shall go to and become vested in the state.

History. — Ga. L. 1918, p. 253, § 4; Ga. L. 1918, p. 254, § 3; Code 1933, § 91-304.

Editor's notes. — The lease of the Western & Atlantic Railroad property by the Louisville & Nashville Railroad Company, made March 4, 1968, referred to above, is found at Ga. L. 1968, p. 54, as amended by Ga. L. 1986, p. 231.

50-16-108. Lessee subject to Public Service Commission regulation.

The railroad operation by the lessee of the Western and Atlantic Railroad shall be subject to the regulation of the Public Service Commission.

History. — Code 1933, § 91-113a, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1973, p. 857, § 1; Code 1933, § 91-114a, enacted by Ga. L. 1975, p. 1092, § 1.

Cross references. — Regulation of railroads generally, T. 46, C. 8 and 9.

Editor's notes. — The lease of the Western & Atlantic Railroad property by the Louisville & Nashville Railroad Company, made March 4, 1968, referred to above, is found at Ga. L. 1968, p. 54, as amended by Ga. L. 1986, p. 231.

JUDICIAL DECISIONS

Lease contract between state and railroad. — Under the lease contract entered into between the state as the owner of the Western & Atlantic Railroad, and the Nashville, Chattanooga & St. Louis Railway, on May 11, 1917, the lessee acquired a right to the use of the underground and overhead space on the portion of the land lying between streets in the City of Atlanta constituting a part of the right of way of the Western & Atlantic Railroad, with the right to sublet any part thereof not needed for railroad purposes, without the consent of the Governor. State v. Western & A.R.R., 185 Ga. 658, 196 S.E. 392 (1938).

ARTICLE 6

INVENTORY OF PROPERTY

PART 1

INVENTORY OF REAL PROPERTY

50-16-120. Definitions.

As used in this part, the term:

(1) "Entities" or "entity" means any and all constitutional offices, as well as all authorities, departments, divisions, boards, bureaus, commissions, agencies, instrumentalities, or institutions of the state.

(2) "Real property" means any improved or unimproved real property owned by the state and under the jurisdiction of any state entity.

(3) "State" means the State of Georgia and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, and institutions but does not include counties, municipalities, school districts, other units of local government, hospital authorities, or housing and other local authorities.

(4) "State facility" means a building owned by the state or under the custody or control of the state or insured by the program of self-insurance established under Code Sections 50-16-8 through 50-16-11.

(5) "State lease" means a lease or rental agreement entered into by a state entity for a definite period of time for the use by a state entity of real property or facilities or a lease of state real property or state facilities by a state entity for use by another party.

History. — Code 1933, § 91-401a, enacted by Ga. L. 1970, p. 672, § 1; Ga. L. 2005, p. 100, § 15/SB 158.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted preceding "the term" in the introductory language.

50-16-121. Real property inventory; form; filing of duplicate with State Properties Commission; index inventories and devising of forms; completion of forms within 30 days.

(a) All state entities are directed to maintain at all times a complete current inventory of real property under their jurisdiction. The inventory shall be accomplished by the completion of a form, substantially as follows, for each parcel of real property held by such departments and public corporations:

REAL PROPERTY INVENTORY

Date: _____
(Date form completed)

(1) State Entity: _____
(Board, bureau, commission, department, official, or other agency)

(2) Grantor: _____
(Exactly as it appears on instrument)

(3) Grantee: _____
(Exactly as it appears on instrument)

(4) Date of instrument: _____

(5) Acreage: _____

(6) Records, office of the clerk, Superior Court _____ County (a) Deed Book ____ Folio ____ (b) Plat or Map Book _____ Folio ____

(7) Location of property: County _____ City _____ Street address, if applicable, and if not, brief directions to property

_____

_____

(8) Type of instrument: (a) Warranty deed ( ), (b) Quitclaim deed ( ), (c) Eminent domain, deed executed ( ), (d) Trustee's deed ( ), (e) Administrator's or Executor's deed ( ), (f) Simple deed, no warranty ( ), (g) Lease ( ), (h) Use permit ( ), (i) Resolution of General Assembly ( ), (j) Deed of gift ( ).

(9) Kind of conveyance: (a) Fee simple ( ), (b) Other ( ), state terms and conditions _____

_____

(10) If acquired by eminent domain by court order and no deed was executed: (a) Name of principal defendant _____, (b) Case number _____, (c) Date of final judgment _____

(11) Location of original deed _____

(12) Is property surplus? _____

(13) Purchase price of property _____

(14) Purchased with (a) State funds? _____, (b) Federal funds? _____ (Show percent state & federal)

(15) Estimated present value: (a) Land _____ (b) Improvements _____

(16) Insured for: $_____ with _____

_____ Ins. Co.

(17) Present use _____

Name of person completing form _____

Title _____ Signature _____

(b) The inventory required by subsection (a) of this Code section shall be maintained current at all times. It shall be the duty of each state entity to file a duplicate of the inventory with the State Properties Commission; and the State Properties Commission shall compile and index all such inventories into a single complete inventory of all real property, but the State Properties Commission shall maintain separate files on the property belonging to the public corporations. It shall be the

further duty of each state entity to file with the State Properties Commission a duplicate of each form or other document, as provided in subsection (c) of this Code section, completed by such state entity in maintaining the inventory of the entity current; and the State Properties Commission shall utilize such forms or other documents to maintain the complete inventory of all real property current.

(c) The State Properties Commission is authorized to devise such forms or other documents as may be necessary to keep the complete inventory of real property current; and it shall be the duty of each state entity to utilize such forms and documents as directed by the State Properties Commission.

(d) The real property inventory form provided in subsection (a) of this Code section shall be completed for each parcel of real property acquired by each state entity. The form shall be completed within 30 days after the acquisition of any real property and a duplicate of same shall be forwarded to the State Properties Commission.

History. — Code 1933, § 91-402a, enacted by Ga. L. 1970, p. 672, § 1; Ga. L. 2005, p. 100, § 15/SB 158.

OPINIONS OF THE ATTORNEY GENERAL

State Properties Commission must follow the mandates set forth in this article regarding real property inventories. 1979 Op. Att'y Gen. No. 79-14.

50-16-122. Requirements for real property acquired or disposed of by the state; filing conveyances with State Properties Commission.

(a) As used in this Code section, the term "real property" means any real property owned by the state and under the custody of any state entity, except public road, street, and highway rights of way and other real property held by the Department of Transportation pursuant to Ga. L. 1919, p. 242, art. 5, Section 5, as amended by Ga. L. 1922, p. 176, Section 1; Ga. L. 1939, p. 188, Section 1; Ga. L. 1945, p. 258, Section 1; and Ga. L. 1953, Jan.-Feb. Sess., p. 421, Section 1.

(b) All real property, the ownership of which is either acquired or disposed of by the state or any state entity thereof after March 30, 1990, shall be subject to the following requirements:

(1) The original of any conveyance acquiring real property shall be filed in the office of the State Properties Commission within 30 days after being recorded in the office of the clerk of the superior court of the county or counties wherein the real property is located. When the conveyance is presented to the State Properties Commission for filing, it shall be accompanied by four copies of the recorded plat of

the real property conveyed. The State Properties Commission shall index and affix both the commission's stamp and the assigned real property inventory number on the recorded original of the conveyance and all copies of the recorded plat and shall retain the recorded original of the conveyance and two copies of the recorded plat as a part of the permanent real property inventory records kept by such commission; but an exact copy of the recorded original of the conveyance shall be produced by the State Properties Commission and, along with a copy of the recorded plat, forwarded by such commission to the state entity acquiring the real property;

(2) When real property is acquired by eminent domain and is conveyed to the state by court order or judgment, following recording of the court order or judgment in the deed book records in the office of the clerk of the superior court of the county or counties wherein the real property is located, a certified copy of the recorded court order or judgment, along with four copies of the recorded plat of the real property conveyed, shall be filed in the office of the State Properties Commission. The State Properties Commission shall index and affix both the commission's stamp and the assigned real property inventory number on the certified copy of the recorded court order or judgment and all copies of the recorded plat and shall retain the certified copy and two copies of the recorded plat as a part of the permanent real property inventory records kept by such commission; but an exact copy of the certified copy of the recorded court order or judgment shall be produced by the State Properties Commission and, along with a copy of the recorded plat, forwarded by such commission to the state entity acquiring the real property;

(3)(A) The original of any fully executed conveyance disposing of real property, except an Act or Resolution Act of the General Assembly, shall be filed in the office of the State Properties Commission before being delivered to the purchaser thereof for recording in the office of the clerk of the superior court of the county or counties wherein the real property is located. When the conveyance is presented to the State Properties Commission for filing, it shall be accompanied by four copies of the plat of the real property conveyed. Though it is encouraged, it is not required that the plat be either already recorded in or eligible to be recorded in the plat book records in the office of the clerk of the superior court of the county or counties wherein the real property is located. The commission shall index and affix both the commission's stamp and the assigned real property inventory number on the original of the conveyance and all copies of the plat. The State Properties Commission shall then cause the conveyance to be duplicated. The duplicate of the conveyance and two copies of the plat shall be retained by the State Properties Commission as a part of the

permanent real property inventory records kept by such commission. The original of the conveyance and a copy of the plat shall be delivered to the purchaser of the real property. Upon receiving the original of the conveyance and a copy of the plat, the purchaser of the real property may then have the original of the conveyance and, if necessary and eligible for recording, the copy of the plat recorded in the office of the clerk of the superior court of the county or counties wherein the real property is located.

(B) The General Assembly may vary or authorize the variance of the requirements of subparagraph (A) of this paragraph in any enactment, including an Act or Resolution Act, authorizing or directing a disposition of real property; and

(4) When real property is conveyed by an Act or Resolution Act of the General Assembly, the State Properties Commission shall obtain from the office of the Secretary of State a certified copy of the Act or Resolution Act and retain the same as a part of the permanent real property inventory records kept by such commission. As a part of such retention, the State Properties Commission shall index and affix both the commission's stamp and the assigned real property inventory number on the certified copy of the Act or Resolution Act.

(c) The documents which are required to be maintained by the State Properties Commission as a part of the permanent real property inventory records kept by such commission, as provided by paragraphs (2) through (4) of subsection (b) of this Code section, shall be used by the State Properties Commission in such manner as it shall determine best in maintaining the real property inventory.

History. — Code 1933, § 91-403a, enacted by Ga. L. 1970, p. 672, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 1424, § 1; Ga. L. 1986, p. 1483, § 1; Ga. L. 1990, p. 662, § 1; Ga. L. 1994, p. 97, § 50; Ga. L. 2005, p. 100, § 15/SB 158.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "(4)" was substituted for "(5)" in subsection (c).

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 1 et seq.
C.J.S. — 76 C.J.S., Records, § 1 et seq.

50-16-123. Conveyances and condemnation orders to be filed with State Properties Commission.

A copy of all conveyances for the acquisition and disposition of real property held or owned by any state entity shall be filed with the State Properties Commission within 30 days after the conveyance in an acquisition has been recorded in the office of the clerk of the superior

court in the county in which the land is located and within 30 days after the conveyance in a disposition has been dated, executed, and delivered. When real property is acquired by condemnation by any state entity, a certified copy of the court order vesting title in such state entity shall be filed with the State Properties Commission within 30 days after the date of the court order.

History. — Code 1933, § 91-404a, enacted by Ga. L. 1970, p. 672, § 1; Ga. L. 1986, p. 1483, § 2; Ga. L. 2005, p. 100, § 15/SB 158.

50-16-124. State entities to compile information for an inventory of all state owned or leased facilities and real property.

Beginning July 1, 2005, each state entity shall compile information on all state facilities, real property, and state leases under the custody or control of such state entity necessary for the compilation of an inventory of all state owned or leased facilities and real property; provided, however, that all improvements acquired for public works that will ultimately be disposed of are excluded from the requirements of this part. On or before October 1, 2005, and as changes occur, but by no later than such date annually, each state entity shall send such information to the commission. The commission shall develop the format for the compilation and reporting of the inventory.

History. — Code 1981, § 50-16-124, enacted by Ga. L. 2005, p. 100, § 15/SB 158.

50-16-125. Rules and regulations authorized.

The State Properties Commission is authorized and directed to promulgate such rules and regulations as may be necessary to carry out this part, provided such rules and regulations are not in conflict with this part.

History. — Code 1933, § 91-405a, enacted by Ga. L. 1970, p. 672, § 1; Ga. L. 1986, p. 1483, § 3; Ga. L. 2005, p. 100, § 15/SB 158.

Editor's notes. — Ga. L. 2005, p. 100, § 15/SB 158, redesignated former Code Section 50-16-124 as present Code Section 50-16-125.

PART 2

ANNUAL INVENTORY

50-16-140. "Proper authority" defined.

The "proper authority" referred to in this part is the Governor for all officers of the state and the county commissioners or other officers having charge of county matters for all officers of the county.

History. — Ga. L. 1882-83, p. 126, § 5; Civil Code 1895, § 279; Civil Code 1910, § 314; Code 1933, § 91-805.

JUDICIAL DECISIONS

Sale of unserviceable property. — When any public property has become unserviceable, the Governor may order the property sold. But no power conferred upon the Governor by the Code authorizes the Governor's consent to the sale of any property of the state, or any easement or interest in the state's property. The power to dispose of property belonging to the state is vested in the legislature. Western Union Tel. Co. v. Western & A.R.R., 142 Ga. 532, 83 S.E. 135 (1914).

Cited in Jackson v. Gasses, 230 Ga. 712, 198 S.E.2d 657 (1973).

OPINIONS OF THE ATTORNEY GENERAL

Granting of easements to county. — Governor may grant easement to county for road purposes over state property which has become unserviceable. 1945-47 Op. Att'y Gen. p. 549.

Disposal of unserviceable harvested forest products. — If harvested forest products are unserviceable and cannot be beneficially or advantageously used for park purposes under all of the circumstances, the Governor may direct such forest products to be sold or otherwise disposed of under such restrictions and conditions which the Governor may deem advisable for the best interest and protection of the state, and the funds derived therefrom paid into the state treasury. 1950-51 Op. Att'y Gen. p. 310.

Determination of unserviceable property. — Authority to determine whether property at Georgia Training School for Girls is unserviceable and should be disposed of is vested by the General Assembly in Governor, not the Department of Human Resources. 1962 Op. Att'y Gen. p. 400.

Discussion of circumstances under which legislative authority for sale not required. — See 1962 Op. Att'y Gen. p. 474.

Commissioner's authority limited. — Director of the Highway Department (now commissioner of transportation) would not have the power or authority to declare any part of a right of way upon which there is maintained a road as unserviceable. That right seems to be lodged with the Governor when dealing with state property. 1945-47 Op. Att'y Gen. p. 545.

Private individual may lease unserviceable state park. — State park may be leased to a private individual only if the Governor determines that the park has become unserviceable to the state. 1945-47 Op. Att'y Gen. p. 330.

Ability of county commissioners to lease county property. — See 1977 Op. Att'y Gen. No. U77-3.

50-16-141. Inventory required of state and county officers; entry of inventory into book.

All state and county officers on or before January 15 of each year shall make a complete inventory on oath of all the public property in their charge and shall enter the same in a book kept for that purpose.

History. — Ga. L. 1882-83, p. 126, § 1; Civil Code 1895, § 275; Civil Code 1910, § 310; Code 1933, § 91-801.

OPINIONS OF THE ATTORNEY GENERAL

No conveyance without specific authority. — Under former Code 1933, §§ 91-801 and 91-802 (see O.C.G.A. §§ 50-16-141 and 50-16-142), all state officers are required to make an inventory of all public property in the officers' charge and to account for the property to the proper authority succeeding such an officer; therefore, a public officer cannot convey state property from the state to another person unless such officer has been given specific authority by some Act or resolution of the General Assembly. 1945-47 Op. Att'y Gen. p. 545.

50-16-142. Receipt for property received from predecessor in office; accounting for property not turned over.

When any officer shall vacate his office, he shall take a receipt from his successor for all property turned over to the successor, which receipt shall be entered in the inventory book; and he shall satisfactorily account to the proper authority for any not turned over.

History. — Ga. L. 1882-83, p. 126, § 2; Civil Code 1895, § 276; Civil Code 1910, § 311; Code 1933, § 91-802.

OPINIONS OF THE ATTORNEY GENERAL

No conveyance without specific authority. — Under former Code 1933, §§ 91-801 and 91-802 (see O.C.G.A. §§ 50-16-141 and 50-16-142), all state officers are required to make an inventory of all public property in thei officers' charge and to account for the property to the proper authority succeeding such an officer; therefore, a public officer cannot convey state property from the state to another person unless such officer has been given specific authority by some Act or resolution of the General Assembly. 1945-47 Op. Att'y Gen. p. 545.

RESEARCH REFERENCES

ALR. — Duty of outgoing officer to see that person to whom money or other property is turned over is a duly qualified successor, 106 A.L.R. 195.

50-16-143. Examination of predecessor's inventories; report.

Every officer, within three months after taking charge of his office, shall examine the inventories of his predecessor and make a report upon the same to the proper authority, especially reporting each article and its value not turned over or satisfactorily accounted for.

History. — Ga. L. 1882-83, p. 126, § 3; Civil Code 1895, § 277; Civil Code 1910, § 312; Code 1933, § 91-803.

JUDICIAL DECISIONS

Probate judge had power to lease directly to individual certain realty for use in operating filling station as it was then being and had been used for 13 years, and such a lease, having been so executed by the ordinary (now probate judge), was not void on the ground that the lease was not authorized by law, or that the interest thereby created extended beyond the term of the ordinary (now probate judge) then in office, or that it amounted to a commercial transaction in which the county was not authorized by law to engage. Black v. Forsyth County, 193 Ga. 571, 19 S.E.2d 297 (1942).

50-16-144. Sale or disposition of unserviceable property.

Reserved. Repealed by Ga. L. 2005, p. 117, § 24/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1882-83, p. 126, § 4; Civil Code 1895, § 278; Civil Code 1910, § 313; Code 1933, § 91-804.

50-16-145. Actions against public officers for violations of part.

Any public officer who violates any one or more of the provisions of this part shall be liable to be ruled by the proper authority in the superior court in the same manner as the sheriffs and be subject to an action on his bond for the value of all public property not turned over or satisfactorily accounted for, provided that this and the preceding Code sections of this part shall not be construed to repeal any laws for the recovery of public property or the value thereof or for the punishment of any public officer who refuses, fails, or neglects to turn over or satisfactorily account for the same.

History. — Ga. L. 1882-83, p. 126, § 7; Civil Code 1895, § 280; Civil Code 1910, § 315; Code 1933, § 91-806; Ga. L. 1982, p. 3, § 50.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 336.

ALR. — Personal liability of public officer or sureties on his bond for nonperformance or improper performance of a duty imposed upon a board or corporate body of which he is a member, 123 A.L.R. 756.

Liability of public officer or his bond for

loss of public funds due to insolvency of bank in which they were deposited, 155 A.L.R. 436.

Part 3

Central Inventory of Personal Property

50-16-160. Department of Administrative Services to establish and maintain inventory; state employees to furnish information; inspection and copies of records.

(a) It shall be the duty of the Department of Administrative Services to establish and maintain an accurate central inventory of movable personal property owned by the state and any offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state; and it shall be the duty of each officer and employee thereof to furnish the Department of Administrative Services full information for such inventory and otherwise assist it in establishing and maintaining the inventory.

(b) The inventory shall be maintained on a current basis; and state officers and employees shall furnish the Department of Administrative Services such information as may be required by it to keep the inventory current.

(c) The inventory records shall be available for inspection at all times during normal working hours; and copies of the inventory records or any part thereof shall be provided to the Governor and the General Assembly, or committees thereof, upon request.

History. — Code 1933, § 91-801a, enacted by Ga. L. 1971, p. 400, § 1; Ga. L. 1972, p. 480, § 1; Ga. L. 2005, p. 117, § 26/HB 312.

50-16-161. Part applicable to movable personal property; determination to include or exclude items from inventory binding.

Reserved. Repealed by Ga. L. 2005, p. 117, §§ 27, 28/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1933, § 91-802a, enacted by Ga. L. 1971, p. 400, § 1; Ga. L. 1972, p. 480, § 1; Ga. L. 1979, p. 1295, § 1; Ga. L. 1986, p. 826, § 1; Ga. L. 1989, p. 468, § 1; Ga. L. 2003, p. 313, § 2.

50-16-161.1. "Movable personal property" defined; inclusion or exclusion of items from inventory.

Repealed by Ga. L. 2003, p. 313, § 6, effective June 30, 2006.

Editor's notes. — This Code section was based on Code 1981, § 50-16-161.1, enacted by Ga. L. 2003, p. 313, § 3.

50-16-162. Rules and regulations.

The state accounting officer is authorized and directed to adopt and promulgate such rules and regulations establishing those items of personal property required to be kept on the inventory records of all offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state as may be necessary to carry out this part.

History. — Code 1933, § 91-803a, enacted by Ga. L. 1971, p. 400, § 1; Ga. L. 2005, p. 117, § 29/HB 312.

50-16-163. Power to examine books, records, papers, or personal property of state entities to ensure compliance.

The Department of Administrative Services or the state accounting officer shall have the power to examine books, records, papers, or personal property of offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state for the purposes of ensuring compliance with this part.

History. — Code 1981, § 50-16-163, enacted by Ga. L. 2005, p. 117, § 30/HB 312; Ga. L. 2006, p. 72, § 50/SB 465.

ARTICLE 7

COMMISSION ON CONDEMNATION OF PUBLIC PROPERTY

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, § 76 et seq.

C.J.S. — 29A C.J.S., Eminent Domain, § 88.

50-16-180. Definitions.

As used in this article, the term:

(1) "Commission" means the State Commission on the Condemnation of Public Property created by Code Section 50-16-181.

(2) "Public property" means any real property located within the State of Georgia in which a legal or equitable interest is held by:

(A) The State of Georgia or any department, division, board, bureau, commission, or other agency of the executive branch of state government;

(B) Any county, municipality, county or independent school district, or other political subdivision of the state or any agency of any such political subdivision;

(C) Any public authority or other public corporation which is a body politic of the state or of any county, municipality, or other political subdivision of the state; or

(D) Any governmental body or governmental entity of this state not covered by subparagraph (A), (B), or (C) of this paragraph.

(3) "State agency" means the State of Georgia; any department, division, board, bureau, commission, or other agency of the executive branch of state government, excluding the Department of Transportation and the Board of Regents of the University System of Georgia, which under the laws of the state has the power and authority to acquire private property by condemnation and the power of eminent domain; or any state authority which under the laws of the state has the power and authority to acquire private property by condemnation and the power of eminent domain.

History. — Code 1981, § 50-16-180, enacted by Ga. L. 1986, p. 1187, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, the subsection designation "(a)" was deleted since this Code section contains no subsection (b).

Law reviews. — For annual survey of local government law, see 43 Mercer L. Rev. 317 (1991).

50-16-181. Creation; membership; officers; quorum; voting requirements; call, notice, and minutes or transcripts of meetings; seal; bylaws; expenses.

(a) There is created the State Commission on the Condemnation of Public Property consisting of the Governor, ex officio; Lieutenant Governor, ex officio; Secretary of State, ex officio; Commissioner of Agriculture, ex officio; Commissioner of Insurance, ex officio; state auditor, ex officio; and the Commissioner of Labor, ex officio.

(b) The Governor shall be the chairman of the commission and the Lieutenant Governor shall be the vice-chairman. Four members of the commission shall constitute a quorum. No vacancy on the commission shall impair the right of the quorum to exercise the powers and perform the duties of the commission. With the sole exception of approving the condemnation of public property, which approval shall require four

affirmative votes of the membership of the commission present and voting at any meeting, the business, powers, and duties of the commission may be transacted, exercised, and performed by a majority vote of the commission members present and voting at a meeting when more than a quorum is present and voting or by a majority vote of a quorum when only a quorum is present and voting at a meeting. An abstention in voting shall be considered as that member not being present and not voting in the matter on which the vote is taken.

(c) Meetings shall be held on the call of the chairman, vice-chairman, or two commission members whenever necessary to the performance of the duties of the commission. Minutes or transcripts shall be kept of all meetings of the commission. Each commission member shall be given, not less than three days prior to the meeting, written notice of the date, time, and place of each meeting of the commission.

(d) The commission shall adopt a seal for its use and may adopt bylaws for its internal government and procedures.

(e) Members of the commission shall receive only their traveling and other actual expenses incurred in the performance of their official duties as commission members.

History. — Code 1981, § 50-16-181, enacted by Ga. L. 1986, p. 1187, § 1.

50-16-182. Powers and duties.

The commission, in addition to other powers and duties set forth in this article, shall have the power and duty to approve the acquisition of public property by condemnation and the power of eminent domain by the Department of Transportation; the Board of Regents of the University System of Georgia; or the State Properties Commission, acting for and on behalf of a state agency.

History. — Code 1981, § 50-16-182, enacted by Ga. L. 1986, p. 1187, § 1.

JUDICIAL DECISIONS

Constitutionality. — Authority granted the State Commission on the Condemnation of Public Property does not amount to an improper delegation of legislative power and does not violate separation-of-powers principles. DOT v. City of Atlanta, 260 Ga. 699, 398 S.E.2d 567 (1990).

50-16-183. Procedure for acquisition of public property by condemnation.

(a) If the Department of Transportation; the Board of Regents of the University System of Georgia; or a state agency, acting by and through

the State Properties Commission, needs to acquire public property or any interest in public property in carrying out its duties and responsibilities, such public property or interest therein may be acquired by condemnation and the power of eminent domain. The procedures to be followed in such acquisitions shall be those set forth in the laws applicable to the Department of Transportation; the Board of Regents of the University System of Georgia; and the State Properties Commission, acting for and on behalf of a state agency, respectively, relating to the acquisition of public property or any interest therein by condemnation and the power of eminent domain. In addition to the requirements and procedures set forth in such laws, the Department of Transportation; the Board of Regents of the University System of Georgia; and the State Properties Commission, acting for and on behalf of a state agency, shall not acquire public property or any interest therein by condemnation until such acquisition has been approved by the commission as provided in this Code section; provided, however, that the commission's approval shall not be required if the interest held by the governmental entity specified in paragraph (2) of Code Section 50-16-180 in the property is a tax lien, a mortgage, or both.

(b) The acquisition of public property or an interest therein by condemnation by the Department of Transportation; the Board of Regents of the University System of Georgia; and the State Properties Commission, acting for and on behalf of a state agency, shall first be approved by the commission. If the Department of Transportation; the Board of Regents of the University System of Georgia; or the State Properties Commission, acting for and on behalf of a state agency, wishes to acquire public property or an interest therein by condemnation, it shall apply to the commission for approval of such acquisition. The commission may require the submission of such information by the Department of Transportation; the Board of Regents of the University System of Georgia; and the State Properties Commission, acting for and on behalf of a state agency, and by the owner or representatives of the owner of the public property as the commission may reasonably require for the consideration of the application. If the commission determines that the acquisition of the public property by condemnation is reasonable, necessary, and in the public interest, it shall grant its approval for such acquisition. The determination of the commission shall be final. The commission shall make its determination within 30 days after the commission receives the information required by the commission for the consideration of the application of the state agency and in no event longer than 90 days after receipt of the application. If the commission approves the condemnation, it shall forward a resolution to that effect to the applicant seeking such approval.

(c) When the approval of the acquisition of public property or an interest therein by condemnation is granted by the commission, the

Department of Transportation; the Board of Regents of the University System of Georgia; or the State Properties Commission, acting for and on behalf of a state agency, may acquire the public property or interest therein pursuant to the procedures specified in the applicable laws. A copy of the resolution approving the acquisition adopted by the commission shall accompany the notice of condemnation and shall accompany any condemnation petition filed in superior court.

(d) Consistent with the provisions of this article, the commission may adopt such rules and regulations as may be necessary to enable the commission to carry out effectively and efficiently the powers and duties assigned to the commission by this article. The commission may utilize the resources of any department or agency of the state, including specifically the State Properties Commission, to assist it in making any determinations required by the provisions of this article and may appoint such hearing officers or other investigators as it deems proper to receive public comment and make reports or recommendations to the commission.

(e) The commission shall not be subject to Chapter 13 of this title, known as the "Georgia Administrative Procedure Act."

History. — Code 1981, § 50-16-183, enacted by Ga. L. 1986, p. 1187, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 2005, p. 60, § 50/HB 95.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "and" was substituted for "an" following "acting for" in the first sentence of subsection (c) and "this title" was substituted for "Title 50" in subsection (e).

JUDICIAL DECISIONS

Constitutionality. — Authority granted the State Commission on the Condemnation of Public Property does not amount to an improper delegation of legislative power and does not violate separation-of-powers principles. DOT v. City of Atlanta, 260 Ga. 699, 398 S.E.2d 567 (1990).

CHAPTER 17

STATE DEBT, INVESTMENT, AND DEPOSITORIES

Article 1

General Provisions

Sec.
50-17-1. Use of facsimile signatures on public securities authorized.
50-17-2. Agreements to resell or repurchase United States government obligations at stated rate of interest; delivery and safekeeping of such obligations; investment in authorized securities.

Article 2

State Financing and Investment

50-17-20. Short title.
50-17-21. Definitions.
50-17-22. State Financing and Investment Commission.
50-17-23. General obligation and guaranteed revenue debts; sinking and common reserve funds; appropriations; investments; taxation to pay debt service requirements.
50-17-24. Authority to incur public debt; purposes; limitations.
50-17-25. Incurring public debt by resolution; sale of evidences of indebtedness; form of obligations; validation of bonds; civil claims and actions.
50-17-26. Evidences of indebtedness generally; accrual of interest; paying agent; executory contracts; audits; legal services.
50-17-27. Application and investment of public debt proceeds by commission and by the Environmental Finance Authority.
50-17-28. Bond security contracts prohibited.
50-17-29. Miscellaneous pledges, authorizations, and exemptions.
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State Depositories

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50-17-50.1. Authority to vote.
50-17-51. Meetings of State Depository Board; records; list of deposits; interest policy; cash management policies and procedures.
50-17-52. Contracts for interest on deposits; authority to remove deposits.
50-17-53. Authority to determine amount to be deposited; deposit security required.
50-17-54. Monitoring financial condition of depositories; action in case of insolvency of depository.
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50-17-63. Deposit of demand funds; investment of funds; reports; remittance of interest earned; motor fuel tax revenues.
50-17-64. Depositories required to furnish monthly statements.
50-17-65. State officials to notify depositories of any unauthorized signatures or alterations; notification in lieu of other obligations to notify; assent to provisions by depositories.

Sec.
50-17-66. State officer not to receive commission, interest, compensation, or reward for depositing state money.
50-17-67. Depositories to serve without definite term or salary or fees; exception.

Article 4

Governmental Commercial Paper Notes

50-17-90. Definitions.
50-17-91. Governed by general provisions on commercial paper; issuance of security by governmental entity; requirements of governing body; renewal and reissuance of commercial paper.

Article 5

Interest Rate Management

50-17-100. Definitions.

Sec.
50-17-101. Guidelines, rules, and regulations for interest rate management plans and agreements; authority to enter into, modify, or terminate; disposition of payments under agreements; obligations, terms, and conditions; agency for state.
50-17-102. Interest rate management plans.
50-17-103. Requirements for interest rate management agreements; credit enhancement or liquidity agreements.
50-17-104. Information required in annual financial statements.
50-17-105. Applicability of state law; jurisdiction.

Cross references. — State debt generally, Ga. Const. 1983, Art. VII, Sec. IV.

ARTICLE 1

GENERAL PROVISIONS

50-17-1. Use of facsimile signatures on public securities authorized.

(a) Public securities authorized to be issued and delivered at any one time may be executed with an engraved, imprinted, stamped, or otherwise reproduced facsimile of any signature, seal, or other means of authentication, certification, or endorsement required or permitted to be recorded thereon if so authorized by the board, body, or officer empowered by law to authorize the issuance of such securities. In addition to the foregoing, the clerk of the superior court of each county of this state may authorize the execution of any public securities, as defined in subsection (b) of this Code section, requiring or permitting his signature, with an engraved, imprinted, stamped, or otherwise reproduced facsimile of such signature and with an engraved, imprinted, stamped, or otherwise reproduced facsimile of the seal of the superior court of which he is clerk.

(b) The term "public securities," as used in this Code section, means bonds, notes, or other obligations for the payment of money issued by this state, by its political subdivisions, or by any department, agency, or other instrumentality of this state or any of its political subdivisions.

(c) This Code section shall be permissive only and shall in no instance be mandatory.

History. — Ga. L. 1958, p. 689, §§ 1-3; Ga. L. 1977, p. 633, § 1; Ga. L. 1983, p. 839, § 3.

Law reviews. — For article discussing tax-exempt financing in Georgia, see 18 Ga. St. B.J. 20 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 23 et seq.

C.J.S. — 10 C.J.S., Bills and Notes, §§ 3, 73.

50-17-2. Agreements to resell or repurchase United States government obligations at stated rate of interest; delivery and safekeeping of such obligations; investment in authorized securities.

(a) Agencies, authorities, boards, public corporations, instrumentalities, retirement systems, and other divisions of state government authorized to invest in direct obligations of the United States government or in obligations unconditionally guaranteed by agencies of the United States government may do so by selling and purchasing such obligations under agreements to resell or repurchase the obligations at a date certain in the future at a specific price which reflects a premium over the purchase or selling price equivalent to a stated rate of interest. Delivery of the obligations purchased may be made by deposit through book entry in a safekeeping account maintained by the seller of the securities, in the name of the purchasing state entity or its agent, clearly indicating the interest of the purchasing state entity.

(b) In addition to the authorization in subsection (a) of this Code section, the state treasurer may invest in the securities authorized for direct investment by subsection (b) of Code Section 50-17-63 by selling and purchasing such obligations under agreements to resell or repurchase the obligations at a date certain in the future at a specific price which reflects a premium over the purchase or selling price equivalent to a stated rate of interest. Delivery of the obligations purchased may be made by deposit through book entry in a safekeeping account maintained by the seller of the securities, in the name of the Office of the State Treasurer or its agent, clearly indicating the interest of the Office of the State Treasurer.

History. — Ga. L. 1980, p. 303, § 1; Ga. L. 1997, p. 569, § 2; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 306 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Reverse repurchase agreements authorized. — O.C.G.A. § 50-17-2(a) authorizes both selling and purchasing with a commitment to repurchase or resell. 2003 Op. Att'y Gen. No. 2003-10.

Repurchase agreements. — Office of the State Treasurer is empowered to enter into repurchase agreements and reverse repurchase agreements in connection with fulfilling its role related to managing the investment and liquidity needs of the state. 2012 Op. Att'y Gen. No. 12-1.

ARTICLE 2

STATE FINANCING AND INVESTMENT

Cross references. — Appropriations, Ga. Const. 1983, Art. III, Sec. IX.

50-17-20. Short title.

This article shall be known and may be cited as the "Georgia State Financing and Investment Commission Act."

History. — Ga. L. 1973, p. 750, § 1; Ga. L. 2002, p. 415, § 50.

50-17-21. Definitions.

As used in this article, the term:

(1) "Commission" means the Georgia State Financing and Investment Commission as defined by Article VII, Section IV, Paragraph VII of the Constitution, consisting of the Governor, the President of the Senate, the Speaker of the House of Representatives, the state auditor, the Attorney General, the state treasurer, and the Commissioner of Agriculture, and declared an agency and instrumentality of the state.

(2) "Constitution" means the Constitution of the State of Georgia of 1983.

(3) "Financial advisory matters" means all matters pertaining to the issuance of state debt and state authority bonds and the investment of funds created by the issuance of such debt or bonds and the performing of ministerial services in connection with the issuance, marketing, and delivery of all such debt or bonds. Financial advice shall include the development and recommendation to state authorities of a financial plan which will provide state authorities with required funds.

(4) "Fiscal officer of the state" means the state treasurer or such other officer as may be designated by a valid Act of the General Assembly to perform the functions of the state treasurer with respect to public debt.

(5) "General obligation debt" means obligations of this state issued pursuant to this article to acquire, construct, develop, extend, enlarge, or improve land, waters, property, highways, buildings, structures, equipment, or facilities of the state, its agencies, departments, institutions, and those state authorities which were created and activated prior to the amendment to Article VII, Section VI, Paragraph I(a) of the Constitution of 1945, adopted November 8, 1960, for which the full faith, credit, and taxing power of the state are pledged for the payment thereof. "General obligation debt" also means obligations of this state issued to provide educational facilities for county and independent school systems and to provide public library facilities for county and independent school systems, counties, municipalities, and boards of trustees of public libraries or boards of trustees of public library systems. "General obligation debt" further means debt incurred to make loans to counties, municipal corporations, political subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems.

(6) "Guaranteed revenue debt" means revenue obligations issued by an instrumentality of the state pursuant to this article to finance toll bridges, toll roads, and any other land public transportation facilities or systems and water and sewer facilities or to make or purchase, or lend or deposit against the security of, loans to citizens of the state for educational purposes, the payment of which has been guaranteed by the state as provided in this article.

(7) "Public debt" means any debt authorized by Article VII, Section IV of the Constitution.

(8) "Sinking fund" means the State of Georgia General Obligation Debt Sinking Fund established by this article.

(9) "State authorities" means the following instrumentalities of the state: Georgia Building Authority, Georgia Education Authority (Schools), Georgia Education Authority (University), Georgia Highway Authority, State Road and Tollway Authority, Georgia Ports Authority, Georgia Development Authority, Jekyll Island—State Park Authority, Stone Mountain Memorial Association, North Georgia Mountains Authority, Lake Lanier Islands Development Authority, Groveland Lake Development Authority, Georgia Higher Education Assistance Authority, the Georgia Housing and Finance Authority, and other instrumentalities of the state created by the General Assembly and authorized to issue debt and not specifically exempt from this article.

History. — Ga. L. 1973, p. 750, § 2; Ga. L. 1974, p. 171, § 1; Ga. L. 1979, p. 401, §§ 1-5; Ga. L. 1983, p. 3, § 66; Ga. L. 1983, p. 839, § 4; Ga. L. 1983, p. 1024, § 1; Ga. L. 1984, p. 22, § 50; Ga. L. 1987, p. 642, § 1; Ga. L. 1988, p. 426, § 2; Ga. L. 1991, p. 1653, § 2-3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2010, p. 863, § 6/SB 296; Ga. L. 2012, p. 775, § 50/HB 942; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2014, p. 866, § 50/SB 340.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a dash was inserted between "Island" and "State" in paragraph (9).

Pursuant to Code Section 28-9-5, in 2010, "the state treasurer" was substituted for "the director of the Office of Treasury and Fiscal Services" in paragraph (1).

Editor's notes. — The amendment to Ga. Const. 1945, Art. VII, Sec. VI, Para. I(a), adopted November 8, 1960, referred to in paragraph (5) of this Code section, is now found in Ga. Const. 1983, Art. VII, Sec. IV, Para. III; Art. VIII, Sec. V, Para. VII; and Art. IX, Sec. III, Para. I.

The amendment to this Code section by Ga. L. 1988, p. 426, § 2, is not in effect, since it was to become effective only upon ratification of proposed amendments to Ga. Const. 1983, Article VII, Section IV, Paragraph VII and Article X, Section I, Paragraph II at the November 1988 general election (see Ga. L. 1988, p. 2116), which proposed constitutional amendments were defeated.

OPINIONS OF THE ATTORNEY GENERAL

Employees of Stone Mountain Memorial Association are not eligible to participate in the State Employees' Health Insurance Plan. 1975 Op. Att'y Gen. No. 75-6.1.

Since Stone Mountain Memorial Association is an authority of the state, association employees, being employees of a state authority not covered by the Employees' Retirement System of Georgia, do not meet the eligibility requirements set forth in Ga. L. 1961, p. 147, § 7 (see O.C.G.A. § 45-18-7). 1975 Op. Att'y Gen. No. 75-6.1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 5, 13.

50-17-22. State Financing and Investment Commission.

(a) **Responsibilities.** Subject to the limitations contained in this article, the commission shall be responsible for the issuance of all public debt incurred hereunder, for the proper application of the proceeds of such debt to the purposes for which it is incurred, for the proper application of an appropriation to the commission for capital outlay to the purpose for which it is appropriated, and for the application and administration of this article; provided, however, that the proceeds of guaranteed revenue obligations shall be paid to the issuer thereof, and such proceeds and the application thereof shall be the responsibility of the issuer. The commission shall also be responsible for the proper disbursement of an appropriation to it for public school capital outlay, and the commission and the State Board of Education will be concurrently responsible for its proper application. The commission shall be responsible for the issuance of guaranteed revenue debt, except that bonds themselves evidencing such debt shall be in the name of the

instrumentality of this state issuing the same and shall be issued and executed in accordance with the laws relative to such instrumentality and the applicable provisions of this article.

(b) **Organization.**

(1) The Governor shall serve as the chairperson and chief executive officer; the presiding officer of the Senate shall serve as the vice chairperson of the commission; and the state auditor shall serve as secretary and treasurer. The chairperson or vice chairperson or secretary and treasurer shall be the presiding officer at each meeting of the commission.

(2) There shall be a construction division of the commission administered by a director who shall not be a member of the commission and who shall also serve as the executive secretary for the commission. The director and the staff of the construction division shall be appointed by and serve at the pleasure of the commission, shall provide administrative support for all personnel of the commission, and shall account for and keep all records pertaining to the operation and administration of the commission and its staff. The director, as executive secretary, shall prepare agendas and keep minutes of all meetings of the commission. In construction and construction related matters, the construction division shall act in accordance with the policies, resolutions, and directives of the Georgia Education Authority (Schools) and the Georgia Education Authority (University) until such time as such policies, resolutions, or directives are changed or modified by the commission. In carrying out its responsibilities in connection with the application of any funds under its control, including the proceeds of any debt or any appropriation made directly to it for construction purposes, the commission is specifically authorized to acquire and construct projects for the benefit of any department or agency of the state or to contract with any such department or agency for the acquisition or construction of projects under policies, standards, and operating procedures to be established by the commission; provided, however, that the commission shall contract with the Department of Transportation or the Georgia Highway Authority or the State Road and Tollway Authority or any combination of the foregoing for the supervision of and contracting for design, planning, building, rebuilding, constructing, reconstructing, surfacing, resurfacing, laying out, grading, repairing, improving, widening, straightening, operating, owning, maintaining, leasing, and managing any public roads and bridges for which general obligation debt has been authorized. The construction division also shall perform such construction related services and grant administration services for state agencies and instrumentalities and for local governments, instrumentalities of local governments, and

other political subdivisions as may be assigned to the commission or to the construction division by executive order of the Governor.

(3) There shall also be a financing and investment division of the commission administered by a director who shall not be a member of the commission. The director shall be appointed by and serve at the pleasure of the commission. The financing and investment division shall perform all services relating to issuance of public debt, the investment and accounting of all proceeds derived from incurring general obligation debt or such other amounts as may be appropriated from time to time to the commission for capital outlay purposes, the guaranteed revenue debt and the proceeds thereof as may be directed by the commission and the issuer, the management of all other state debt, and such financial advisory matters and general accounting duties as are not specifically assigned to the executive secretary in paragraph (2) of this subsection and in subsection (g) of this Code section. The director of the financing and investment division shall report directly to the commission on all matters pertaining to the functions and duties assigned to the division.

(4) Members of the commission shall serve without compensation but shall receive actual expenses incurred by them in the performance of their duties. The expenses, including mileage, shall be paid on the same basis as for other state officials and employees.

(c) **Meetings.** The commission shall hold regular meetings as it deems necessary, but, in any event, not less than one meeting shall be held in each calendar quarter. The commission shall meet at the call of the chairperson, vice chairperson, or secretary and treasurer or a majority of the members of the commission. Meetings of the commission shall be subject to Chapter 14 of this title, and its records shall be subject to Article 4 of Chapter 18 of Title 50. The commission shall approve the issuance of public debt, as hereinafter provided, adopt and amend bylaws, and establish salaries and wages of employees of the commission only upon the affirmative vote of a majority of its members; all other actions of the commission may be taken upon the affirmative vote of a majority of a quorum present. A quorum shall consist of a majority of the members of the commission. If any vote is less than unanimous, the vote shall be recorded in the minutes of the commission.

(d) **Powers.** The commission shall have those powers set forth in the Constitution and the powers necessary and incidental thereto. In addition to such powers, the commission shall have power:

(1) To have a seal and alter the same at pleasure;

(2) To make contracts and to execute all instruments necessary or convenient, including contracts with any and all political subdivi-

sions, institutions, or agencies of the state and state authorities, upon such terms and for such purposes as it deems advisable; and such political subdivisions, institutions, or agencies of the state and state authorities are authorized and empowered to enter into and perform such contracts;

(3) To employ such other experts, agents, and employees as may be in the commission's judgment necessary to carry on properly the business of the commission; to fix the compensation for such officers, experts, agents, and employees and to promote and discharge the same;

(4) To do and perform all things necessary or convenient to carry out the powers conferred upon the commission by this article;

(5) To make reasonable regulations or adopt the standard specifications or regulations of the Department of Transportation or the state authorities, or parts thereof, for the construction, reconstruction, building, rebuilding, renovating, surfacing, resurfacing, acquiring, leasing, maintaining, repairing, removing, installing, planning, or disposing of projects for which public debt has been authorized, or for such other purposes as deemed necessary by the commission; and

(6)(A) To apply for, arrange for, accept, and administer federal funds for capital outlay and construction related services and for authorization or payment of public debt.

(B) Without limitation, the commission may:

(i) Deposit or arrange for federal funds to be deposited into the State of Georgia General Obligation Debt Sinking Fund or into the State of Georgia Guaranteed Revenue Debt Common Reserve Fund, and the fiscal officer of the state shall accept such deposits;

(ii) Arrange for the disbursement of federal funds directly to trustees, paying agents, or other persons for the payment of public debt;

(iii) Cooperate with any public agency, authority, or officer in applying for, accepting, and administering federal funds for public purposes mutual to the commission and any other agency, authority, or officer;

(iv) Apply or arrange to participate in and take all actions the commission determines appropriate to obtain the benefits of federal programs which provide tax credits, incentives, or other inducements to the state or to holders of public debt;

(v) Apply or arrange to participate in federal programs which require the allocation of funds or bonding authority among geographical areas, governmental jurisdictions and entities, or

other categories, and perform such allocation, including mandating, requiring, treating, or deeming the waiver of any local allocation by way of resolution or policy of the commission, unless another officer, agency, or instrumentality is explicitly authorized by state law to perform such allocation and all officers, agencies, or instrumentalities are required to provide such assistance, cooperation, and information as the commission directs related to any federal programs. In such cases where the commission has allocated funds or bonding authority or mandated, required, treated, or deemed the waiver of any allocation, any local governmental entity desiring to issue obligations of any type that are dependent upon a waived allocation shall only be lawfully permitted to do so in a manner that is consistent with the actions of the commission; and any notice to the district attorney or the Attorney General, pursuant to Code Section 36-82-20 or 36-82-74 or any similar provision of law, by any local governmental entity shall include a certification that the issuance of such obligations is consistent with the actions of the commission. No court shall have jurisdiction to consider any petition regarding the validation of any such obligations, whether pursuant to Article 2 or Article 3 of Chapter 82 of Title 36 or any other similar provision of law, in the absence of such certification when required by this division;

(vi) Establish and apply criteria for determining a reasonable expectation of the state that an allocation made pursuant to division (v) of this subparagraph will not be used by a local governmental entity so that the commission may mandate, require, treat, or deem such allocation as waived; and

(vii) Apply or arrange to participate in any other federal program which provides benefits consistent with state law and supportive of functions of the commission.

(C) The use of federal funds as part of the authorization for the issuance of general obligation debt or the issuance of guaranteed revenue debt shall be by appropriation as provided by law. The payment of federal funds into the sinking fund to pay annual debt service requirements shall be by appropriation or by direction of the commission in the absence of appropriation. The payment of federal funds into the State of Georgia Guaranteed Revenue Debt Common Reserve Fund as part of the common reserve shall be by appropriation or by direction of the commission in the absence of appropriation.

(D) The commission may delegate to the fiscal officer of the state its authority to arrange for and accept federal funds as provided in this Code section.

(e) **Records.** Except for those records specifically designated in this article to be kept by the fiscal officer of the state, the commission shall be responsible for keeping the records provided for in this article and such other records as it deems necessary or convenient for the administration of this article.

(f) **Advisory and service function.**

(1) The commission is further vested with complete and exclusive authority and jurisdiction in all financial advisory matters relating to the issuance or incurrence of debt by state authorities as defined in paragraph (9) of Code Section 50-17-21; and no such state authority shall be authorized, without the approval of the commission, to employ other financial or investment advisory counsel in any matter whatsoever or to incur debt without the specific approval of the commission.

(2) When the commission performs financial advisory or construction related services, the state authority or state agency requiring such services shall reimburse the commission for such services.

(g) **Budget unit; budget.**

(1) The commission is designated a budget unit and shall be subject to Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act."

(2) The executive secretary shall prepare, under the direction and supervision of the commission, any budgets, requests, estimates, records, or other documents deemed necessary or efficient for compliance with Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," to provide for the payment of personnel services, operating expense, and administration and otherwise carry out this article. The commission may but need not receive an appropriation for personnel, administrative services, and other operating expenses of the commission. The commission may but need not receive an appropriation for the costs of issuance, validation, and delivery of obligations to be incurred, including, but not limited to, trustee's fees, paying agent fees, printing fees, bond counsel fees, district attorney fees, clerk of the superior court fees, architect fees, and engineering fees, which costs and fees are dependent on the principal amount of the obligations incurred and are determined to be appropriate costs of the project or projects for which such obligations are incurred and are authorized to be paid from bond proceeds. The commission may but need not receive an appropriation for expenditures made for fees and expenses incurred in safeguarding and protecting public health, life, and property in connection with projects for which general obligation debt has been incurred.

(h) **Retirement system.** All officers and employees of the commission shall be qualified to be and shall become members of the Employ-

ees' Retirement System of Georgia; provided, however, that any such officer or employee who was on April 13, 1973, an officer or employee of any state agency, authority, department, or instrumentality and a member or participant in any annuity or retirement program other than the Employees' Retirement System of Georgia, which person hereinafter is referred to as a "present employee," may elect to remain under such other annuity or retirement program or to transfer membership to the Employees' Retirement System of Georgia. The commission is authorized to perform and shall perform all obligations of employer if such present employee shall elect to remain under such other annuity or retirement program. A present employee electing to transfer membership to the Employees' Retirement System of Georgia under this article shall give notice of electing to transfer membership to the Board of Trustees of the Employees' Retirement System of Georgia and simultaneously therewith shall give to the governing body of the other annuity or retirement program notice that it shall transfer to the Board of Trustees of the Employees' Retirement System of Georgia the employer's and employee's contributions standing to his account. From and after the date of transfer of contributions, the present employee electing to transfer membership shall be a member of the Employees' Retirement System of Georgia with membership service and prior service credits equivalent to those he would have accrued had he been a member of the Employees' Retirement System of Georgia throughout the period of transferred creditable service. In lieu of the foregoing election, any present employee wishing to retain his rights under any private annuity or retirement program may assume responsibility for the payment of all costs of such program and may elect to become a member of the Employees' Retirement System of Georgia effective the date upon which he becomes an officer or employee of the commission. Any present employee so electing to retain his rights may also receive membership service credit and prior service credit under the Employees' Retirement System of Georgia for all or part of his service with any state agency, authority, department, or instrumentality, plus military service credit as otherwise provided by law, by paying to the Board of Trustees of the Employees' Retirement System of Georgia, on terms acceptable to the Board of Trustees, all the employee's contributions, plus regular interest thereon, which would have stood to his credit had he been a member of the Employees' Retirement System of Georgia during the period of creditable service sought to be established. In the event of the latter election, the commission shall pay all employer's contributions, plus regular interest thereon, attributable to the creditable service sought to be established. Any elections under this subsection shall be made in writing within six months from the date of appointment to office or employment by the commission.

(i) **Surety bonds.** All members and officers of the commission and such employees as the commission may designate shall be surety bonded in such amounts as determined by the commission.

(j) **Exemptions from laws.** The commission shall not be subject to the following:

(1) Articles 3 and 4 of Chapter 5 of this title;

(2) Subpart 2 of Part 2 of Article 4 of Chapter 12 of Title 45, relating to approval of contracts;

(3) Article 1 of Chapter 20 of Title 45; or

(4) Code Sections 45-12-82, 45-12-83, 45-12-89, and 45-12-92.

History. — Ga. L. 1973, p. 750, § 3; Ga. L. 1974, p. 1213, § 1; Ga. L. 1979, p. 401, § 7; Ga. L. 1982, p. 3, § 50; Ga. L. 1988, p. 227, § 7; Ga. L. 1994, p. 97, § 50; Ga. L. 2001, p. 496, § 1; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2005, p. 642, § 3/SB 227; Ga. L. 2009, p. 139, § 11/HB 581; Ga. L. 2010, p. 123, § 1/HB 1258; Ga. L. 2010, p. 863, § 4/SB 296; Ga. L. 2011, p. 752, § 50/HB 142; Ga. L. 2012, p. 218, § 16/HB 397.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, the hyphen in "construction related" was deleted twice in paragraph (b)(2) and once in paragraph (f)(2).

Editor's notes. — Ga. L. 2009, p. 139, § 1/HB 581, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Works Job Creation and Protection Act of 2009.'"

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

JUDICIAL DECISIONS

Cited in Fuller v. State, 232 Ga. 581, 208 S.E.2d 85 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Assuring local systems of gift of facilities. — Georgia State Financing and Investment Commission cannot provide any assurances that facilities financed by general obligation bonds will be given to the local school systems when the bonds are retired. 1975 Op. Att'y Gen. No. 75-51.

Commission is not required to obtain bids on construction contracts. 1975 Op. Att'y Gen. No. 75-58.

Authority of university to issue revenue obligations. — Legal ability of the Board of Regents of the University System of Georgia to incur debt by issuing revenue obligations is doubtful. 1988 Op. Att'y Gen. No. 88-21.

RESEARCH REFERENCES

ALR. — Unemployment compensation: eligibility of employee laid off according to employer's mandatory retirement plan, 50 A.L.R.3d 880.

50-17-23. General obligation and guaranteed revenue debts; sinking and common reserve funds; appropriations; investments; taxation to pay debt service requirements.

(a) **General obligation debt.** General obligation debt may not be incurred until the General Assembly has enacted legislation stating the

purposes, in general or specific terms, for which such issue of debt is to be incurred, specifying the maximum principal amount of the issue, and appropriating an amount at least sufficient to pay the highest annual debt service requirements for the issue. Appropriations made in each fiscal year, as provided in this subsection, for debt service purposes shall not lapse for any reason and shall continue in effect until the debt for which such appropriation was authorized shall have been incurred; but the General Assembly may repeal any such appropriation at any time prior to the incurring of such debt. Following the incurring of debt in any fiscal year for any purpose for which an appropriation has been made, there shall be deposited in the sinking fund provided for in paragraph (1) of this subsection an amount equal to the highest annual debt service requirements for such debt coming due in any succeeding fiscal year. On or prior to the end of such fiscal year, the commission shall certify to the fiscal officer of the state the amount of the appropriation for any purpose which has been transferred to the sinking fund and the amount of the anticipated highest annual debt service requirement of debt authorized to be issued in such fiscal year for any purpose by resolution of the commission but which actually will be incurred in the next succeeding fiscal year. The remaining appropriation for any purpose, after deducting the aggregate amounts described in the preceding sentence, shall lapse, except that any such amount attributable to an appropriation to general obligation debt for the construction and improvement of public roads and bridges shall not lapse but shall be paid to the Department of Transportation. The General Assembly may provide in an appropriation of highest annual debt service requirements that if the commission determines not to incur the debt so authorized, the commission may expend the appropriation as capital outlay for the purposes specified in the appropriation. The appropriation as capital outlay shall lapse at the end of the fiscal year of the appropriation unless committed as provided by law. The appropriation as highest annual debt service shall expire as authorization for debt when the funds are committed as capital outlay but shall otherwise lapse as provided by law.

(1) **Sinking fund.** The General Assembly shall appropriate to a special trust fund designated "State of Georgia General Obligation Debt Sinking Fund" such amounts as are necessary to pay annual debt service requirements on all general obligation debt incurred hereunder. The sinking fund shall be used solely for retirement of general obligation debt payable therefrom.

(2) **Failure to appropriate; insufficient moneys in sinking fund.** If the General Assembly shall fail to make any appropriation or if for any reason the moneys in the sinking fund are insufficient to make all payments required with respect to such general obligation debt as and when the same becomes due, the state treasurer shall set

apart from the first revenues thereafter received, applicable to the general fund of the state, such amounts as are necessary to cure any such deficiencies and shall immediately deposit the same into the sinking fund. The state treasurer may be required to set aside and apply such revenues as aforesaid at the action of any holder of any general obligation debt incurred under this article. The obligation to make such sinking fund deposits shall be subordinate to the obligation imposed upon the fiscal officers of the state pursuant to the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976.

(3) **Sinking fund investments.** The moneys in the sinking fund shall be as fully invested as practical, consistent with the requirements to make current principal and interest payments. Any such investments shall be restricted to obligations constituting direct and general obligations of the United States government or obligations unconditionally guaranteed as to the payment of principal and interest by the United States government, maturing no longer than 12 months from date of purchase.

(4) **Highway appropriations.** Appropriations to the sinking fund for debt service requirements attributable to public debt incurred or to be incurred for construction, reconstruction, and improvement of public roads and bridges shall be considered as an appropriation for activities incident to providing and maintaining an adequate system of public roads and bridges in this state for the purpose of Article III, Section IX, Paragraph VI(b) of the Constitution.

(b) **Guaranteed revenue debt.** Guaranteed revenue debt may not be incurred until the General Assembly has enacted legislation authorizing the guarantee of the specific issue of revenue obligations then proposed, reciting that the General Assembly has determined such obligations will be self-liquidating over the life of the issue, which determination shall be conclusive, specifying the maximum principal amount of such issue, and appropriating an amount at least equal to the highest annual debt service requirements for such issue. After the General Assembly has enacted legislation authorizing the guarantee of a specific issue of revenue bonds by an instrumentality of the state or state authority, the commission shall approve the issuance of such bonds and thereafter such instrumentality or state authority shall actually authorize the issuance of its revenue bonds in accordance with the Act of the General Assembly, including amendments thereto, authorizing the issuance of revenue bonds by such instrumentality or state authority and the applicable provisions of this article.

(1) **Common reserve fund.** Appropriations made in connection with guaranteed revenue debt shall be paid, upon the issuance of the

obligations, into a special trust fund to be designated "State of Georgia Guaranteed Revenue Debt Common Reserve Fund" to be held together with all other sums similarly appropriated as a common reserve for any payments which may be required by virtue of any guarantee entered into in connection with any issue of guaranteed revenue obligations. This Guaranteed Revenue Debt Common Reserve Fund shall be held and administered by the state treasurer. All such appropriations for the benefit of guaranteed revenue debt shall not lapse for any reason and shall continue in effect until the debt for which the appropriation was authorized shall have been incurred; but the General Assembly may repeal any such appropriation at any time prior to the payment of the same into the common reserve fund.

(2) **Insufficient moneys in common reserve fund.** If any payments are required to be made from the State of Georgia Guaranteed Revenue Debt Common Reserve Fund to meet debt service requirements on guaranteed revenue obligations by virtue of an insufficiency of revenues, the state treasurer shall pay to the designated paying agent, upon certification by the issuing instrumentality as to the insufficiency of such revenues, from the common reserve fund, the amount necessary to cure such deficiency. The state treasurer shall then reimburse such fund from the general funds of the state within ten days following the commencement of any fiscal year of the state for any amounts so paid. The state treasurer may be required to apply such funds as aforesaid with respect to guaranteed revenue debt at the action of any holder of any such guaranteed revenue obligations. The obligation to make any such reimbursements shall be subordinate to the obligation imposed upon the fiscal officers of the state pursuant to the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 and shall also be subordinate to the obligation hereinabove imposed upon the state treasurer to make sinking funds deposits for the benefit of general obligation debt.

(3) **Minimum balance required; excess moneys; investments.** The amount to the credit of the common reserve fund shall at all times be at least equal to the aggregate highest annual debt service requirements on all outstanding guaranteed revenue obligations entitled to the benefit of such fund. If at the end of any fiscal year of the state the fund is in excess of the required amount, the state treasurer, upon certification of the state accounting officer, shall transfer such excess to the general funds of the state, free of such trust. The funds in the common reserve shall be as fully invested as is practical, consistent with the requirements of guaranteeing the principal and interest payments on the revenue obligations guaranteed by the state. Any such investments shall be restricted to

obligations constituting direct and general obligations of the United States government or obligations unconditionally guaranteed as to the payment of principal and interest by the United States government, maturing no longer than 12 months from the date of purchase.

(c) **Requirement for taxation.** The General Assembly shall raise by taxation each fiscal year, in addition to the sums necessary to make all payments required to be made under contracts entitled to the protection of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 and to pay public expenses, such amounts as are necessary to pay debt service requirements in such fiscal year on all general obligation debt incurred hereunder and to maintain at all times the Guaranteed Revenue Debt Common Reserve Fund in the full amount required by the Constitution and this article.

(d) **Variable rate debt.**

(1) As used in this subsection, the term "variable rate debt" means general obligation debt bearing interest at a variable interest rate.

(2) Variable rate debt may be incurred in the following manner:

(A) For purposes of calculating the highest annual debt service requirements for variable rate debt, interest may be calculated at the maximum rate of interest that may be payable during any one fiscal year, after taking into account any credits permitted in the related bond resolution, indenture, or other instrument against such amount;

(B) Any resolution authorizing general obligation debt which is variable rate debt, in lieu of stating the rate or rates at which such variable rate debt shall bear interest and the price or prices at which such variable rate bonds shall be initially sold or remarketed, in the event of purchase and subsequent resale, may provide that such interest rates and prices may vary from time to time depending on criteria established in the approving resolution, which criteria may include, without limitation, references to indices or variations in interest rates as may, in the judgment of a remarketing agent, be necessary to cause variable rate debt to be remarketable from time to time at a price equal to its principal amount and may provide for the appointment of a bank, trust company, investment bank, or other financial institution to serve as remarketing agent for such purposes. The resolution for any variable rate debt may provide that alternate interest rates or provisions for establishing alternate interest rates, different security or claim priorities, or different call or amortization provisions will apply during such times as the variable rate debts are held by a person providing credit or liquidity enhancement arrangements for such debt as authorized in subparagraph (C) of this paragraph.

The resolution may also provide for such variable rate debt to bear interest at rates established pursuant to a process generally known as an auction rate process and may provide for appointment of one or more financial institutions or investment banks to serve as auction agents and broker-dealers in connection with the establishment of such interest rates and sale and remarketing of such debt;

(C) In connection with the issuance of any variable rate debt, the state may enter into arrangements to provide additional security and liquidity for such debt, including without limitation, bond or interest rate insurance or letters of credit, bond purchase contracts, or other arrangements whereby funds are available to retire or purchase such variable rate debt, thereby assuring the ability of owners of the variable rate debt to sell or redeem such debt. The state may enter into contracts and may agree to pay fees to persons providing such arrangements, but only under circumstances where the appropriate officer has certified that he or she reasonably expects that the total interest paid or to be paid on the variable rate debt, together with the fees for the arrangements, being treated as if interest, would not, taken together, cause the debt to bear interest, calculated to its stated maturity, at a rate in excess of the rate that the debt would bear in the absence of such arrangements; and

(D) The state may enter into qualified interest rate management agreements with respect to any variable rate debt. Net payments for such qualified interest rate management agreements shall constitute interest on the variable rate debt and shall be paid from the same source as payments on the variable rate debt. During the term of any qualified interest rate management agreement, annual debt service requirements of the variable rate debt may be calculated taking into account any amounts to be paid or received pursuant to the terms of such qualified interest rate management agreement.

History. — Ga. L. 1973, p. 750, § 4; Ga. L. 1974, p. 171, § 2; Ga. L. 1979, p. 401, §§ 8-13; Ga. L. 1982, p. 3, § 50; Ga. L. 1983, p. 3, § 66; Ga. L. 1986, p. 339, § 1; Ga. L. 1990, p. 8, § 50; Ga. L. 1993, p. 1402, § 18; Ga. L. 2004, p. 886, § 6; Ga. L. 2005, p. 694, § 13/HB 293; Ga. L. 2010, p. 863, § 3/SB 296.

Cross references. — State debt, Ga. Const. 1983, Art. VII, Sec. IV.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "treated as" was substituted for "treated is" near the end of subparagraph (d)(2)(C).

OPINIONS OF THE ATTORNEY GENERAL

Requirements of authorized investment in securities. — Repurchase agreement transaction can be an authorized investment of the Teachers Retirement System, Employees' Retirement System, and Georgia State Financing and

Investment Commission so long as the transaction is intended by the parties to be a sale and repurchase of securities on terms under which such securities might normally be sold, the documents supporting the transaction adequately record that intention of the parties, and the securities involved are those in which the state entity is otherwise authorized to invest. 1979 Op. Att'y Gen. No. 79-62.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 311 et seq.

C.J.S. — 81A C.J.S., States, §§ 352, 374 et seq., 425 et seq., 440 et seq.

ALR. — Right of creditor of public body to full or pro rata payment when fund out of which obligation is payable is insufficient to pay all like obligations of equal dignity, 90 A.L.R. 717; 171 A.L.R. 1033.

50-17-24. Authority to incur public debt; purposes; limitations.

(a) **Authority.** The state, through action of the commission, is authorized to incur public debt as provided in this article.

(b) **Purposes for debt.**

(1) Public debt without a limit may be incurred to repel invasion, suppress insurrection, and defend the state in time of war.

(2) Public debt may be incurred to supply such temporary deficit as may exist in the state treasury in any fiscal year because of necessary delay in collecting the taxes of that year, but the debt so incurred shall not exceed, in the aggregate, 1 percent of the total revenue receipts, less refunds, of the state treasury in the fiscal year immediately preceding the year in which such debt is incurred; and any debt so incurred shall be repaid out of the taxes levied for the fiscal year in which the loan is made. Such debt shall be payable on or before the last day of the fiscal year in which it is incurred, and no such debt may be incurred in any fiscal year under this paragraph if there is then outstanding unpaid debt from any previous fiscal year which was incurred under this paragraph.

(3) Public debt for public purposes may be either general obligation debt or guaranteed revenue debt. General obligation debt may be incurred by issuing obligations to acquire, construct, develop, extend, enlarge, or improve land, waters, property, highways, buildings, structures, equipment, or facilities of the state, its agencies, departments, institutions, and those state authorities which were created and activated prior to the amendment adopted November 8, 1960, to Article VII, Section VI, Paragraph I(a) of the Constitution of 1945. General obligation debt may also be incurred to provide educational facilities for county and independent school systems and to provide public library facilities for county and independent school systems, counties, municipalities, and boards of trustees of public libraries or boards of trustees of public library systems. General obligation debt

may also be incurred in order to make loans to counties, municipal corporations, political subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems. It shall not be necessary for the state or a state authority to hold title to or otherwise be the owner of such facilities or systems. General obligation debt for these purposes may be authorized and incurred for administration and disbursement by a state authority created and activated before, on, or after November 8, 1960. Guaranteed revenue debt may be incurred by guaranteeing the payment of revenue obligations issued by an instrumentality of the state if such revenue obligations are issued to finance toll bridges, toll roads, or any other land public transportation facilities or systems, or water or sewage treatment facilities or systems, or to make or purchase, or lend or deposit against the security of, loans to citizens of the state for educational purposes; provided, however, that in no event shall general obligation debt or guaranteed revenue debt be incurred for water or sewage treatment facilities or systems for counties or municipalities unless such facilities are financed in whole or in part through an instrumentality of the state created by the General Assembly for the purpose of assisting the state, counties, or municipalities in the financing of water or sewage treatment facilities or systems for the benefit of the citizens of Georgia. General obligation debt or guaranteed revenue debt may be incurred to fund or refund any such debt or to fund or refund any obligations issued upon the security of contracts to which the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 is applicable.

(c) **Limitations.** No debt may be incurred under paragraph (3) of subsection (b) of this Code section at any time when the highest aggregate annual debt service requirements for the then current year or any subsequent year for outstanding general obligation debt and guaranteed revenue debt, including the proposed debt, and the highest aggregate annual payments for the then current year or any subsequent fiscal year of the state under all contracts then in force to which the provisions of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 are applicable exceed 10 percent of the total revenue receipts, less refunds of the state treasury in the fiscal year immediately preceding the year in which any such debt is to be incurred. Within such limitation, the following limitations shall also be applicable:

(1) No guaranteed revenue debt may be incurred to finance water or sewage treatment facilities or systems when the highest aggregate annual debt service requirements for the then current year or any subsequent fiscal year of the state for outstanding or proposed guaranteed revenue debt for water or sewage treatment facilities or

systems exceed 1 percent of the total revenue receipts, less refunds, of the state treasury in the fiscal year immediately preceding the year in which any such debt is to be incurred;

(2) The aggregate principal amount of guaranteed revenue debt incurred to make loans to citizens of the state for educational purposes that may be outstanding at any time shall not exceed $18 million and the aggregate principal amount of guaranteed revenue debt incurred to make or purchase, or to lend or deposit against the security of, loans to citizens of the state for educational purposes that may be outstanding at any time shall not exceed $72 million; and

(3) The issuance of any funding or refunding debt pursuant to this Code section shall be subject to the 10 percent limitation provided for in this subsection to the same extent as debt incurred under this article; provided, however, that in making such computation the annual debt service requirements and annual contract payments remaining on the debt or obligations being funded or refunded shall not be taken into account.

(d) **Annual debt service requirements.** For the purposes of subsection (c) of this Code section, annual debt service requirements shall mean the total principal and interest coming due in any fiscal year of the state; provided, however, that with regard to any issue of debt incurred wholly or in part on a term basis, annual debt service requirements shall mean an amount equal to the total principal and interest payments required to retire such issue in full divided by the number of years from its issue date to its maturity date.

History. — Ga. L. 1973, p. 750, § 5; Ga. L. 1979, p. 401, §§ 14, 15; Ga. L. 1983, p. 3, § 66; Ga. L. 1983, p. 839, § 5; Ga. L. 1983, p. 1024, § 2; Ga. L. 1987, p. 642, § 2; Ga. L. 1988, p. 13, § 50; Ga. L. 1994, p. 97, § 50.

Cross references. — State debt, Ga. Const. 1983, Art. VII, Sec. IV.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "receipts" was substituted for "recipts" in paragraph (b)(2).

Editor's notes. — The amendment to Const. 1945, Art. VII, Sec. VI, Para. I(a), adopted November 8, 1960, referred to in paragraph (b)(3) of this Code section, is now found in Ga. Const. 1983, Art. VII, Sec. IV, Para. III; Art. VIII, Sec. V, Para. VII; and Art. IX, Sec. III, Para. I.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 86 et seq., 95 et seq.

C.J.S. — 81A C.J.S., States, §§ 328 et seq., 345 et seq., 377 et seq.

ALR. — Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein, 119 A.L.R. 190.

Validity, under state constitution and laws, of issuance by state or state agency of revenue bonds to finance or refinance construction projects at private religious-affiliated colleges or universities, 95 A.L.R.3d 1000.

50-17-25. Incurring public debt by resolution; sale of evidences of indebtedness; form of obligations; validation of bonds; civil claims and actions.

(a) **Authority.** The state, through action of the commission, is authorized to incur public debt as hereinafter provided.

(b) **Resolutions.**

(1)(A) All actions of the commission shall be taken by resolution. Each resolution adopted in connection with authorizing public debt shall be reduced to writing; and the executive secretary shall maintain a full and correct record of each step or proceeding had or taken in the course of authorizing and contracting public debt. Each authorizing resolution shall state each purpose of the debt it authorizes, which statement need not be more specific but shall not be more general than those purposes in or pursuant to law and the maximum principal amount authorized for each purpose. Public debt may be contracted and evidences of indebtedness issued therefor pursuant to one or more authorizing resolutions, unless otherwise provided in the resolution at any time and from time to time for any combination of purposes, in any specific amounts, at any rates of interest, for any term, payable at any intervals, at any place, in any manner, and having any other terms or conditions deemed by the commission to be necessary or useful. Unless debt is sooner incurred or unless a shorter period is provided in such resolution, every authorizing resolution shall expire one year after the date of its adoption if the debt authorized by such resolution has not been issued in whole or in part.

(B) In the event it is determined by the commission that it is to the best interest of the state to fund or refund any such public debt or obligation, the same may be accomplished by resolution of the commission without any action on the part of the General Assembly. Any appropriation made or required to be made with respect to the debt being funded or refunded shall immediately attach and inure to the benefit of the obligations to be issued in connection with such funding or refunding, to the same extent and with the same effect as though the obligation to be issued had originally been authorized by action of the General Assembly, provided that the debt incurred in connection with any such funding or refunding shall be the same as that originally authorized by the General Assembly (except that general obligation debt may be incurred to fund or refund obligations issued upon the security of contracts to which the provisions of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 are applicable and the continuing appropriation required to be made

under such provisions of the Constitution shall immediately attach and inure to the benefit of the obligation to be issued in connection with such funding and refunding with the same force and effect as though the obligation so funded or refunded had originally been issued as a general obligation debt authorized hereunder); and provided, further, that the term of the funding or refunding issue shall not extend beyond the term of the original debt or obligation, and the total interest on the funding or refunding issue shall not exceed the total interest to be paid on the original debt or obligation. The principal amount of any debt issued in connection with such funding or refunding may exceed the principal amount being funded or refunded to the extent necessary to provide for the payment of any premium thereby incurred.

(2) An authorizing resolution may authorize the negotiation of a loan or loan agreement of any type, upon any terms, with any bank authorized to transact business in this state or with any agency of the United States government.

(3) An authorizing resolution may authorize the issuance and sale of notes or it may authorize the issuance and sale of bonds at public or private sale in such manner and for such price as the commission may determine to be for the best interests of the state.

(c) **Notice and sale.** The commission may adopt resolutions providing for the sale of evidences of indebtedness, which resolutions may provide the manner and methods of making the sale, acceptance of bids, delivery dates, and such other actions deemed necessary by the commission in the sale and delivery of the evidences of indebtedness.

(d) **Form of obligations.**

(1) Every loan agreement and every evidence of indebtedness under a loan agreement shall be executed in the name of and for the state by the chairman and secretary of the commission. Every other evidence of indebtedness, except those issued in connection with the incurring of guaranteed revenue debt, shall be executed in the name of the state by the chairman and secretary of the commission and shall be sealed with the official seal of the commission or a facsimile thereof. Coupons shall be executed by the chairman of the commission. The facsimile signature of either the chairman or the secretary, or both, may be imprinted in lieu of the manual signature if the commission so directs, and the facsimile of the chairman's signature shall be used on coupons; provided, however, that the executive secretary may sign as secretary if the commission so directs. Evidence of indebtedness and interest coupons appurtenant thereto bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid

notwithstanding the fact that before or after the delivery thereof such person ceased to hold such office.

(2) Each bond representing guaranteed revenue debt shall have stamped or printed thereon a certificate reading as follows:

> "I hereby certify that the State of Georgia guarantees full payment of this obligation and the interest hereon in accordance with its terms and has pledged the full faith, credit, and taxing power of the state to such payment."

Immediately below the certificate shall appear the facsimile signature of the secretary of the commission.

(3) Debt to be incurred at the same time for more than one purpose may be combined in one issue without stating the purposes separately, but the proceeds thereof must be allocated, disbursed, and used solely in accordance with the original purposes and without exceeding the principal amount authorized for each purpose set forth in the authorization of the General Assembly and to the extent not so used shall be used to purchase and retire public debt.

(4) Every evidence of indebtedness shall be dated not later than the date the same was issued; shall contain a reference by date of the appropriate authorizing resolution pursuant to which the same was issued; and may, but need not, state the purpose for which the debt is being incurred. When debt is being incurred at the same time for more than one purpose, the statement "for various purposes" shall be authorized.

(5) Bonds issued as evidence of general obligation debt or guaranteed revenue debt shall have a certificate of validation bearing the facsimile signature of the clerk of the Superior Court of Fulton County, stating the date on which the bonds were validated as hereinafter provided, and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state. The bonds may be sealed with the official seal of the Superior Court of Fulton County or a facsimile thereof.

(6) The commission is authorized to use a standardized registered bond certificate. Such bond certificate may bear the facsimile signatures of the chairman and secretary of the commission and a manual authorizing signature of the registrar or transfer agent or an agent of the registrar or transfer agent.

(e) **Validation of bonds.** Bonds issued to evidence guaranteed revenue debt shall be validated in the Superior Court of Fulton County as provided in the Act creating the instrumentality issuing guaranteed revenue debt. Bonds issued to evidence general obligation debt shall be validated in the Superior Court of Fulton County as provided herein,

notwithstanding any provisions of Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law," to the contrary.

(1) **Notice to district attorney.** The commission shall give notice to the Fulton County district attorney of its intention to incur general obligation debt, setting forth the principal amount of issue, the terms of the debt, the purpose, either in general or specific terms, and other terms of the debt to be incurred; provided, however, that the notice, in the discretion of the commission, in lieu of specifying the rate or rates of interest which the bonds are to bear, may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest specified in the notice or that in the event the bonds are to bear different rates of interest for different maturity dates that none of such rates will exceed the maximum rate specified in the notice. The notice, signed by the chairman, vice-chairman, or secretary shall be served to the district attorney.

(2) **District attorney to file action.** Within 20 days from the date of service of the notice provided for in paragraph (1) of this subsection, the district attorney shall prepare and file in the office of the clerk of the Superior Court of Fulton County a complaint directed to the superior court, in the name of the state and against the commission, setting forth service of the notice, the amount of the bonds to be issued, for what purpose or purposes to be issued, what interest rate or rates they are to bear, or the maximum rate or rates of interest, how much principal and interest is to be paid annually, and when the bonds are to be paid in full; and shall obtain from the judge of the court an order requiring the commission, by its proper officers, to appear at such time and place within 20 days from the filing of the complaint, as the judge may direct, and show cause, if any exists, why the bonds should not be confirmed and validated, which complaint and order shall be served upon the commission in the manner provided by law; and to such complaint the commission shall make sworn answer within the time prescribed in this paragraph.

(3) **Notice of hearing.** Prior to the hearing of the case, the clerk of the Superior Court of Fulton County shall publish in a newspaper, once during each of the two successive weeks immediately preceding the week in which the hearing is to be held, a notice to the public that on the day specified in the order providing for the hearing of the case the same will be heard. Such newspaper shall be the official organ of the county in which the sheriff's advertisements appear.

(4) **Trial of case; parties; judgment; appeal.** Within the time prescribed in the order, or such further time as he may fix, the judge of the superior court shall proceed to hear and determine all questions of law and of fact in the case and shall render judgment thereon. Any citizen of this state may become a party to the proceedings at or

before the time set for the hearing; and any party thereto dissatisfied with the judgment of the court confirming and validating issuance of the bonds, or refusing to confirm and validate the issuance of the bonds, may appeal from the judgment under the procedure provided by law in cases of injunction. Only a party to the proceedings at the time the judgment appealed from is rendered may appeal from such judgment. In the event no appeal is filed within the time prescribed by law or, if filed, the judgment is affirmed on appeal, the judgment of the superior court, so confirming and validating the issuance of the bonds and the security therefor, shall forever be conclusive upon the validity of the bonds.

(5) **Costs.** The commission shall reimburse the district attorney for his actual costs of the case, if any. The fees payable to the clerk of the Superior Court of Fulton County for validation and confirmation shall be for each $5,000.00 bond as follows:

First 100 bonds	$ 1.00
Bonds 101 through 500	0.25
All bonds over 500	0.10

(f) **Civil claims and actions.**

(1) Any other provisions of law to the contrary notwithstanding, this article shall govern all civil claims, proceedings, and actions respecting public debt.

(2) If the state fails to pay any public debt in accordance with its terms, an action to compel such payment may be commenced against the state by delivering a copy of the summons and the complaint to the Attorney General of the state. The place of trial of any such action shall be the Superior Court of Fulton County. If there is final judgment against the state in the action, it shall be paid as provided in Code Section 50-17-23, together with interest thereon at the rate of 7 percent per annum from the date such payment was judged to have been due until the date of payment of the judgment.

History. — Ga. L. 1973, p. 750, § 5; Ga. L. 1979, p. 401, § 16; Ga. L. 1982, p. 3, § 50; Ga. L. 1983, p. 3, § 66; Ga. L. 1983, p. 839, § 6; Ga. L. 1984, p. 22, § 50; Ga. L. 1986, p. 339, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "exists" was substituted for "exist" in paragraph (e)(2).

JUDICIAL DECISIONS

Validation petition must state purpose of bonds. — Statutory requirements of the section is merely that the validation petition state the purpose of the bonds in general terms. Sears v. State, 232 Ga. 547, 208 S.E.2d 93 (1974).

Purpose of validation proceeding. — It is not the purpose of a validation

proceeding to determine lawfulness of purpose for bonds. Sears v. State, 232 Ga. 547, 208 S.E.2d 93 (1974).

Remedy for unlawful use of proceeds. — If the public authorities should seek to use in an unlawful manner, or for an unlawful purpose, the proceeds of the bonds thus authorized, the remedy is not by a refusal to validate the bonds for the purpose for which the bonds were authorized. Sears v. State, 232 Ga. 547, 208 S.E.2d 93 (1974).

Cited in Fuller v. State, 232 Ga. 581, 208 S.E.2d 85 (1974).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 148 et seq., 174, 198 et seq., 352 et seq., 382, 394.

C.J.S. — 81A C.J.S., States, §§ 437, 443 et seq., 454, 524 et seq.

ALR. — When limitations begin to run against actions on public securities or obligations to be paid out of special or particular fund, 50 A.L.R.2d 271.

50-17-26. Evidences of indebtedness generally; accrual of interest; paying agent; executory contracts; audits; legal services.

(a) **Authority.** The state, through action of the commission, is authorized to incur public debt as hereinafter provided.

(b) **Registration, prepayment, cancellation, destruction, etc.**

(1) **Registrar.** The fiscal officer of the state or his agent shall act as registrar for evidences of indebtedness registrable as to principal or interest or both. No transfer of a registered evidence of indebtedness is valid unless made on the register maintained by the fiscal officer of the state or his agent for that purpose, and the state shall be entitled to treat the registered owner as the owner of such instrument for all purposes. Payment of principal and interest, when registered as to interest, of registered instruments shall be by check to the registered owner as it appears on the register unless the commission has otherwise provided. The commission may make such other provisions respecting registration as it deems necessary or useful. The fiscal officer of the state may employ out-of-state transfer agents or in-state transfer agents, or both, to perform registration duties or payment duties, or both, as agents of the fiscal officer of the state.

(2) **Prepayment.** The commission may authorize debt having any provision for prepayment deemed necessary or useful, including the payment of any premium.

(3) **Destroyed bonds.** If any evidence of indebtedness becomes mutilated or is destroyed, lost, or stolen, the commission shall execute and deliver a new bond or note of like date of issue, maturity date, principal amount, and interest rate per annum as the bond or note so mutilated, destroyed, lost, or stolen, upon exchange and substitution for such mutilated bond or note and in lieu of and

substitution for the bond or note destroyed, lost, or stolen, upon filing with the commission evidence satisfactory to it that such bond or note has been destroyed, lost, or stolen and proof of ownership thereof and upon furnishing the commission with indemnity satisfactory to it and upon complying with other reasonable rules of the commission and paying expenses connected therewith. Any bond or note surrendered for exchange shall be canceled. As provided in connection with the issuance of replacement bonds or notes under this Code section, the commission shall have authority to print the new bonds with a validation certificate bearing the facsimile signature of the clerk of the superior court then in office; and such certificate shall have the same force and effect as in the first instance. All responsibility with respect to the issuance of any such new bonds shall be on the commission and not on the clerk, and the clerk shall have no liability in the event an overissuance occurs.

(4) **Interest.** Interest shall cease to accrue on public debt on the date that the debt becomes due for payment if the payment is made or duly provided for; but such debt and the accrued interest thereon shall continue to be public debt until 20 years overdue for payment. At that time, unless demand for their payment has been made, they shall be extinguished and shall be deemed no longer outstanding.

(5) **Cancellation.** Unless otherwise directed by the commission, every evidence of indebtedness and interest coupon paid or otherwise retired shall forthwith be marked "canceled" and shall be delivered by the paying agent accepting payment thereof to the commission, which shall destroy them and provide a certificate of destruction to the fiscal officer of the state.

(6) **Records.** The fiscal officer of the state or his agent shall maintain records containing a full and correct description of each evidence of indebtedness issued, identifying it and showing its date, issue, amount, interest rate, payment dates, payments made, registration, destruction, and every other relevant transaction. The use of depositories or immobilized or book-entry delivery systems, or both, may be authorized by the commission.

(7) **Confidentiality.** Records maintained by the commission, the fiscal officer of the state or his agents, or by any paying agent appointed by the commission which reveal the names or identities of registered holders of bonds or notes shall not be deemed public records. Any information concerning the identity or the name of registered holders of bonds or notes shall be released only upon direction or authorization by the commission.

(c) **Paying agent.** The commission may appoint one or more paying agents for each issue of bonds or notes. The fiscal officer of the state may

be designated the sole paying agent or a copaying agent for any issue of bonds or notes. Every other such paying agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to do a banking or trust business. There may be deposited with a paying agent, in a special account for such purposes only, a sum estimated to be sufficient to enable the paying agent to pay the principal and interest on public debt which will come due not more than 15 days after the date of the deposit. The commission may make such other provisions respecting paying agents as it deems necessary or useful and may enter into a contract with any paying agents containing such terms, including its compensation and conditions in regard to the paying agents, as it deems necessary or useful.

(d) **Executory contracts.** After adoption of an authorizing resolution for a purpose which is to be accomplished wholly or in part through performance of an executory contract by some other contracting party, the contract may be entered into prior to the contracting of the debt authorized by the resolution with like effect as if the funds necessary for payments on the contract were readily available. In such cases, the debt authorized by the resolution shall be deemed to have been contracted pursuant to the resolution in the amount necessary to make such payments on the date the contract is entered into, and the authority of the resolution shall promptly thereafter be exercised.

(e) **Money borrowed.** All money borrowed shall be lawful money of the United States and all debts shall be payable in such money.

(f) **Evidences of indebtedness held by state funds.** All evidences of indebtedness owned or held by any state fund shall be deemed to be outstanding in all respects, and the agency having such fund under its control shall have the same rights with respect to such evidences of indebtedness as a private party; but, if any sinking fund acquires bonds which give rise to such fund, such bond shall be deemed paid for all purposes and no longer outstanding and together with any interest coupons appurtenant thereto shall be canceled. All evidence of indebtedness owned by any state fund shall be registered to the fullest extent registrable.

(g) **Audits.** The commission, together with all funds established in connection with public debt, shall be audited no less frequently than annually by an independent certified public accountant to be selected by a majority of the commission. Copies of such audit shall be given to both houses of the General Assembly and shall be available upon request to interested parties, including, specifically but without limitation, the holders of evidences of indebtedness. The commission shall not be required to distribute copies of the audit to the members of the General Assembly but shall notify the members of the availability of the audit in the manner which it deems to be most effective and efficient.

(h) **Legal services.** The Attorney General shall provide legal services for the commission, and in connection therewith the provisions of reimbursement for legal services of Code Sections 45-15-13 through 45-15-16 shall be fully applicable; provided, however, that the chairman of the commission shall be the one to provide the advance approval for the amount of such services and expenses.

History. — Ga. L. 1973, p. 750, § 5; Ga. L. 1974, p. 171, § 3; Ga. L. 1979, p. 401, § 17; Ga. L. 1982, p. 3, § 50; Ga. L. 1983, p. 839, § 7; Ga. L. 2005, p. 1036, § 46/SB 49.

RESEARCH REFERENCES

Am. Jur. 2d. — 52 Am. Jur. 2d, Lost and Destroyed Instruments, § 1 et seq. 64 Am. Jur. 2d, Public Securities and Obligations, §§ 157, 350.

C.J.S. — 81A C.J.S., States, §§ 438, 448.

ALR. — Right to call governmental bonds in advance of their maturity, 109 A.L.R. 988.

50-17-27. Application and investment of public debt proceeds by commission and by the Environmental Finance Authority.

(a) The commission shall be responsible for the proper application of the proceeds of public debt issued under this article to the purposes for which it is incurred; provided, however, that the proceeds from guaranteed revenue obligations shall be paid to the issuer thereof, and the proceeds and the application thereof shall be the responsibility of the issuer.

(b) Proceeds received from the sale of bonds evidencing general obligation debt shall be held in trust by the commission and disbursed promptly by the commission in accordance with the original purpose set forth in the authorization of the General Assembly and in accordance with rules and regulations established by the commission. Bond proceeds and other proceeds held by the commission shall be as fully invested as is practical, consistent with the proper application of such proceeds for the purposes intended. Investments shall be limited to general obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government, or to obligations issued by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, Bank for Cooperatives, Federal Farm Credit Banks regulated by the Farm Credit Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or to tax exempt obligations issued by any state, county, municipal corporation, district, or political subdivision, or civil division or public instrumentality of any such government or unit of such government, or to prime bankers' acceptances, or to the units of

any unit investment trusts the assets of which are exclusively invested in obligations of the type described in this subsection, or to the shares of any mutual fund the investments of which are limited to securities of the type described in this subsection and distributions from which are treated for federal income tax purposes in the same manner as the interest on said obligations, provided that at the time of investment such obligations or the obligations held by any such unit investment trust or the obligations held or to be acquired by any such mutual fund are limited to obligations which are rated within one of the top two rating categories of any nationally recognized rating service or any rating service recognized by the commissioner of banking and finance, and no others, or to securities lending transactions involving securities of the type described in this subsection. Income earned on any such investments or otherwise earned by the commission shall be retained by the commission and used to purchase and retire any public debt or any bonds or obligations issued by any public agency, public corporation, or authority which are secured by a contract to which the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 is applicable and may be used to pay operating expenses of the commission. However, in order to provide for contingencies, efficiency, and flexibility, the commission may agree by contract or grant agreement with county and independent school systems that income earned during grant administration on a direct appropriation of state funds to the commission for public school capital outlay will be applied to the capital outlay purposes of the appropriation. Otherwise, the interest on direct appropriations to the commission shall be deposited into the treasury.

(c) Notwithstanding subsections (a) and (b) of this Code section, the Georgia Environmental Finance Authority shall be the state authority responsible for the proper application of the proceeds of public debt issued under this article for the purpose of making loans to counties, municipal corporations, political subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems. Proceeds from the sale of such bonds shall be paid to the authority, which shall hold them in trust for their original purposes as set forth in the authorization of the General Assembly, as provided by law and in accordance with the rules and regulations established by the authority. Bond proceeds held by the authority shall be as fully invested as is practicable, consistent with the proper application of such proceeds for the purposes intended, and the authority shall contract with the Georgia State Financing and Investment Commission for the purpose of investing any such bond proceeds and the income therefrom. Investments shall be limited to those permitted to the authority or the Georgia State Financing and Investment Commission in the laws providing for their creation and activities. Income earned on any such

investments of bond proceeds or the income therefrom shall be retained by the authority and used by it for its public purposes as provided by law.

History. — Ga. L. 1973, p. 750, § 6; Ga. L. 1974, p. 1213, § 2; Ga. L. 1979, p. 401, § 18; Ga. L. 1980, p. 555, § 1; Ga. L. 1983, p. 3, § 66; Ga. L. 1986, p. 339, § 3; Ga. L. 1987, p. 642, §§ 3, 4; Ga. L. 2001, p. 496, § 2; Ga. L. 2003, p. 359, § 1; Ga. L. 2004, p. 319, § 2; Ga. L. 2010, p. 949, § 1/HB 244.

50-17-28. Bond security contracts prohibited.

The state and all institutions, departments, and agencies of the state are prohibited from entering into any contract, except contracts pertaining to guaranteed revenue debt, with any public agency, public corporation, authority, or similar entity if the contract is intended to constitute security for bonds or other obligations issued by any such public agency, public corporation, or authority; and, from and after September 1, 1974, in the event any contract between the state, or any institution, department, or agency of the state, and any public agency, public corporation, authority, or similar entity, or any revenues from any such contract, is pledged or assigned as security for the repayment of bonds or other obligations, then and in either such event the appropriation or expenditure of any funds of the state for the payment of obligations under any such contract shall likewise be prohibited; provided, however, that all contracts entered into prior to September 1, 1974, shall continue to have the benefit of the protection afforded by the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 as fully and completely as though this article had not been adopted and for as long as any such contract shall remain in force and effect. Furthermore, nothing in this article is intended directly or by implication to have any effect upon any provision of any such contract establishing lien rights, priorities regarding revenues, or otherwise providing protection to the holders of obligations secured by such contracts.

History. — Ga. L. 1973, p. 750, § 7; Ga. L. 1979, p. 401, § 19; Ga. L. 1983, p. 3, § 66.

50-17-29. Miscellaneous pledges, authorizations, and exemptions.

(a) **Full faith and credit.** The full faith, credit, and taxing powers of the state are pledged to the payment of all public debt, and the interest thereon, incurred under this article; and all such debt and the interest thereon shall be exempt from taxation.

(b) **Negotiability.** Every evidence of indebtedness issued under this article shall be, and the same is held to have all the rights and incidences of, negotiable instruments, anything in law to the contrary notwithstanding.

(c) **Legal investments; securities for deposit.** General obligation debt and guaranteed revenue debt herein authorized are made securities in which all public officers and bodies of this state; all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them. Such debt is further made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state may be authorized.

(d) **State employees.** Notwithstanding the provisions of any other law, employees of the state are authorized to hold, purchase, and own bonds representing general obligation debt or guaranteed revenue debt issued under this article.

(e) **Exemption from taxation.**

(1) Except as otherwise provided in paragraph (2) of this subsection, no city, county, municipality, or other political subdivision of this state shall impose any tax, assessment, levy, license fee, or other fee upon any contractors or subcontractors as a condition to or result of the performance of a contract, work, or services by such contractors or subcontractors in connection with any project being constructed, repaired, remodeled, enlarged, serviced, or destroyed for, or on behalf of, the state or any of its agencies, boards, bureaus, commissions, and authorities; nor shall any city, county, municipality, or other political subdivision of this state include the contract price of or value of such contract, work, or services performed on such projects in computing the amount of any tax, assessment, levy, license fee, or other fee authorized to be imposed on any contractors or subcontractors.

(2) The exemption provided for in paragraph (1) of this subsection shall not apply to any local sales tax, local use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to,

such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or pursuant to Article 2 of Chapter 8 of Title 48; or by or pursuant to Article 3 of Chapter 8 of Title 48.

(3)(A) As used in this paragraph, the term:

(i) "Building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(ii) "Local sales and use tax" means any local sales tax, local use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or pursuant to Article 2 of Chapter 8 of Title 48; or by or pursuant to Article 3 of Chapter 8 of Title 48.

(B) No local sales and use tax which became applicable subsequent to the time of entering into a contract as described in this subparagraph shall be collected by a county or municipality upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was entered into on December 19, 1994, and a prior claim for a refund of such sales and use taxes was filed with the department on or before January 22, 1998.

(C)(i) Notwithstanding any other provision of this title or any other title to the contrary, the provisions of this subparagraph shall provide the exclusive remedy and procedure for seeking and obtaining any and all refunds for local sales and use taxes paid on the sale or use of building and construction materials. No refund shall be allowed for any such taxes or payments unless expressly authorized by this subparagraph.

(ii) The commissioner shall issue refunds for local sales and use taxes paid or due with respect to a contract specified under subparagraph (B) of this paragraph when it is shown to the satisfaction of the commissioner that local sales and use taxes were paid pursuant to paragraph (2) of this subsection.

(D) No person shall receive a refund for local sales and use taxes paid in any case where an amount equal to the amount of taxes

paid has been charged to or paid by any purchaser of the person seeking a refund. When a claimant is issued a refund for taxes paid, in every case where an amount equal to the amount of taxes paid has been charged to or paid by any purchaser of the claimant, the claimant shall refund to the purchaser or customer an amount equal to the refund allowed by the commissioner.

(E) No refund for taxes paid shall be allowed unless a refund claim is filed with the commissioner pursuant to subparagraph (F) of this paragraph. If, in the opinion of the commissioner, a refund claim of taxes paid pursuant to this subsection contains a false statement, the claim shall be denied. In no event shall interest be allowed on any refund under this paragraph.

(F) Each refund claim shall be filed in writing with the commissioner in the form and containing such information as the commissioner may require. The commissioner shall consider information contained in the refund claim, together with such other information as may be available, and shall approve or disapprove the refund claim and notify the claimant of such action. Any claimant whose claim is denied by the commissioner or whose claim is not decided by the commissioner within one year from the date of filing the claim shall have the right to bring an action for a refund in the superior court of such county. No action or proceeding for the recovery of a refund shall be commenced before the expiration of one year from the date of filing the refund claim unless the commissioner renders a decision on the refund claim within that time, nor shall any action or proceeding be commenced after the occurrence of the earlier of (i) the expiration of one year from the date the claim is denied, or (ii) the expiration of two years from the date the refund claim was filed. The time for filing an action for the recovery of a refund may be extended for such period as may be agreed upon in writing between the claimant and the commissioner during the period authorized for bringing an action or any extension thereof. In the event any refund claim is approved and the taxpayer has not paid other state taxes which have become due, as determined by the commissioner, the commissioner may set off the unpaid taxes against the refund. When the setoff authorized in this Code section is exercised, the refund shall be deemed granted and the amount of the setoff shall be considered for all purposes as a payment toward the particular tax debt which is being set off. Any excess refund properly allowable under this paragraph which remains after the setoff has been applied may be refunded to the taxpayer.

History. — Ga. L. 1973, p. 750, § 8; Ga. L. 1979, p. 401, § 20; Ga. L. 1982, p. 3, § 50; Ga. L. 1994, p. 97, § 50; Ga. L. 1995, p. 172, § 6; Ga. L. 2000, p. 1347, § 1.

JUDICIAL DECISIONS

Exemptions of this section were validly passed, the title to the legislation giving sufficient warning of the exemptions. Sears v. State, 232 Ga. 547, 208 S.E.2d 93 (1974).

Exemption from taxation. — O.C.G.A. § 50-17-29(e) evinces the legislature's intent to prohibit a county or municipality from taxing any property used by a contractor on a state project, or from getting around that prohibition by including the contract price of a state project as a basis for any other kind of authorized tax or fee. Lunda Constr. Co. v. Clayton County, 201 Ga. App. 106, 410 S.E.2d 446 (1991).

Phrase "any tax" in O.C.G.A. § 50-17-29(e) included local option, Metropolitan Atlanta Rapid Transit Authority, and special county sales taxes which were assessed against a contractor performing work for the state. C.W. Matthews Contracting Co. v. Collins, 214 Ga. App. 532, 448 S.E.2d 234 (1994).

Road construction exemptions. — Pursuant to O.C.G.A. § 50-17-29(e), a highway construction contractor who performed work solely for a state agency was entitled to a refund of sales and use taxes and local option taxes. Collins v. Lunda Constr. Co., 214 Ga. App. 512, 448 S.E.2d 236 (1994).

Inventory and equipment of company producing asphalt for road construction were not exempt from ad valorem taxes since the property was taxed solely as a condition to or result of the performance of work for the state. Gainesville Asphalt, Inc. v. Hall County, 214 Ga. App. 679, 448 S.E.2d 721 (1994).

Highway construction contractor was entitled to an exemption under O.C.G.A. § 50-17-29(e) to the extent that the contractor's machinery and equipment were used in state projects in the tax year. Gwinnett County Bd. of Tax Assessors v. APAC-Georgia, Inc., 215 Ga. App. 609, 451 S.E.2d 798 (1994).

Paving contractor was entitled to a tax exemption for that part of the contractor's machinery and equipment located in the taxing county for use on state projects; use of the equipment solely on state projects was not required, nor was it required that proximity to state work be the sole reason for moving to the taxing county or that the majority of work be performed for the state. APAC-Georgia, Inc. v. Richmond County Bd. of Tax Assessors, 230 Ga. App. 570, 496 S.E.2d 488 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bonds, § 42. 64 Am. Jur. 2d, Public Securities and Obligations, §§ 11, 13, 33, 309, 311, 312, 316. 71 Am. Jur. 2d, State and Local Taxation, § 278.

C.J.S. — 10 C.J.S., Bills and Notes, § 15. 81A C.J.S., States, §§ 364 et seq., 439, 446 et seq. 84 C.J.S., Taxation, § 315.

ALR. — Constitutional provision against impairing obligation of contract as applicable to statutes affecting rights or remedies of holders or owners of improvement bonds or liens, 97 A.L.R. 911.

50-17-30. Liability of public officers and employees.

Any public officer or employee and any surety on his official bond or any other person participating in any direct or indirect impairment of any fund established in connection with public debt shall be liable in any action brought by the Attorney General in the name of the state, or by any taxpayer of the state, or by the holder of any evidence of indebtedness payable in whole or in part, directly or indirectly, out of such fund to restore to such fund all diversions therefrom.

History. — Ga. L. 1973, p. 750, § 9.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 346.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 363 et seq.

ARTICLE 3

STATE DEPOSITORIES

Cross references. — Administration of deposits of insurers, T. 33, C. 12. Depositing of state funds in state depositories, § 45-8-10 et seq.

Editor's notes. — For application of this article in 2020, see Executive Order 03.31.20.02.

50-17-50. Creation of State Depository Board; membership; quorum; assignment for administrative purposes.

The State Depository Board, referred to in this article as the "board," is created, consisting of the Governor, the state chief financial officer, the state accounting officer, the commissioner of banking and finance, the state revenue commissioner, the commissioner of transportation, and the state treasurer, who shall act as administrative officer of the board. A majority of the board shall constitute a quorum, and the acts of the majority shall be the acts of the board. The board, in its discretion, may name and appoint, from time to time, as state depositories of state funds any bank, trust company, or savings and loan association which has its deposits insured by the Federal Deposit Insurance Corporation. The board may also authorize any department, board, bureau, or other agency of the state which has a foreign office to deposit state funds for current operating expenses in certain foreign banks, the deposits of which are not insured by the Federal Deposit Insurance Corporation, provided the balance of such deposits in any one foreign bank does not exceed limits prescribed by the State Depository Board. For the purposes of this article, "foreign bank" shall mean a bank organized under the laws of a foreign country. The board is assigned to the Department of Administrative Services for administrative purposes only as prescribed in Code Section 50-4-3.

History. — Ga. L. 1878-79, p. 88, § 1; Code 1882, § 943a; Ga. L. 1888, p. 34, § 1; Ga. L. 1889, p. 54, § 1; Ga. L. 1890-91, p. 67, § 1; Ga. L. 1892, p. 54, § 1; Ga. L. 1893, p. 24, § 1; Ga. L. 1893, p. 25, § 1; Ga. L. 1893, p. 26, § 1; Ga. L. 1893, p. 27, § 1; Ga. L. 1893, p. 28, § 1; Ga. L. 1895, p. 21, § 1; Civil Code 1895, § 982; Ga. L. 1896, p. 39, § 1; Ga. L. 1897, p. 22, § 1; Ga. L. 1898, p. 46, § 1; Ga. L. 1899, p. 27, § 1; Ga. L. 1900, p. 43, § 1; Ga. L. 1901, p. 24, § 1; Ga. L. 1901, p. 25, § 1; Ga. L. 1901, p. 26, § 1; Ga. L. 1901, p. 27, § 1; Ga. L. 1901, p. 28, § 1; Ga. L. 1901, p. 29, § 1; Ga. L. 1902, p. 42, § 1; Ga. L. 1902, p. 43, § 1; Ga. L. 1902, p. 44, § 1; Ga. L. 1902, p. 45, § 1; Ga. L. 1902, p. 46, § 1; Ga. L. 1902, p. 47, § 1; Ga. L. 1902, p. 48, § 1; Ga. L. 1903, p. 28, § 1; Ga. L. 1903, p. 29, § 1; Ga. L. 1903, p. 30, § 1; Ga. L.

1903, p. 31, § 1; Ga. L. 1904, p. 56, § 1; Ga. L. 1904, p. 57, § 1; Ga. L. 1904, p. 58, § 1; Ga. L. 1905, p. 70, § 1; Ga. L. 1905, p. 71, § 1; Ga. L. 1905, p. 72, § 1; Ga. L. 1906, p. 34, § 1; Ga. L. 1906, p. 35, § 1; Ga. L. 1906, p. 36, § 1; Ga. L. 1906, p. 37, § 1; Ga. L. 1906, p. 38, § 1; Ga. L. 1906, p. 39, § 1; Ga. L. 1906, p. 40, § 1; Ga. L. 1906, p. 41, § 1; Ga. L. 1906, p. 42, § 1; Ga. L. 1907, p. 51, § 1; Ga. L. 1907, p. 52, § 1; Ga. L. 1907, p. 53, § 1; Ga. L. 1907, p. 54, § 1; Ga. L. 1908, p. 37, § 1; Ga. L. 1908, p. 38, § 1; Ga. L. 1908, p. 39, § 1; Ga. L. 1908, p. 40, § 1; Ga. L. 1909, p. 82, § 1; Ga. L. 1909, p. 83, § 1; Ga. L. 1909, p. 84, § 1; Ga. L. 1909, p. 85, § 1; Ga. L. 1909, p. 86, § 1; Civil Code 1910, § 1249; Ga. L. 1910, p. 50, § 1; Ga. L. 1910, p. 51, § 1; Ga. L. 1910, p. 52, § 1; Ga. L. 1910, p. 53, § 1; Ga. L. 1911, p. 57, § 1; Ga. L. 1911, p. 58, § 1; Ga. L. 1911, p. 59, § 1; Ga. L. 1911, p. 60, § 1; Ga. L. 1911, p. 61, § 1; Ga. L. 1911, p. 62, § 1; Ga. L. 1911, p. 63, § 1; Ga. L. 1911, p. 64, § 1; Ga. L. 1912, p. 47, § 1; Ga. L. 1912, p. 48, § 1; Ga. L. 1912, p. 49, § 1; Ga. L. 1912, p. 50, § 1; Ga. L. 1912, p. 51, § 1; Ga. L. 1913, p. 40, § 1; Ga. L. 1913, p. 41, § 1; Ga. L. 1914, p. 49, § 1; Ga. L. 1914, p. 50, § 1; Ga. L. 1914, p. 51, § 1; Ga. L. 1914, p. 52, § 1; Ga. L. 1914, p. 53, § 1; Ga. L. 1914, p. 54, § 1; Ga. L. 1914, p. 55, § 1; Ga. L. 1914, p. 56, § 1; Ga. L. 1915, p. 12, § 1; Ga. L. 1915, p. 13, § 1; Ga. L. 1915, p. 14, § 1; Ga. L. 1915, p. 15, § 1; Ga. L. 1916, p. 34, § 1; Ga. L. 1916, p. 35, § 1; Ga. L. 1916, p. 36, § 1; Ga. L. 1918, p. 111, § 1; Ga. L. 1919, p. 83, § 1; Ga. L. 1919, p. 84, § 1; Ga. L. 1920, p. 69, § 1; Ga. L. 1920, p. 70, § 1; Ga. L. 1920, p. 71, § 1; Ga. L. 1920, p. 72, § 1; Ga. L. 1920, p. 73, § 1; Ga. L. 1921, p. 98, § 1; Ga. L. 1921, p. 99, § 1; Ga. L. 1921, p. 100, § 1; Ga. L. 1922, p. 43, § 1; Ga. L. 1922, p. 44, § 1; Ga. L. 1922, p. 45, § 1; Ga. L. 1923, p. 54, § 1; Ga. L. 1923, p. 55, § 1; Ga. L. 1924, p. 49, § 1; Ga. L. 1925, p. 82, § 1; Ga. L. 1925, p. 83, § 1; Ga. L. 1925, p. 84, § 1; Ga. L. 1925, p. 85, § 1; Ga. L. 1925, p. 86, § 1; Ga. L. 1927, p. 140, § 1; Ga. L. 1927, p. 141, § 1; Ga. L. 1927, p. 142, § 1; Ga. L. 1929, p. 159, § 1; Ga. L. 1929, p. 161, § 1; Ga. L. 1929, p. 162, § 1; Ga. L. 1931, p. 119, § 1; Code 1933, § 100-101; Ga. L. 1949, p. 13, §§ 1, 2; Ga. L. 1960, p. 1144, § 1; Ga. L. 1969, p. 681, § 1; Ga. L. 1971, p. 553, § 1; Ga. L. 1972, p. 1015, § 413; Ga. L. 1973, p. 149, § 1; Ga. L. 1980, p. 763, § 1; Ga. L. 1986, p. 855, § 29; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 50; Ga. L. 1997, p. 863, § 1; Ga. L. 1997, p. 1525, § 1; Ga. L. 2005, p. 694, § 14/HB 293; Ga. L. 2010, p. 863, §§ 3, 4/SB 296; Ga. L. 2012, p. 775, § 50/HB 942; Ga. L. 2015, p. 1055, § 1/SB 104.

Cross references. — Powers and duties of board with regard to local government investment pool, T. 36, C. 83.

Editor's notes. — Ga. L. 1960, p. 1144, § 7, not codified by the General Assembly, provides that all retirement, trust, and authority funds shall be exempt from the provisions of the Act.

Ga. L. 1997, p. 1525, § 2, not codified by the General Assembly, provides: "No member of the State Depository Board shall vote to name and appoint as state depositories of state funds any bank, trust company, building and loan association, federal savings and loan association, or the Georgia Credit Union Deposit Corporation in which the member is a stockholder, board member, or owner."

JUDICIAL DECISIONS

Depositories created for purpose and specific use. — State depositories were created for the purpose and as a means whereby the tax collectors could remit money due the state, that is, as a method of payment of money to the state. Allen v. Henderson, 48 Ga. App. 74, 172 S.E. 94 (1933).

Cited in American Sur. Co. v. Griffin Banking Co., 50 Ga. App. 460, 178 S.E. 481 (1935).

OPINIONS OF THE ATTORNEY GENERAL

State Depository Board may appoint as state depository any building and loan association or savings and loan association, the deposits of which are insured by the Federal Savings and Loan Insurance Corporation. 1975 Op. Att'y Gen. No. 75-37.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, §§ 7 et seq., 13.

C.J.S. — 26B C.J.S., Depositaries, § 59 et seq. 81A C.J.S., States, §§ 441, 442.

50-17-50.1. Authority to vote.

No member of the State Depository Board shall vote to name and appoint as state depositories of state funds any bank, trust company, building and loan association, federal savings and loan association, or the Georgia Credit Union Deposit Corporation in which the member is a stockholder, board member, or owner.

History. — Code 1981, § 50-17-50.1, enacted by Ga. L. 1998, p. 128, § 50.

Editor's notes. — This Code section is a codification of the language of Ga. L. 1997, p. 1525, § 2.

50-17-51. Meetings of State Depository Board; records; list of deposits; interest policy; cash management policies and procedures.

(a) The board shall meet at least once every 90 days. The records and proceedings of the board shall be available for inspection by each member of the General Assembly. At the end of each quarter, the board shall furnish to the chairmen of the Senate and House Appropriations Committees, the chairman of the Senate Banking and Financial Institutions Committee, and the chairman of the House Banks and Banking Committee a list of all state time deposits, indicating the amount in each depository, the rates of interests contracted on such deposits, and the physical location of the depository.

(b) Compatible with the desirability of placing all state funds on deposit among state depositories and the necessity to maximize the protection of state funds on deposit, the policy to be followed by the board shall be that there will accrue to the state an advantageous yield of interest on its funds in excess of those required for current operating expenses, in accordance with sound business management practices.

(c) The board shall prescribe cash management policies and procedures and state agencies shall employ the cash management policies and procedures prescribed by the board. Cash management policies and procedures prescribed by the board shall be designed to maximize the

efficient and effective utilization of the state's cash resources for the state as a whole. The board may require state agencies to submit reports and plans on such forms and at such times as the board may prescribe to determine whether an agency is in compliance with the cash management policies and procedures prescribed by the board. The state treasurer shall serve as cash management officer for the state on behalf of the board.

History. — Code 1933, § 100-101.1, enacted by Ga. L. 1971, p. 553, § 2; Ga. L. 1973, p. 149, § 2; Ga. L. 1976, p. 728, § 1; Ga. L. 1986, p. 10, § 50; Ga. L. 1992, p. 6, § 50; Ga. L. 1992, p. 1247, § 1; Ga. L. 2010, p. 863, § 4/SB 296.

50-17-52. Contracts for interest on deposits; authority to remove deposits.

The board shall make with depositories the most advantageous contracts for interest to be paid by them to the state for the use of the state's money which may be deposited therein, as provided by this article. In so doing, the board may authorize the state treasurer to negotiate with depositories explicit fees in payment for the state's banking services. Such fees shall be paid by the state treasurer from interest earned and shall be subject to the board's approval. In the event any depository so named shall refuse to make a satisfactory contract with the board as to interest to be paid and fees to be charged, it shall have authority to remove state funds from such depository.

History. — Ga. L. 1878-79, p. 88, § 2; Code 1882, § 943b; Ga. L. 1895, p. 22, § 1; Civil Code 1895, § 984; Civil Code 1910, § 1251; Code 1933, § 100-103; Ga. L. 1949, p. 13, § 8; Ga. L. 1992, p. 1247, § 2; Ga. L. 2010, p. 863, § 4/SB 296.

JUDICIAL DECISIONS

Recovery of principal and interest from receiver. — When a bank has made a contract with the state, whereby the bank agrees to pay the state a certain rate of interest on daily balances on deposit in the bank, belonging to the state, and the bank subsequently becomes insolvent and a receiver is appointed to take charge of the bank's assets, the state can recover of the receiver the principal sum due the state and interest at the contract rate to the date of the appointment of a receiver for the assets of the bank. Central Bank & Trust Corp. v. State, 139 Ga. 54, 76 S.E. 587 (1912).

OPINIONS OF THE ATTORNEY GENERAL

Limitations on purchases of negotiable certificates of deposit. — Terms "the most advantageous contracts for interest" and "time deposit agreements" permit the state treasurer to purchase negotiable certificates of deposit from state depositories provided the negotiable certificates of deposit are at the rates of interest required by the State Depository Board. 1971 Op. Att'y Gen. No. 71-79.

50-17-53. Authority to determine amount to be deposited; deposit security required.

To enable the board to fulfill its responsibilities of ensuring safe and effective cash management, the board shall be authorized to determine, from time to time, in respect to all state funds, whether deposited by the state treasurer or any other department or agency of the state government, any and all of the following:

(1) The maximum amount of state money which may be deposited in a particular depository;

(2) The maximum and minimum proportion of state funds which may be maintained in a particular depository;

(3) The amount of state funds to be deposited in particular state depositories as time deposits, and the periods of such deposits, provided that all state depositories shall give security for state deposits as required by law, but the board, in its discretion, may choose not to require that security be given in the case of special deposits and operating funds; and

(4) The policies and procedures governing the collection, processing, deposit, and withdrawal of state funds.

History. — Ga. L. 1949, p. 13, § 4; Ga. L. 1960, p. 1144, § 2; Ga. L. 1971, p. 553, § 4; Ga. L. 1973, p. 149, § 4; Ga. L. 1982, p. 3, § 50; Ga. L. 1992, p. 1247, § 3; Ga. L. 2010, p. 863, § 4/SB 296.

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Constitutionality. — This law does not in any way pledge the credit of the state in violation of the prohibition contained in Ga. Const. 1976, Art. VII, Sec. III, Para. IV (now Ga. Const. 1983, Art. VII, Sec. IV, Para. VIII). 1948-49 Op. Att'y Gen. p. 435.

This section, which permits the State Depository Board to determine the maximum and minimum proportion of state funds which the treasurer (now director) can maintain in a particular depository, does not render this law unconstitutional. 1948-49 Op. Att'y Gen. p. 435.

Inconsistent laws are superseded or repealed. — To the extent that former Code 1933, § 89-812 (see O.C.G.A. §§ 34-8-81 and 45-8-13) or any other prior laws were irreconcilably inconsistent with former Code 1933, §§ 100-101 and 100-106 (see O.C.G.A. §§ 50-17-50 and 50-17-54), those laws were superseded or repealed by implication. 1971 Op. Att'y Gen. No. 71-112.

Return of collateral. — When the State Depository Board acted to waive the bond requirement for a particular depository, it would be appropriate for the Department of Human Resources to return any collateral held as security for demand deposits in that depository; in other words, former Code 1933, §§ 100-104 and 100-106 (see O.C.G.A. §§ 50-17-54 and 50-17-58) did not require the return of collateral, but rather the action of the State Depository Board is required. 1971 Op. Att'y Gen. No. 71-112.

Board can change required amount. — This is a flexible provision, and the board can from time to time vary and change these amounts in the board's discretion. 1948-49 Op. Att'y Gen. p. 435.

Negotiable certificates that are time or call deposits. — Assuming that

negotiable certificates of deposit are either time deposits or call deposits, depending on the specific agreement, the State Depository Board, through the state treasurer, would be authorized to purchase negotiable certificates of deposit from state depositories, provided rules as to maximum amount and proration of deposits in particular depositories and all relevant statutes are observed; if negotiable certificates of deposit are neither time deposits nor call deposits, then purchase would be unauthorized. 1971 Op. Att'y Gen. No. 71-79.

Limitations on purchase of negotiable certificates of deposit. — Terms "the most advantageous contracts for interest" and "time deposit agreements" permit the state treasurer to purchase negotiable certificates of deposit from state depositories provided the negotiable certificates of deposit are at the rates of interest required by the State Depository Board. 1971 Op. Att'y Gen. No. 71-79.

State depositories must provide security in the form of a bond or a bond and certain enumerated securities in a sum equal to the amount of money to be deposited with such depository; however, it is noted that the guarantee of the Federal Deposit Insurance Corporation shall be accepted as collateral to the extent authorized by federal law. 1968 Op. Att'y Gen. No. 68-61.

Deposit of money gifts in state depositories. — Department of Public Safety may accept private foundation funds which are designated by the foundation for specified projects subject to the following limitations: the gift must be accepted in the name of and in behalf of the state; any conditional gift must not require the Department of Public Safety to exceed the department's powers; and all gifts of money must be held in accordance with the statutes relating to the deposit of money in state depositories. 1974 Op. Att'y Gen. No. 74-140.

50-17-54. Monitoring financial condition of depositories; action in case of insolvency of depository.

It shall be the duty of the board to keep itself advised, from time to time, of the financial condition of the various state depositories, as well as of the financial condition and standing of the securities on the bonds of the depositories; and, if at any time the board should become satisfied as to the insolvency of any of the depositories or that the affairs of any of the depositories are in an embarrassed financial condition, it shall be the duty of the board to direct the state treasurer to withdraw the money of the state from such depository. In case the board should be advised of the insolvency of the securities on the bond of any of the depositories, it shall be the duty of the state treasurer to notify the depository to strengthen the bond; and if, at the end of ten days, the bond is not strengthened, it shall be the duty of the board to direct the state treasurer to withdraw the money of the state from such depository. In either event, the board may also withdraw designation as a state depository.

History. — Ga. L. 1882-83, p. 138, § 2; Civil Code 1895, § 987; Civil Code 1910, § 1254; Code 1933, § 100-106; Ga. L. 1949, p. 13, § 8; Ga. L. 1971, p. 553, § 5; Ga. L. 1973, p. 149, § 5; Ga. L. 2010, p. 863, § 4/SB 296.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, §§ 21, 23.

ALR. — Constitutionality, construction, and application of statute for prevention or equalizing of loss to governmental or political units as result of insolvency or failure of depositories of public funds, 104 A.L.R. 1372.

50-17-55. Absolute discretion of State Depository Board in performance of duties.

The board shall exercise absolute discretion in performing its duties under this article.

History. — Ga. L. 1949, p. 13, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 7.

ALR. — Invalid designation by another than depositing officer of depository for public funds as affecting liability of officer or his bond for loss thereof through failure of depository, 66 A.L.R. 1059.

Power of board or officials to depart from literal requirements in respect of deposits or loans of public funds in their control, 104 A.L.R. 623.

50-17-56. State treasurer to make deposits in compliance with board's determinations.

The state treasurer shall deposit all state moneys in compliance with the determination of the board as to the maximum amount and proportion of deposits in particular depositories.

History. — Ga. L. 1949, p. 13, § 6; Ga. L. 1973, p. 149, § 11; Ga. L. 2010, p. 863, § 4/SB 296.

RESEARCH REFERENCES

ALR. — Invalid designation by another than depositing officer of depository for public funds as affecting liability of officer or his bond for loss thereof through failure of depository, 66 A.L.R. 1059.

50-17-57. State treasurer to make reports.

The state treasurer, as administrative officer of the board, shall furnish to the Governor and the board such information and reports relating to funds held on demand accounts and as investments, estimates of treasury receipts and withdrawals, and interest earned on investments as may be necessary or helpful to the board in the administration of its duties.

History. — Ga. L. 1960, p. 1144, § 5; Ga. L. 1973, p. 149, § 13; Ga. L. 2010, p. 863, § 4/SB 296.

50-17-58. Execution of bonds by depositories.

Depositories, before entering upon the discharge of their duties, by their proper officers, shall execute bonds, with good and sufficient securities, to be fixed and approved by the Governor. The bonds shall be conditioned for the faithful performance of all such duties as shall be required of them by law and for a faithful accounting for the money or effects that may come into their hands during their continuance in office. The bonds shall be filed and recorded in the Governor's office and copies thereof, certified by one of the Governor's secretaries under the seal of the executive department, shall be received in evidence in lieu of the original in any of the courts; and the bonds shall have the same binding force and effect as public officers' bonds and, in case of default, shall be enforced in like manner. In determining the amount of the bond to be given by a depository under this Code section, the Governor shall fix the same as to make it not less than the amount of money to be entrusted to the depository; and in no case shall a larger amount of money be deposited in any depository than the amount of the bond; and the Governor, at any time, may require additional bond, if necessary, to cover fully the amount deposited or intended to be deposited in such bank. The board, in its discretion, may waive the requirement of such bond as to demand deposits in a depository.

History. — Ga. L. 1878-79, p. 88, § 4; Code 1882, § 943d; Civil Code 1895, § 985; Ga. L. 1903, p. 32, § 1; Civil Code 1910, § 1252; Code 1933, § 100-104; Ga. L. 1971, p. 553, § 3; Ga. L. 1973, p. 149, § 3.

Cross references. — Official bonds generally, T. 45, C. 4.

JUDICIAL DECISIONS

Effect of insolvency at date of bond. — While it is the duty of the Governor to use discretion in selecting a chartered solvent bank of good standing and credit as a state depository, the very object of requiring a bond is to guarantee the solvency of the bank, and one who becomes a surety on such bond cannot be discharged on the ground that the bank was insolvent. Mathis v. Morgan, 72 Ga. 517, 53 Am. R. 847 (1884).

Liability of surety. — One who became a surety on the bond of a bank as a state depository cannot free itself from liability thereon on the ground that the Governor selected the bank as a solvent bank, and published the bank as one of the depositories, and that the surety was induced to become such by this fact, though the bank was not solvent at the time of the bank's selection, and the giving of the bond by the bank. Mathis v. Morgan, 72 Ga. 517, 53 Am. R. 847 (1884).

Surety liable despite Governor's representations. — When one who signed the bond of a bank as a state depository resided in the city where the bank was located, and had opportunity to investigate as to the condition of the bank before signing the bond, but did sign and enabled the bank to receive money belonging to the state, that person could not be relieved from responsibility on the ground of false representations made by the Gov-

ernor. Mathis v. Morgan, 72 Ga. 517, 53 Am. R. 847 (1884).

Liability for subsequent forgery. — It was the duty of the president of the bank to make the bond and furnish the sureties thereon, and having executed the bond as president, and signed the bond as surety individually, the president could not be relieved from liability because the name of one of the sureties which the president furnished, and which appeared on the bond after the president signed, was forged, and not signed by such surety. Colquitt v. Simpson & Ledbetter, 72 Ga. 501 (1884).

Purchasers charged with notice of suretyship. — When purchasers of property from one who was the president of a bank knew of the president's position, the law charged the purchasers with notice that the bank was a state depository and was required to give bond and security; this was sufficient to put the purchasers on inquiry whether their vendor was not personaly one of the sureties which one had, as president, to procure, and the purchasers were not purchasers without notice of the state's lien. Colquitt v. Simpson & Ledbetter, 72 Ga. 501 (1884).

Purchasers subrogated to surety's defenses. — Purchasers of property from president of a bank, who were charged with notice that the president was a surety, were subrogated to the president's position, and could make no defense which the president could not make. Colquitt v. Simpson & Ledbetter, 72 Ga. 501 (1884).

Governor's power regarding depository default. — Upon default of depository, the Governor may issue execution at once, in like manner, as against a defaulting treasurer (now director of the Office of Treasury and Fiscal Services). Seay v. Bank of Rome, 66 Ga. 609 (1881).

State priority for assets of insolvent depository. — State has the right of priority of payment out of the assets of an insolvent state bank which prior to insolvency was a state depository as against individual depositors and creditors. Seay v. Bank of Rome, 66 Ga. 609 (1881); Central Bank & Trust Corp. v. State, 139 Ga. 54, 76 S.E. 587 (1912).

State school's deposited funds. — Funds arising partly from oil inspection fees, and partly from private donations, which had been turned over to and were in the hands of trustees of a school of agriculture, and were deposited by the treasurer of the board of trustees in the treasurer's own name, as such, in a bank which was a state depository, and which failed, did not constitute such a debt due to the state as created a lien in its favor under the law in reference to state depositories. Knight v. State, 137 Ga. 537, 73 S.E. 825 (1912).

Execution provides state with lien on all property of depository. — From the date of the execution of the bond of a state depository the state has a lien on its property for the amount thereof, and the lien of the state is not limited to such property of the depository as may be reached by levy and sale, but extends to all the property, including choses in action. Seay v. Bank of Rome, 66 Ga. 609 (1881); Standard Accident Ins. Co. v. Luther Williams Bank & Trust Co., 45 Ga. App. 831, 166 S.E. 260 (1932), rev'd on other grounds, 178 Ga. 446, 173 S.E. 672 (1934).

Depository's bond is lien on property of principal and sureties from the bond's date. Fidelity & Deposit Co. v. Howard, 67 F.2d 961 (5th Cir. 1933), aff'd sub nom. Lewis v. Fidelity & Deposit Co., 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

State acquires lien on all assets. — State acquires a lien on all of the assets of a depository bank, both those at the time of the execution of the bond and those subsequently acquired. Lewis v. Fidelity & Deposit Co., 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

Lien does not apply to certain assets. — Lien arising under this section from giving of bond by national bank designated as depository for state funds does not apply to money paid out and stocks, bonds, and notes transferred from the bank in the course of business. Fidelity & Deposit Co. v. Howard, 67 F.2d 961 (5th Cir. 1933), aff'd sub nom. Lewis v. Fidelity & Deposit Co., 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

Lien effective in case of insolvency and receivership. — Lien arising under this section from giving of bond by na-

tional bank designated as depository of state funds is effective in case of insolvency, notwithstanding, 12 U.S.C. § 91, prohibiting preferences made in view of insolvency, and 12 U.S.C. § 194, requiring the payment of ratable dividends to creditors, since these statutes do not affect liens validly existing against the bank's property before receivership. Fidelity & Deposit Co. v. Howard, 67 F.2d 961 (5th Cir. 1933), aff'd sub nom. Lewis v. Fidelity & Deposit Co., 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

National bank lien does not contravene federal law. — Creation of lien by national bank designated as depository of state funds by giving of bond under this section is not in contravention of federal law. Fidelity & Deposit Co. v. Howard, 67 F.2d 961 (5th Cir. 1933), aff'd sub nom. Lewis v. Fidelity & Deposit Co., 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

Subjection of national bank to state law. — While a national bank is subject to state law unless that law interferes with the purposes of its creation, or destroys its efficiency, or is in conflict with some paramount federal law, it is quite possible that the legislature might attempt to impose, under the conditions of the bond, a duty which the bank would be without authority to undertake; and to that extent the contract would be unenforceable. Lewis v. Fidelity & Deposit Co., 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

Cited in Gormley v. Board of Comm'rs of Rds. & Revenues, 178 Ga. 439, 173 S.E. 667 (1934).

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Return of collateral when bond requirement waived. — When the State Depository Board acted to waive the bond requirement for a particular depository, it would be appropriate for the Department of Human Resources to return any collateral held as security for demand deposits in that depository; in other words, former Code 1933, §§ 100-104 and 100-106 (see O.C.G.A. §§ 50-17-53 and 50-17-58) did not require the return of collateral, but rather the action of the State Depository Board is required. 1971 Op. Att'y Gen. No. 71-112.

Procedures applicable when deposit exceeds bond. — Former Code 1933, § 100-108 (see O.C.G.A. § 50-17-59) did not in any way authorize the Treasurer (now director of the Office of Treasury and Fiscal Services) to make a deposit in excess of the bond or other authorized security for a ten-day period; it instead provided for a grace period of ten days within which the treasurer (now director of the Office of Treasury and Fiscal Services), whenever a deposit through accumulation of interest or otherwise grew beyond the amount of the bond, must either withdraw the excess or obtain additional bond (or authorized security) from the depository; this applied to all state funds including former Code 1933, §§ 100-104 and 100-111 and Ga. L. 1960, p. 1144, § 4 (see O.C.G.A. §§ 50-17-58, 50-17-62, and 50-17-63). 1971 Op. Att'y Gen. No. 71-65.

State depositories must provide security in the form of a bond or a bond and certain enumerated securities in a sum equal to the amount of money to be deposited with such depository; however, it is noted that the guarantee of the Federal Deposit Insurance Corporation shall be accepted as collateral to the extent authorized by federal law. 1968 Op. Att'y Gen. No. 68-61.

Inconsistent laws superseded or repealed. — To the extent that former Code 1933, § 89-812 (see O.C.G.A. §§ 34-8-81 and 45-8-13) or any other prior laws were irreconcilably inconsistent with Ga. L. 1971, p. 553, §§ 3 and 4 (see O.C.G.A. §§ 50-17-53 and 50-17-58), those laws were superseded or repealed by implication. 1971 Op. Att'y Gen. No. 71-112.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 15 et seq.

C.J.S. — 26B C.J.S., Depositaries, § 76.

ALR. — Validity and construction of provisions of depositary's statutory bond in conflict with, or in addition to, condition prescribed by the statute, 88 A.L.R. 547.

Validity, construction, and effect of cancellation provision in public depository's bond, 88 A.L.R. 645.

Depository's bond as covering deposits made before its execution, 98 A.L.R. 1312.

50-17-59. Deposit of securities in lieu of bond.

(a) The state treasurer cannot have on deposit at any one time in any of the depositories for a time longer than ten days a sum of money belonging to the state under a contract with the depository providing for the payment of interest by a depository which has not given a bond to the state in the amount as determined by the board. The bond to be given by the state depositories, when such bonds are required and whether the depositories are state or national banks, shall be a surety bond in a sum as required signed by a surety company duly qualified and authorized to transact business within this state. In lieu of such a surety bond the state depository may deposit with the state treasurer to secure state funds on deposit in state depositories:

(1) Bonds, bills, certificates of indebtedness, notes, or other direct obligations of the United States or of this state;

(2) Bonds, bills, certificates of indebtedness, notes, or other obligations of the counties or municipalities of this state;

(3) Bonds of any public authority created by the laws of this state, if the statute creating such authority provides that the bonds of the authority may be used for this purpose and the bonds have been duly validated as provided by law, and as to which there has been no default in payment, either of principal or interest;

(4) Industrial revenue bonds or bonds of development authorities created by the laws of this state, which bonds have been duly validated as provided by law and as to which there has been no default in payment, either of principal or interest; or

(5) Bonds, bills, certificates of indebtedness, notes, or other obligations of a subsidiary corporation of the United States government, which are fully guaranteed by the United States government both as to principal and interest, or debt obligations issued by or securities guaranteed by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, the Central Bank for Cooperatives, the Farm Credit Banks, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association.

(b) The state treasurer may accept letters of credit issued by a Federal Home Loan Bank to secure state funds on deposit in state depositories.

(c) The state treasurer shall also accept the guarantee or insurance of accounts of the Federal Deposit Insurance Corporation to secure state funds on deposit in state depositories, to the extent authorized by federal law governing the Federal Deposit Insurance Corporation.

(d) Upon approval by the state treasurer, a state depository may secure deposits made with it in part by surety bond, in part by deposit of any or all of the bonds mentioned in subsection (a) of this Code section, whether these bonds are owned by the depository or by another bank, and in part by letters of credit pursuant to subsection (b) of this Code section, or by any such method. The board may determine, however, that such security will be required only in the case of time deposits under a contract providing for the payment of interest.

(e) The state treasurer is authorized to contract with any bank, other than the state depository offering the security, for the purpose of safekeeping the securities deposited with the state treasurer under this provision.

History. — Ga. L. 1893, p. 135, § 1; Civil Code 1895, § 989; Civil Code 1910, § 1256; Ga. L. 1931, p. 120, § 1; Code 1933, § 100-108; Ga. L. 1935, p. 106, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 483, § 1; Ga. L. 1968, p. 485, § 1; Ga. L. 1970, p. 467, § 1; Ga. L. 1971, p. 553, § 6; Ga. L. 1973, p. 149, § 6; Ga. L. 1975, p. 917, § 1; Ga. L. 1976, p. 769, § 1; Ga. L. 1979, p. 399, § 1; Ga. L. 1991, p. 94, § 50; Ga. L. 1993, p. 929, § 4; Ga. L. 1994, p. 499, § 2; Ga. L. 2007, p. 162, § 1/HB 96; Ga. L. 2010, p. 863, § 4/SB 296.

Law reviews. — For article, "Tax-exempt Financing of Private Business: Structural Approaches," see 16 Ga. St. B.J. 8 (1979).

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Procedure when deposit exceeds bond amount. — Former Code 1933, § 100-108 (see O.C.G.A. § 50-17-59) did not in any way authorize the treasurer (now director of the Office of Treasury and Fiscal Services) to make a deposit in excess of the bond or other authorized security for a ten-day period; it instead provided for a grace period of ten days within which the treasurer (now director of the Office of Treasury and Fiscal Services) whenever a deposit through accumulation of interest or otherwise grew beyond the amount of the bond, must either withdraw the excess or obtain additional bond (or authorized security) from the depository; this applied to all state funds, including former Code 1933, §§ 100-104 and 100-111 and Ga. L. 1960, p. 1144, § 4 (see O.C.G.A. §§ 50-17-58, 50-17-62, and 50-17-63). 1971 Op. Att'y Gen. No. 71-65.

Pledges of notes also accepted in lieu of surety bonds. — This section, authorizing state depositories to deposit with the treasurer (now director of the Office of Treasury and Fiscal Services) "notes or other obligations of the United States or of this state," in lieu of surety bonds, is to be construed to include pledges of notes guaranteed and reinsured according to the provisions of the 1970 amendment to that section (Ga. L. 1970, p. 467). 1971 Op. Att'y Gen. No. 71-69.

State depositors may pledge or assign to the treasurer (now director of the Office of Treasury and Fiscal Services) in lieu of surety bonds, notes fully guaranteed by the Georgia Higher Education Assistance Corporation to the extent that the notes are reinsured by the United States government in accordance with the 1970 amendment to this section by Ga. L. 1970, p. 467. 1971 Op. Att'y Gen. No. 71-69.

State depositories must provide se-

curity in the form of a bond or a bond and certain enumerated securities in a sum equal to the amount of money to be deposited with such depository; however, the guarantee of the Federal Deposit Insurance Corporation shall be accepted as collateral to the extent authorized by federal law. 1968 Op. Att'y Gen. No. 68-61.

Obligations of government corporations. — Guarantee as to principal and interest accepted as security since there exist government corporations whose obligations are specifically guaranteed as to principal and interest, the statutory rule of construction that words are to be given their ordinary signification would require the conclusion that it was to the obligations of these corporations that the General Assembly was referring to in this section. 1975 Op. Att'y Gen. No. 75-6.

Warrants may be used as security. — This section specifically provides that Western & Atlantic Railroad warrants may be used to secure bank deposits. 1979 Op. Att'y Gen. No. 79-12.

Tax anticipation notes are not acceptable as collateral. — Tax anticipation notes used to cover temporary loans for expenses to Georgia's cities and counties during the current year would not be proper collateral for state deposits since tax anticipation notes are not included in this section as proper collateral. 1968 Op. Att'y Gen. No. 68-3.

Assets of bank other than depository bank are not acceptable. 1979 Op. Att'y Gen. No. 79-12.

Standby letters of credit issued by a Federal Home Loan Bank. — Standby letters of credit issued by a Federal Home Loan Bank do not meet the statutory criteria for collateral for deposits of public funds. 1999 Op. Att'y Gen. No. 99-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 30.

ALR. — Liability upon public depository bond as affected by excess of deposit over legal limit, 90 A.L.R. 679.

Depository's bond as covering deposits made before its execution, 98 A.L.R. 1312.

50-17-60. Governor to sell bonds to reimburse state for any default.

Whenever any bank which has been made a state depository and has deposited bonds shall fail to perform faithfully such duties as shall be required of it by law or shall fail to account faithfully for all the public moneys or effects that may have come into its hands during its continuance in office, the Governor shall sell sufficient bonds to reimburse the state the amounts due by the state depository on account of such default.

History. — Ga. L. 1889, p. 177, § 2; Civil Code 1895, § 991; Civil Code 1910, § 1258; Code 1933, § 100-110.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 26.

ALR. — Depository's bond as covering deposits made before its execution, 98 A.L.R. 1312.

50-17-61. Procedure for relief of bond sureties.

Any surety desiring to be relieved from the bond of a state depository may give notice in writing to the Governor of such desire with the reasons therefor; and the Governor shall have authority, in his discretion, to relieve the surety. The consent of the cosureties first must be obtained in writing; and the principal must furnish a new surety to take the place of the surety relieved, which new surety will assume all the liabilities for past and future transactions.

History. — Ga. L. 1882-83, p. 138, § 3; Civil Code 1895, § 988; Civil Code 1910, § 1255; Code 1933, § 100-107.

RESEARCH REFERENCES

C.J.S. — 26B C.J.S., Depositaries, §§ 67 et seq., 91.

ALR. — Depository's bond as covering deposits made before its execution, 98 A.L.R. 1312.

50-17-62. Funds to be held by depositories.

State depositories shall hold:

(1) All funds deposited with them as time deposits for and on account of the state in accordance with such time deposit agreements as from time to time may be entered into between the depositories and the board pursuant to Code Section 50-17-52, which agreements shall not be inconsistent with the statutes of the United States and regulations made pursuant thereto governing interest-bearing time deposits; and

(2) All other funds received by them for and on account of the state, subject to the check or order of the state treasurer or the officer or employee charged with the custody of any particular bank account.

History. — Ga. L. 1878-79, p. 88, § 5; Code 1882, § 943e; Civil Code 1895, § 992; Civil Code 1910, § 1259; Code 1933, § 100-111; Ga. L. 1960, p. 1144, § 3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, §§ 3, 4/SB 296.

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Procedure when deposit exceeds bond. — Former Code 1933, § 100-108 (see O.C.G.A. § 50-17-59) did not in any way authorize the treasurer to make a deposit in excess of the bond or other authorized security for a ten-day period; it instead provided for a grace period of ten days within which the treasurer, whenever a deposit through accumulation of interest or otherwise grew beyond the amount of the bond, must either withdraw the excess or obtain additional bond (or authorized security) from the depository; this applied to all state funds, including former Code 1933, §§ 100-104 and 100-111 and Ga. L. 1960, p. 1144, § 4 (see O.C.G.A. §§ 50-17-58, 50-17-62, and 50-17-63). 1971 Op. Att'y Gen. No. 71-65.

State depositories must hold all funds either as time deposits or call deposits. 1971 Op. Att'y Gen. No. 71-79.

50-17-63. Deposit of demand funds; investment of funds; reports; remittance of interest earned; motor fuel tax revenues.

(a) All demand funds held by any department, board, bureau, or other agency of the state shall be deposited in state depositories, except the monthly deposits of funds for current operating expenses may be deposited in a foreign bank by any department, board, bureau, or other agency of the state which has a foreign office, provided that the department, board, bureau, or other agency of the state limits its operating deposits in foreign banks to conform to guidelines and dollar limitations prescribed by the State Depository Board; and such funds that are in excess of requirements for current operating expenses shall be placed under time deposit agreements by the state treasurer conforming to interest contracts then having approval of the board made pursuant to Code Section 50-17-52; and any funds not deposited or placed under time deposit agreements shall be subject to immediate withdrawal on order of the state treasurer when directed by the board. The board may permit any department, board, bureau, or other agency to invest funds collected directly by that department, board, bureau, or agency in short-term time deposit agreements, provided the interest income of those funds is remitted to the state treasurer as revenues of the state.

(b) All departments, boards, bureaus, and other agencies of the state shall report to the board, on such forms and at such times as the board may prescribe, such information as the board may reasonably require concerning deposits and withdrawals pursuant to this Code section and shall enable the board to determine compliance with this Code section. Interest earned on state funds withdrawn from the state treasury on approved budgets shall be remitted to the Office of the State Treasurer by each department, board, bureau, or agency and placed in the general fund. The board may permit the state treasurer to invest in any one or more of the following: bankers' acceptances; commercial paper; bonds, bills, certificates of indebtedness, notes, or other obligations of the United States and its subsidiary corporations and instrumentalities or entities sanctioned or authorized by the United States government including, but not limited to, obligations or securities issued or guaranteed by Banks for Cooperatives regulated by the Farm Credit Administration, the Commodity Credit Corporation, Farm Credit Banks regulated by the Farm Credit Administration, Federal Assets Financing Trusts, the Federal Financing Bank, Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal

National Mortgage Association, the Financial Assistance Corporation chartered by the Farm Credit Administration, the Government National Mortgage Association, the Import-Export Bank, Production Credit Associations regulated by the Farm Credit Administration, the Resolution Trust Corporation, and the Tennessee Valley Authority; obligations of corporations organized under the laws of this state or any other state but only if the corporation has a market capitalization equivalent to $100 million; provided, however, that such obligation shall be listed as investment grade by a nationally recognized rating agency; the shares of any mutual fund the investments of which are limited to securities of the type described in this subsection and distributions from which are treated for federal income tax purposes in the same manner as the interest on said obligations, provided that at the time of investment such obligations, or the obligations held by any such unit investment trust or the obligations held or to be acquired by any such mutual fund, are limited to obligations which are rated within one of the top two rating categories of any nationally recognized rating service or any rating service recognized by the commissioner of banking and finance, and no others, or to securities lending transactions involving securities of the type described in this subsection; bonds, notes, warrants, and other securities not in default which are the direct obligations of the government of any foreign country which the International Monetary Fund lists as an industrialized country and for which the full faith and credit of such government has been pledged for the payment of principal and interest, provided that such securities are listed as investment grade by a nationally recognized rating agency; or obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development or the International Financial Corporation, provided that such securities are listed as investment grade by a nationally recognized rating agency; provided, however, that interest earned on the investment of motor fuel tax revenues shall be defined as motor fuel tax revenues and shall be appropriated in conformity with and pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of Georgia. The board may also permit the state treasurer to lend any of the securities of the type identified in this subsection subject to the limitations of subsection (b) of Code Section 50-5A-7 and this chapter.

History. — Ga. L. 1960, p. 1144, § 4; Ga. L. 1973, p. 149, § 12; Ga. L. 1979, p. 399, § 2; Ga. L. 1983, p. 3, § 66; Ga. L. 1993, p. 1402, § 17; Ga. L. 1997, p. 569, § 3; Ga. L. 1997, p. 863, § 2; Ga. L. 2000, p. 1474, § 11; Ga. L. 2004, p. 319, § 3; Ga. L. 2004, p. 335, § 1; Ga. L. 2010, p. 863, §§ 2, 4/SB 296; Ga. L. 2011, p. 752, § 50/HB 142; Ga. L. 2020, p. 566, § 1/HB 901.

The 2020 amendment, effective August 3, 2020, inserted "the shares of any mutual fund the investments of which are limited to securities of the type described in this subsection and distributions from which are treated for federal income tax purposes in the same manner as the interest on said obligations, provided that at the time of investment such obligations, or the obligations held by any such unit

investment trust or the obligations held or to be acquired by any such mutual fund, are limited to obligations which are rated within one of the top two rating categories of any nationally recognized rating service or any rating service recognized by the commissioner of banking and finance, and no others, or to securities lending transactions involving securities of the type described in this subsection;" in the middle of the third sentence of subsection (b).

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 306 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Procedure when deposit exceeds bond. — Former Code 1933, § 100-108 (see O.C.G.A. § 50-17-59) did not in any way authorize the treasurer (now director of the Office of Treasury and Fiscal Services) to make a deposit in excess of the bond or other authorized security for a ten-day period; it instead provided for a grace period of ten days within which the treasurer (now director of the Office of Treasury and Fiscal Services) whenever a deposit through accumulation of interest or otherwise grew beyond the amount of the bond, must either withdraw the excess or obtain additional bond (or authorized security) from the depository; this applied to all state funds, including former Code 1933, §§ 100-104 and 100-111 and Ga. L. 1960, p. 1144, § 4 (see O.C.G.A. §§ 50-17-58, 50-17-62, and 50-17-63). 1971 Op. Att'y Gen. No. 71-65.

Appropriation of interest on motor fuel tax revenues. — Interest earned on motor fuel tax revenues is constitutionally appropriated for activities incident to the construction and maintenance of roads and bridges. 1984 Op. Att'y Gen. No. 84-6.

Audit billeting funds or armory rentals of DOD. — Funds collected by the Department of Defense (DOD) as billeting funds or armory rentals pursuant to regulations issued under O.C.G.A. § 38-2-195 are state funds which may be retained by DOD. The management of the funds is subject to requirements of the Office of Planning and Budget, the State Auditor, and the State Depository Board. 1993 Op. Att'y Gen. No. 93-4.

Repurchase agreements. — Office of the State Treasurer is empowered to enter into repurchase agreements and reverse repurchase agreements in connection with fulfilling its role related to managing the investment and liquidity needs of the state. 2012 Op. Att'y Gen. No. 12-1.

50-17-64. Depositories required to furnish monthly statements.

State depositories shall furnish to the state official having custody of the funds a monthly statement of demand accounts and shall furnish to the responsible official or to the board such other statements as may be requested relating to funds or transactions in custody of or caused by the agencies, bureaus, boards, commissions, or departments of this state.

History. — Ga. L. 1878-79, p. 88, § 5; Code 1882, § 943e; Ga. L. 1893, p. 135, § 2; Civil Code 1895, §§ 990, 992; Civil Code 1910, §§ 1257, 1259; Code 1933, § 100-109; Ga. L. 1973, p. 149, § 7.

50-17-65. State officials to notify depositories of any unauthorized signatures or alterations; notification in lieu of other obligations to notify; assent to provisions by depositories.

The state official or employee of any state department, board, bureau, commission, committee, authority, or other state agency to whom a depository bank sends the statement of account, paid items, and related material shall notify such depository bank of the existence of any unauthorized signature or alteration appearing on any such paid item or related material. The notification shall be in writing and shall be delivered to the depository bank as soon as the unauthorized signature or alteration is discovered, but in no event no later than 90 days from the closing date of the annual state audit for the fiscal year during which the unauthorized signature was affixed or during which the alteration occurred. The notification shall be in lieu of any other obligation to discover and report unauthorized signatures or alterations provided by contract or by law, including, but not limited to, Code Section 11-4-406. The receipt of state funds or funds of any department, authority, board, bureau, commission, committee, or other agency of the state by a depository bank shall constitute assent to the provisions of this Code section.

History. — Code 1933, § 100-115, enacted by Ga. L. 1971, p. 553, § 7.

50-17-66. State officer not to receive commission, interest, compensation, or reward for depositing state money.

No officer of this state shall be allowed to receive any commission, interest, compensation, or reward for himself from any source for the depositing of the state's money in depositories or for continuing such deposits. Any officer of this state who receives any such commission, interest, compensation, or reward for himself shall, upon conviction thereof, be punished by imprisonment for not less than seven nor more than 20 years and shall be disqualified to hold office.

History. — Ga. L. 1878-79, p. 88, § 2; Code 1882, § 943b; Ga. L. 1895, p. 22, § 1; Civil Code 1895, § 984; Penal Code 1895, § 201; Civil Code 1910, § 1251; Penal Code 1910, § 199; Code 1933, §§ 100-103, 100-9901.

OPINIONS OF THE ATTORNEY GENERAL

Limitations on purchase of negotiable certificates of deposit. — Terms "the most advantageous contracts for interest" and "time deposit agreements" permit the state treasurer (now director of the Office of Treasury and Fiscal Services) to purchase negotiable certificates of deposit from state depositories provided the negotiable certificates of deposit are at the rates of interest required by the State

Depository Board. 1971 Op. Att'y Gen. No. 71-79.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 12.

50-17-67. Depositories to serve without definite term or salary or fees; exception.

Depositories appointed by the board shall serve only at the discretion of the board and without definite term. Depositories shall receive no salary or fees from the state except as authorized by Code Section 50-17-52.

History. — Ga. L. 1878-79, p. 88, § 2; Code 1882, § 943b; Ga. L. 1895, p. 22, § 1; Civil Code 1895, § 983; Civil Code 1910, § 1250; Code 1933, § 100-102; Ga. L. 1949, p. 13, § 3; Ga. L. 1992, p. 1247, § 4.

ARTICLE 4

GOVERNMENTAL COMMERCIAL PAPER NOTES

Cross references. — Commercial paper notes from government, § 36-82-240.

50-17-90. Definitions.

As used in this article, the term:

(1) "Governing body" means, with respect to the state, the Georgia State Financing and Investment Commission, and with respect to a state authority, such authority's board.

(2) "State authority" shall mean "state authority" as defined in paragraph (9) of Code Section 50-17-21.

History. — Code 1981, § 50-17-90, enacted by Ga. L. 2004, p. 886, § 7.

50-17-91. Governed by general provisions on commercial paper; issuance of security by governmental entity; requirements of governing body; renewal and reissuance of commercial paper.

(a) Whenever the state or any state authority is authorized by law to incur bonds, notes, or certificates, including but not limited to general obligation bonds, guaranteed revenue bonds, revenue bonds, bond anticipation notes, tax anticipation notes, or revenue anticipation

certificates, the state or state authority is authorized to issue such obligation in the form of commercial paper notes. The issuance of commercial paper notes shall be subject to the same restrictions and provisions under the laws of this state which would be applicable to the issuance of the type of bond, note, or certificate in lieu of which the commercial paper notes are being issued. The state or state authority may designate the commercial paper notes issued under this article to be in registered form or bearer form and may provide for payment by wire transfers or electronic funds transfer in accordance with the federal Electronic Fund Transfer Act, 15 U.S.C., Section 1693, et seq. The authority granted by this article to issue commercial paper notes shall not be construed to permit the state or state authority to increase or otherwise alter any debt limits.

(b) To secure commercial paper notes authorized under this article, the state or state authority may:

(1) Pledge its anticipated taxes, grants, or other revenue; the proceeds of any bonds, notes, or other permanent financing; or any combination thereof;

(2) Segregate any pledged funds in separate accounts that may be held by the state, state authority, or third parties;

(3) Enter into contracts with third parties to obtain standby lines of credit or other financial commitments designated to provide additional security for commercial paper notes authorized by this article;

(4) Establish any reserves deemed necessary for the payment of the commercial paper notes; and

(5) Adopt resolutions and enter into agreements containing covenants, including covenants to issue bonds, notes, or other permanent financing and provisions for protection and security of the owners of commercial paper notes, which shall constitute enforceable contracts with such owners.

(c) Commercial paper notes authorized by this article may be in any form and contain any terms, including provisions for redemption at the option of the owner and provisions for the varying of interest rates in accordance with any index, banker's loan rate, or other standard.

(d) The governing body shall adopt a resolution finding that issuance of the obligations in the form of commercial paper notes is necessary and desirable, directing the designated officer to arrange for preparation of the requisite number of suitable notes, and specifying other provisions relating to the commercial paper notes including the following:

(1) For each program of commercial paper notes authorized, the final date of maturity and the total aggregate principal amount of the commercial paper notes authorized to be outstanding at any one time up to the maturity date. The resolution may provide that the commercial paper notes may be issued and renewed from time to time until the final maturity date and that the amount issued from time to time may be set by a designated officer of the governmental entity up to the maximum amount authorized to be outstanding at any one time. The resolution shall include methods of setting the dates, numbers, and denominations of the commercial paper notes;

(2) The method of setting the interest rates and interest payment dates applicable to the commercial paper notes. Commercial paper notes may bear a stated rate of interest payable only at maturity, which rate or rates may be determined at the time of sale of each unit of commercial paper notes;

(3) The maximum effective rate of interest the commercial paper notes shall bear;

(4) The manner of sale;

(5) The discount, if any, the state or state authority may allow;

(6) Any provisions for the redemption of the commercial paper notes prior to the stated maturity;

(7) The technical form and language of the commercial paper notes; and

(8) All other terms and conditions of the commercial paper notes and of their execution, issuance, and sale deemed necessary and appropriate by the state or state authority.

(e) The governing body, in the resolution authorizing the issuance of commercial paper notes under this article, may delegate to any elected or appointed official of the state or state authority the authority to determine maturity dates, principal amounts, redemption provisions, interest rates, and other terms and conditions of such commercial paper notes that are not appropriately determined at the time of enactment or adoption of the authorizing resolution, which delegated authority shall be exercised subject to such parameters, limitations, and criteria as may be set forth in such resolution.

(f) Any commercial paper notes may be sold at negotiated sale at a price below the par value thereof.

(g) For purposes of determining the principal amount of debt outstanding in connection with complying with any limitations on the amount of debt outstanding for a governmental entity, commercial paper notes shall be deemed outstanding at any time during the term

of a program of commercial paper notes in an amount equal to the maximum amount authorized in the resolution.

(h) The renewal and reissuance from time to time of the commercial paper notes pursuant to a commercial paper note program in an amount up to the maximum amount authorized by the resolution shall be deemed to be a refunding of the previously maturing amount.

History. — Code 1981, § 50-17-91, enacted by Ga. L. 2004, p. 886, § 7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "or other revenue;" was substituted for "other revenue," and "financing;" was substituted for "financing," in paragraph (b)(1).

ARTICLE 5

INTEREST RATE MANAGEMENT

Cross references. — Interest and usury, T. 7, C. 4. Interest rate management agreements, T. 36, C. 82, A. 11.

50-17-100. Definitions.

As used in this article, the term:

(1) "Commission" means the Georgia State Financing and Investment Commission as defined in paragraph (1) of Code Section 50-17-21, as amended.

(2) "Counterparty" means the party entering into a qualified interest rate management agreement with the state party. A counterparty must be a bank, insurance company, or other financial institution duly qualified to do business in the state that either:

(A) Has, or whose obligations are guaranteed by an entity that has, at the time of entering into a qualified interest rate management agreement and for the entire term thereof, a long-term unsecured debt rating or financial strength rating in one of the top two ratings categories, without regard to any refinement or gradation of rating category by numerical modifier or otherwise, assigned by any two of the following: Moody's Investors Service, Inc., Standard & Poors Ratings Service, a division of The McGraw-Hill Companies, Inc., Fitch, Inc., or such other nationally recognized ratings service approved by the commission; or

(B) Has collateralized its obligations under a qualified interest rate management agreement in a manner approved by the commission.

(3) "Debt" shall include all debt and revenue obligations that a state party is authorized to incur by law, including without limitation

general obligation debt in the form of bonds or other obligations, guaranteed revenue debt in the form of bonds or other obligations, revenue bonds and other forms of revenue obligations, and all other debt or revenue undertakings, including, but not limited to, bonds, notes, warrants, certificates or other evidences of indebtedness, or other obligations for borrowed money issued or to be issued by any state party. "Debt" includes any financing lease or installment purchase contracts of any state authority.

(4) "Independent financial adviser" means a person or entity experienced in the financial aspects and risks of qualified interest rate management agreements that is retained by the state party to render advice with respect to a qualified interest rate management agreement. The independent financial adviser may not be the counterparty or an affiliate or agent of the counterparty on a qualified interest rate management agreement with respect to which the independent financial adviser is advising the state party.

(5) "Interest rate management plan" means a written plan prepared or reviewed by an independent financial adviser with respect to qualified interest rate management agreements of the state party.

(6) "Lease or installment purchase contract" means multiyear lease, purchase, installment purchase, or lease purchase contracts within the meaning of Code Sections 50-5-64, 50-5-65, and 50-5-77 or substantially similar other or successor Code sections.

(7) "Qualified interest rate management agreement" means an agreement, including a confirmation evidencing a transaction effected under a master agreement, entered into by the state party in accordance with, and fulfilling the requirements of, Code Section 50-17-101 which agreement in the judgment of the state party is designed to manage interest rate risk or interest cost of the state party on any debt or lease or installment purchase contract the state party is authorized to incur, including, but not limited to, interest rate swaps or exchange agreements, interest rate caps, collars, corridors, ceiling, floor, and lock agreements, forward agreements, swaptions, warrants, and other interest rate agreements which, in the judgment of the state party, will assist the state party in managing the interest rate risk or interest cost of the state or state authority.

(8) "State authority" means any state authority as defined in paragraph (9) of Code Section 50-17-21, as amended.

(9) "State party" means the state and any state authority.

History. — Code 1981, § 50-17-100, enacted by Ga. L. 2005, p. 642, § 2/SB 227; Ga. L. 2006, p. 72, § 50/SB 465.

Cross references. — Interest rate management agreements, T. 36, C. 82, A. 11.

50-17-101. Guidelines, rules, and regulations for interest rate management plans and agreements; authority to enter into, modify, or terminate; disposition of payments under agreements; obligations, terms, and conditions; agency for state.

(a) The commission is authorized to and shall establish guidelines, rules, or regulations with respect to the procedures for approving interest rate management plans and with respect to any requirements for qualified interest rate management agreements. Such guidelines, rules, and regulations shall apply to the interest rate management plans and qualified interest rate management agreements of any state party. Such guidelines, rules, and regulations shall not constitute a rule within the meaning of Chapter 13 of this title, the "Georgia Administrative Procedure Act," including, without limitation, the term "rule" as defined in paragraph (6) of Code Section 50-13-2 and used in Code Section 50-13-4.

(b) With respect to all or any portion of any debt or any lease or installment purchase contract, either issued or anticipated to be issued by the state party, the state party may enter into, terminate, amend, or otherwise modify a qualified interest rate management agreement under such terms and conditions as the state party may determine, including, without limitation, provisions permitting the state party to pay to or receive from any counterparty any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(c) Payments received by a state party pursuant to the terms of a qualified interest rate management agreement shall not be deposited into the state general fund but shall be subject to disposition by the state party and applied in accord with the goals of managing interest rate risk and interest cost as set forth in the qualified interest rate management agreement, any authorizing document for the debt or the lease or installment purchase contract to which such qualified interest rate management agreement relates, or such state party's interest rate management plan.

(d)(1) With respect to any qualified interest rate management agreement related to all or any portion of debt of a state party, the obligations of the state party contained in such qualified interest rate management agreement may be incurred as related or additional obligations of such debt and approved in the same manner as required for authorizing, approving, and issuing such debt to the

extent not otherwise prohibited, limited, or impractical and consistent with any tax-exempt status of the related debt. If this power is exercised with respect to state debt, the obligations to pay a counterparty shall be subordinate to the obligations to pay holders of general obligation debt, guaranteed revenue debt, and all payments required under contracts entitled to the protection of the second paragraph of Paragraph I(a), Section VI, Article IX of the Constitution of 1976.

(2) When the obligations of the state party are not incurred as related or additional obligations pursuant to paragraph (1) of this subsection and the qualified interest rate management agreement relates to debt of a state authority, the qualified interest rate management agreement shall be on such terms and conditions as the state party and counterparty agree consistent with provisions of this article.

(3) When the obligations of the state party are not incurred as related or additional obligations pursuant to paragraph (1) of this subsection and the qualified interest rate management agreement relates to debt of the state or to a lease or installment purchase contract, the obligations of the state party contained in such qualified interest rate management agreement may renew from fiscal year to fiscal year and may provide for the payment of any fee related to a termination or a nonrenewal, so long as the following requirements are satisfied:

(A) Such qualified interest rate management agreement shall terminate absolutely at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed;

(B) Any renewal of such qualified interest rate management agreement shall require positive action taken by the state party or in such other manner not otherwise prohibited by law which method of renewal and termination, in either case, shall be specified in the qualified interest rate management agreement; and

(C) Such qualified interest rate management agreement shall include a statement of the total obligation of the state party for the fiscal year of execution and, if renewed, for the fiscal year of renewal.

A qualified interest rate management agreement meeting the requirements of this paragraph may also provide that the state's obligations will terminate immediately and absolutely at such time as appropriated and other funds encumbered for payment by the state pursuant to the terms of such qualified interest rate management agreement are no longer available to satisfy such obligations.

The total obligation of the state for the fiscal year payable pursuant to a qualified interest rate management agreement may be stated in contingent but objective terms with respect to variable rate payments or termination payments, but in that event a qualified interest rate management agreement must provide that it will terminate immediately and absolutely at such time as appropriated and other funds encumbered for its payment are no longer available to satisfy the obligations of the state under such agreement. A qualified interest rate management agreement executed under this paragraph shall not be deemed to create a debt of the state or otherwise obligate the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal. When a qualified interest rate management agreement is executed under this paragraph or paragraph (1) of this subsection, the obligation of the state may be treated as an operating expense of the commission within the meaning of Paragraph VII of Section IV of Article VII of the Constitution and within the meaning of paragraph (2) of subsection (g) of Code Section 50-17-22 and of subsection (b) of Code Section 50-17-27.

(e)(1) The obligations of a state party to pay a counterparty under a qualified interest rate management agreement with respect to debt may be paid from any lawful source, to the extent not otherwise prohibited, limited, or impractical and consistent with any tax exempt status of the related debt and in compliance with Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," including without limitation, as to the state, proceeds of general obligation debt, earnings on investments of proceeds of general obligation debt, appropriations of state and federal funds, and agency funds; and, as to any state authority, any funds of such state authority to the extent not otherwise prohibited, limited, or impractical and consistent with any tax exempt status of the related debt.

(2) The obligations of a state party to pay a counterparty under a qualified interest rate management agreement with respect to a lease or installment purchase contract may be paid from any lawful source, to the extent not otherwise prohibited, limited, or impractical and consistent with any tax-exempt status of the related lease or installment purchase agreement and in compliance with Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," including without limitation appropriations of state and federal funds and agency funds.

(f)(1) With respect to obligations of a state authority to pay a counterparty, any qualified interest rate management agreement of a state authority may provide that it is an unconditional, limited recourse obligation of such state authority payable from a specified revenue source.

(2) A state authority may, in any qualified interest rate management agreement that constitutes a limited recourse obligation of the state authority, pledge to the punctual payment of amounts due under the qualified interest rate management agreement revenues from a specified revenue source, which shall not include any taxes, including without limitation collateral derived from such revenue source or proceeds of the debt, including debt for future delivery, to which such qualified interest rate management agreement relates.

(3) A qualified interest rate management agreement that constitutes a limited recourse obligation shall not be payable from or charged upon any funds other than the revenue identified as the source of payment thereof, nor shall the state authority entering into the same be subject to any pecuniary liability thereon. No counterparty under any such qualified interest rate management agreement shall ever have the right to compel any exercise of the taxing power of the state or the state authority to pay any amount due under any such qualified interest rate management agreement, nor to enforce payment thereof against any property of the state or state authority, other than the specified revenue source; nor shall any such qualified interest rate management agreement constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the state or state authority, other than the specified revenue source. Every such qualified interest rate management agreement shall contain a recital setting forth the substance of this paragraph.

(g)(1) The commission shall act for the state with respect to debt of the state and a qualified interest rate management agreement. However, upon authorization of the Governor, the Office of the State Treasurer shall act as fiscal agent or provide other administrative services.

(2) A state authority shall act for itself with respect to an interest rate management plan, a qualified interest rate management agreement, and an independent financial adviser regarding the debt of the state authority subject, however, to the guidelines, rules, and regulations of the commission under subsection (a) of this Code section. Further, the interest rate management plan, a qualified interest rate management agreement, and retention of an independent financial adviser will be treated as financial advisory matters within the exclusive authority and jurisdiction of the commission under paragraph (1) of subsection (f) of Code Section 50-17-22 and will require specific commission approval, unless the commission otherwise directs in either the specific case or in general terms. Upon authorization of the Governor, the Office of the State Treasurer shall act as fiscal agent or provide other administrative services for a qualified interest rate management agreement of the state authority.

(3) The agency responsible for payment shall act for the state with respect to a lease or installment purchase contract but only under the supervision and approval of the commission. Upon authorization of the Governor, the Office of the State Treasurer shall act as fiscal agent or provide other administrative services.

History. — Code 1981, § 50-17-101, enacted by Ga. L. 2005, p. 642, § 2/SB 227; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2010, p. 863, § 2/SB 296.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "the" was deleted preceding "Part 1" in paragraphs (e)(1) and (e)(2).

50-17-102. Interest rate management plans.

(a) Prior to executing and delivering a qualified interest rate management agreement, the state party shall have adopted an interest rate management plan that includes:

(1) An analysis of the interest rate risk, basis risk, termination risk, credit risk, market-access risk, and other risks to the state party entering into qualified interest rate management agreements;

(2) The state party's procedure for approving and executing qualified interest rate management agreements;

(3) The state party's plan to monitor interest rate risk, basis risk, termination risk, credit risk, market-access risk, and other risks; and

(4) Such other provisions as may from time to time be required by the commission, including but not limited to additional provisions due to changes in market conditions for qualified interest rate management agreements.

Any interest rate management plan adopted by the state shall be approved by the commission or by a designated officer of the commission and shall have been reviewed by an independent financial adviser approved by the commission.

(b) The state party shall conduct an annual review of its interest rate management plan as to the adequacy of the procedures set forth in such plan for the analysis and monitoring requirements set forth in subsection (a) of this Code section. A report summarizing the results of such review shall be submitted annually to the commission and, with respect to any interest rate management plan of a state authority, to the governing body of such state authority. The requirements of this subsection shall not be construed as to require the review of any existing interest rate management plan by an independent financial adviser.

History. — Code 1981, § 50-17-102, enacted by Ga. L. 2005, p. 642, § 2/SB 227.

50-17-103. Requirements for interest rate management agreements; credit enhancement or liquidity agreements.

(a) Each qualified interest rate management agreement shall meet the following requirements:

(1) The maximum term, including any renewal periods, of any qualified interest rate management agreement of the state may not exceed ten years unless such longer term has been approved by the commission. In addition to approval of the commission required by paragraph (2) of subsection (g) of Code Section 50-17-101, the maximum term, including any renewal periods, of any qualified interest rate management agreement of a state authority may not exceed ten years unless such longer term has been approved by the governing body of the state authority. The foregoing provisions of this paragraph notwithstanding, in no case may the term of the qualified interest rate management agreement exceed the latest maturity date of the bonds, notes, debt, or lease or installment purchase contract referenced in the qualified interest rate management agreement.

(2) The state party shall enter into a qualified interest rate management agreement only with a counterparty meeting the requirements set forth in paragraph (2) of Code Section 50-17-100.

(3) Prior to the execution and delivery by the state of any qualified interest rate management agreement, an interest rate management plan meeting the requirements of Code Section 50-17-102 must have been submitted to the commission and the commission shall have been provided evidence that such qualified interest rate management agreement is in compliance with the existing interest rate management plan. Prior to the execution and delivery by a state authority of any qualified interest rate management agreement, an interest rate management plan meeting the requirements of Code Section 50-17-102 must have been submitted to the governing body of the state authority and the governing body of the state authority shall have been provided evidence that such qualified interest rate management agreement is in compliance with the existing interest rate management plan.

(4) Any qualified interest rate management agreement shall be payable only in the currency of the United States of America.

(5) The notional amount of any qualified interest rate management agreement shall not exceed the outstanding principal amount of the debt or the aggregate payments due under any lease or install-

ment purchase contract to which such agreement relates unless otherwise approved in writing by the commission for any qualified interest rate management agreement executed by the state or by the governing body of the state authority for any qualified interest rate management agreement executed by a state authority, subject to the approval of the commission required by paragraph (2) of subsection (g) of Code Section 50-17-101.

(b) Any state party may enter into credit enhancement or liquidity agreements in connection with any qualified interest rate management agreement containing such terms and conditions as the state party determines are necessary or desirable, provided that any such agreement has the same source of payment as the related qualified interest rate management agreement.

History. — Code 1981, § 50-17-103, enacted by Ga. L. 2005, p. 642, § 2/SB 227.

50-17-104. Information required in annual financial statements.

The state party that has entered into a qualified interest rate management agreement shall include in its annual financial statements information with respect to each qualified interest rate management agreement it has authorized or entered into, including any information required by any accounting or regulatory standard to which the state party is subject.

History. — Code 1981, § 50-17-104, enacted by Ga. L. 2005, p. 642, § 2/SB 227.

50-17-105. Applicability of state law; jurisdiction.

When entering into any qualified interest rate management agreement authorized under this article, the agreement shall be governed by the laws of the State of Georgia, and jurisdiction over the state party in any matter concerning a qualified interest rate management agreement shall lie exclusively in the courts of the State of Georgia or in the applicable federal court having jurisdiction and located within the State of Georgia.

History. — Code 1981, § 50-17-105, enacted by Ga. L. 2005, p. 642, § 2/SB 227.

CHAPTER 18

STATE PRINTING AND DOCUMENTS

Article 1

Information on State Stationery

Sec.

50-18-1. State stationery to contain telephone numbers for responses or questions; exemptions.
50-18-2. Definitions; publications in printed or electronic format; preference.

Article 2

Court Reports

50-18-20. Definitions.
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50-18-26. Content and appearance of reports; number of volumes per year.
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50-18-28. Publisher to print and bind reports; liable for delay; opportunity to explain delay before panel.
50-18-29. Method of printing and binding reports; notice of deficiencies and time for cure; advice of panel regarding quality of reports.
50-18-30. Number of volumes ordered and produced.
50-18-31. Procedure for distribution of reports; discontinuance or resumption of distribution.
50-18-32. Production and sale of reports to citizens; liability for not having reports in stock; opportunity to explain failure to panel.
50-18-33. Statement of charges to be paid or arbitrated; payment funds to come from particular appropriation; price of reports.
50-18-34. Copyright belongs to state.
50-18-35. Publisher to maintain means to reproduce volumes.
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Article 4

Inspection of Public Records

50-18-70. Legislative intent; definitions.
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50-18-71.1 and 50-18-71.2 [Repealed].
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50-18-77. Inapplicable to public records.

Article 5

State Records Management

50-18-90. Short title.

Sec.
50-18-91. Definitions.
50-18-92. Creation of State Records Committee; membership; duties; retention schedules; appeal to committee by agency heads; court records.
50-18-93. Duties of division.
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50-18-96. Retention of video recordings from law enforcement sources; destruction; presumption from destruction; fee for duplication.
50-18-97. Effect of certified copies of records; fee.
50-18-98. Title to records; access to records of constitutional officers.
50-18-99. Records management programs for local governments.
50-18-100. Lifting restrictions on access to confidential, classified, or restricted records after 75 years; earlier lifting.
50-18-101. Use of confidential, classified, or restricted records for research; limitations.
50-18-102. Records as public property; disposing of records other than by approved retention schedule as misdemeanor; person acting under article not liable.
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Article 6

Microforms

50-18-120. Authority for establishment of standards.
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Article 7

"Multiracial" Classification

50-18-135. "Multiracial" classification requirement; reporting racial data to federal agencies.

RESEARCH REFERENCES

ALR. — What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public, 40 A.L.R.4th 333.

ARTICLE 1

INFORMATION ON STATE STATIONERY

Editor's notes. — Ga. L. 1993, p. 1394, § 1, effective April 15, 1993, repealed the former article, relating to state printing and documents, which was reserved pursuant to Ga. L. 1990, p. 1466, § 2, effective April 11, 1990.

The former article was part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8) and was based on Ga. L. 1974, p. 1002, § 1 and Ga. L. 1989, p. 1634, § 1.

50-18-1. State stationery to contain telephone numbers for responses or questions; exemptions.

(a) As used in this Code section, the term "state agency" means any state department, board, bureau, commission, authority, council, or committee or any other state agency or instrumentality.

(b) All stationery used by any state agency for correspondence with members of the public shall have printed or typed thereon one or more telephone numbers to which responses or questions concerning such correspondence may be directed.

(c) This Code section shall not apply to:

(1) Stationery for the use of the office of the Governor; or

(2) Stationery for the use of any officer or agency or other entity of the judicial branch of state government.

(d) Subsection (b) of this Code section shall apply to all stationery ordered by state agencies after July 1, 1993. Until July 1, 1995, state agencies may continue to use stationery printed before July 1, 1993, which does not comply with subsection (b) of this Code section.

History. — Code 1981, § 50-18-1, enacted by Ga. L. 1993, p. 1394, § 1.

50-18-2. Definitions; publications in printed or electronic format; preference.

(a) As used in this Code section, the term:

(1) "State agency" means any department, board, bureau, commission, authority, council, or committee or any other state agency or instrumentality of the executive or legislative branch of state government.

(2) "State officer" means any officer of the executive or legislative branch of state government.

(b) When any other provision of state law authorizes or directs any state officer or state agency to publish or provide for publication of any matter, such publication shall be made in electronic format unless the state officer or state agency determines that a printed format is necessary to achieve the purpose of publication, except that:

(1) When another provision of state law specifically provides for publication in one or more newspapers, publication shall be in the newspaper or newspapers as provided by such other provision of law; and

(2) When any other provision of state law makes specific reference to this Code section and requires publication in a specific manner notwithstanding the provisions of this Code section, such other provision of law shall control over this Code section.

(c) Nothing in this Code section shall limit the applicability of Article 4 of this chapter, relating to inspection of public records, when said article by its terms is otherwise applicable.

History. — Code 1981, § 50-18-2, enacted by Ga. L. 2010, p. 838, § 4/SB 388.

Law reviews. — For annual survey on local government law, see 68 Mercer L. Rev. 199 (2016).

ARTICLE 2

COURT REPORTS

50-18-20. Definitions.

As used in this article, the term:

(1) "Publisher" means the state publisher of court reports who has been awarded the contract as defined in this article.

(2) "Reporter" means the reporter of the Supreme Court and Court of Appeals whose duties are set forth in Chapter 4 of Title 15.

(3) "Reports" means the official reports of the decisions of the Supreme Court or of the Court of Appeals, together with the usual title pages, indexes, etc., as well as the advance reports of the decisions of each court.

(4) "Rules compilation" means a compilation of rules applicable in the courts of this state. The rules compilation shall include the Rules of the Supreme Court, the Rules of the Court of Appeals, the Unified Appeal, the Uniform Transfer Rules, the Uniform Rules for the various classes of courts, the Rules of the Judicial Qualifications Commission, the Georgia Code of Judicial Conduct, the Bar Admissions Rules, the Rules and Regulations for the Organization and Government of the State Bar of Georgia, and any other rules or amendments as promulgated by the Supreme Court or the Court of Appeals, together with all applicable forms.

History. — Ga. L. 1920, p. 237, § 2; Code 1933, § 90-201; Code 1933, § 90-201, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 1432, § 1; Ga. L. 2010, p. 838, § 5/SB 388; Ga. L. 2011, p. 752, § 50/HB 142.

Law reviews. — For article, "Researching Georgia Law," see 34 Ga. St. U.L. Rev. 741 (2015).

50-18-21. Preparation of contract for state reports publication; public inspection.

The reporter, acting upon the advice of the Governor, shall prepare a contract to be awarded every four years, or as the occasion may require, which contract is renewable annually during those four years and provides for the publication of the state reports. This contract shall be on file for public inspection in the offices of the Department of Administrative Services.

History. — Ga. L. 1920, p. 237, § 3; Code 1933, § 90-204; Code 1933, § 90-202, enacted by Ga. L. 1972, p. 460, § 1.

OPINIONS OF THE ATTORNEY GENERAL

State reporter is proper budget unit for appropriations. — Because the reporter is primarily responsible for the production of the reports, and because the reporter has the responsibility of furnishing a manuscript of the decisions to the state publisher and of ascertaining proper performance by the publisher, and because failure of a report to be published is directly attributable to the reporter, the state reporter is the proper budget unit to which appropriations for state reports should be directed. 1971 Op. Att'y Gen. 71-103.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 40 et seq.

C.J.S. — 73A C.J.S., Public Contracts, § 16 et seq. 81A C.J.S., States, §§ 270, 282.

50-18-22. Advertising for and accepting bids for state reports publication; contract with lowest bidder; right to reject bids.

(a) Every four years the reporter shall present the contract provided for in Code Section 50-18-21 to the Department of Administrative Services for purposes of advertising for and accepting bids under the contract according to the established procedures of that department. After the deadline for the acceptance of bids, all bids submitted shall be turned over to the reporter by the Department of Administrative Services.

(b) The reporter, with the approval of the Governor, shall contract with the lowest bidder who, to the satisfaction of the Governor and reporter, is capable of full and adequate performance under the contract and complies with the terms and provisions of this law.

(c) The reporter has the right to reject any and all bids. In the event all bids are rejected, the reporter shall again advertise for bidders and follow the procedures as set forth in this Code section.

History. — Ga. L. 1920, p. 237, § 3; Code 1933, § 90-205; Code 1933, § 90-203, enacted by Ga. L. 1972, p. 460, § 1.

Cross references. — Competitive bidding for contracts to furnish supplies and services to state generally, § 50-5-67.

OPINIONS OF THE ATTORNEY GENERAL

State reporter is proper budget unit for appropriations. — Because the reporter is primarily responsible for the production of the reports, and because the reporter has the responsibility of furnishing a manuscript of the decisions to the state publisher and of ascertaining proper performance by the publisher, and be-

cause failure of a report to be published is directly attributable to the reporter, the state reporter is the proper budget unit to which appropriations for state reports should be directed. 1971 Op. Att'y Gen. 71-103.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 25, 28 et seq., 60 et seq.

C.J.S. — 73A C.J.S., Public Contracts, §§ 5 et seq., 17, 21 et seq. 81A C.J.S., States, § 270 et seq.

ALR. — Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee, 2 A.L.R.4th 991.

50-18-23. Contractor to give bond.

The person to whom the contract is awarded shall give bond with adequate and satisfactory security in the sum of not less than $25,000.00, to be payable to the Governor and his successors in office and to be conditioned that the contractor will perform his duties promptly and faithfully under the contract and carry out all provisions of law so far as they relate to the duties arising from the contract. The bond is subject to the approval of the Attorney General.

History. — Ga. L. 1920, p. 237, § 4; Code 1933, § 90-206; Code 1933, § 90-204, enacted by Ga. L. 1972, p. 460, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 273, 293.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 73, 74. 73A C.J.S., Public Contracts, § 42 et seq.

50-18-24. State publisher of court reports; annual renewal of contract; publisher may succeed himself.

(a) The person to whom the contract is awarded shall become and be known as the state publisher of court reports when his bond is approved by the Attorney General.

(b) The contract awarded to the publisher must be renewed each year during his four-year term. At the end of the four years, the reporter shall prepare a contract as set forth in Code Section 50-18-21 and follow the procedures set forth in Code Section 50-18-22.

(c) The state publisher can succeed himself as long as his bid on the contract is accepted by the reporter with the approval of the Governor.

History. — Ga. L. 1920, p. 237, § 5; Code 1933, § 90-207; Code 1933, § 90-205, enacted by Ga. L. 1972, p. 460, § 1.

50-18-25. Publisher to act only on direction of reporter.

In all matters pertaining to the publication of the reports, the publisher will act only upon the direction of the reporter.

History. — Code 1933, § 90-216, enacted by Ga. L. 1972, p. 460, § 1.

50-18-26. Content and appearance of reports; number of volumes per year.

(a) The reports shall contain the decisions rendered in all cases presented to the Supreme Court of Georgia and to the Court of Appeals of Georgia and an index of all cases reported. No report shall contain any argument or brief of counsel beyond a statement of the major points and authorities.

(b) The reporter has the duty to ascertain that the reports are uniform in size and appearance. Whenever it becomes necessary, due to a variance in the number of decisions rendered, the reporter, in order to maintain the desired uniformity, may provide for the production of more than one volume from either court in any one year or may consolidate decisions of either court from two different years into one volume, but in no case shall the decisions of the Supreme Court be combined in one volume with the decisions of the Court of Appeals.

History. — Laws 1856, Cobb's 1851 Digest, p. 455; Code 1863, § 222; Code 1868, § 216; Code 1873, § 230; Code 1882, § 230; Ga. L. 1882-83, p. 76, § 11; Civil Code 1895, §§ 1088, 1092; Civil Code 1910, §§ 1357, 1361; Code 1933, §§ 90-208, 90-209; Code 1933, § 90-206, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 1432, § 2; Ga. L. 2010, p. 838, § 6/SB 388.

50-18-27. Responsibilities of reporter; subject to dismissal if reports not published within six months of delivery.

(a) The reporter shall furnish to the publisher the manuscript of the decisions, read the proof and correct the same, and furnish for each volume an index of the cases reported.

(b) If the reporter shall fail to publish the volumes of reports within six months of the time of the delivery to him of the last of the decisions to be included in a particular volume, he shall be subject to immediate dismissal unless good cause for such delay is shown to the satisfaction of a panel composed of three Justices of the Supreme Court appointed by the Chief Justice and two Judges of the Court of Appeals appointed by the Chief Judge.

History. — Laws 1845, Cobb's 1851 Digest, p. 452; Code 1863, § 223; Code 1868, § 217; Code 1873, § 231; Code 1882, § 231; Civil Code 1895, § 1093;

Civil Code 1910, § 1362; Ga. L. 1920, p. 237, § 6; Code 1933, §§ 90-210, 90-211; Code 1933, § 90-207, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 1432, § 3; Ga. L. 2010, p. 838, § 7/SB 388.

OPINIONS OF THE ATTORNEY GENERAL

State reporter is proper budget unit for appropriations. — Because the reporter is primarily responsible for the production of the reports, and because the reporter has the responsibility of furnishing a manuscript of the decisions to the state publisher and of ascertaining proper performance by the publisher, and because failure of a report to be published is directly attributable to the reporter, the state reporter is the proper budget unit to which appropriations for state reports should be directed. 1971 Op. Att'y Gen. 71-103.

RESEARCH REFERENCES

C.J.S. — 73A C.J.S., Public Contracts, § 25.

50-18-28. Publisher to print and bind reports; liable for delay; opportunity to explain delay before panel.

(a) It shall be the duty of the publisher to print and bind the reports promptly within the prescribed time limit as set out in the contract.

(b) Should there be a delay in the printing or binding beyond the time set out in the contract, the reporter shall declare, upon notice to the publisher, the contract breached and the publisher shall become liable to the state for a sum to be assessed by the reporter, not exceeding $1,000.00 per week for each week that the delay continues. If the delay is flagrant or continued more than 60 days, the reporter may declare the contract ended. The bond given by the publisher shall be liable for any sum assessed.

(c) The reporter, prior to declaring the contract breached, shall seek the advice of a panel composed of the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, an appointee of the Governor who is not the Attorney General, the executive counsel, and the legislative counsel. The publisher shall have an opportunity to appear before this panel to explain the reasons for delay and to avoid liability for any sum which might be assessed against him. The panel can decide to provide the publisher an extended time in which to produce the reports or it may declare the publisher liable for a sum assessed by the reporter. The decision of the panel is final.

History. — Ga. L. 1920, p. 237, § 6; Code 1933, §§ 90-211, 90-212; Code 1933, § 90-208, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 426, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 104, 105.

C.J.S. — 73A C.J.S., Public Contracts, § 28.

50-18-29. Method of printing and binding reports; notice of deficiencies and time for cure; advice of panel regarding quality of reports.

(a) The publisher, with the approval of the reporter, may choose the most efficient and advantageous method of producing the reports so long as the style and quality of the reports are not compromised by any change in the method of printing and binding the reports.

(b) Should the work of printing and binding the reports or any part of them be done improperly, it shall be the duty of the reporter to advise the publisher by written notice of the deficiencies in the reports. The publisher shall have 60 days to make the necessary corrections. In the event the publisher fails to cure the deficiencies, the reporter may declare the contract breached and ended and assess the publisher for any damages the state may realize for the breach. The bond given by the publisher shall be liable for any sum assessed.

(c) The reporter may seek, and must seek if requested in writing by the publisher, advice regarding the quality of the reports, such advice to be obtained from a panel composed of the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, an appointee of the Governor who is not the Attorney General, the executive counsel, and the legislative counsel. The publisher and the reporter shall be allowed to appear before the panel and present any material relevant to the quality of the reports. The decision of the panel is final.

History. — Ga. L. 1920, p. 237, § 7; Code 1933, § 90-219; Code 1933, § 90-209, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 426, § 1.

OPINIONS OF THE ATTORNEY GENERAL

State reporter is proper budget unit for appropriations. — Because the reporter is primarily responsible for the production of the reports, and because the reporter has the responsibility of furnishing a manuscript of the decisions to the state publisher and of ascertaining proper performance by the publisher, and because failure of a report to be published is directly attributable to the reporter, the state reporter is the proper budget unit to which appropriations for state reports should be directed. 1971 Op. Att'y Gen. 71-103.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 96 et seq.

C.J.S. — 73A C.J.S., Public Contracts, §§ 25, 27.

50-18-30. Number of volumes ordered and produced.

(a) The reporter shall order in writing from the publisher the number of volumes of each report required by the state when he delivers the manuscript to the publisher.

(b) The publisher shall produce the number of reports as is ordered by the reporter and upon completion of printing and binding shall deliver the reports to the reporter.

History. — Code 1933, § 90-211, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1975, p. 741, § 6.

50-18-31. Procedure for distribution of reports; discontinuance or resumption of distribution.

The reporter shall make distribution of the reports which shall be handled in accordance with this Code section:

(1) The reporter shall place all orders for the reports with the publisher;

(2) All volumes distributed within this state to the state or to any of its subordinate departments, agencies, or political subdivisions, or to public officers or public employees within the state, shall be the property of the appropriate public officer or employee during his or her term of office or employment and shall be turned over to his or her successor; and the reporter shall take and retain a receipt from each such public officer or employee acknowledging this fact. The reporter shall at all times use the most economical method of shipment consistent with the safety and security of the volumes; and

(3) The reporter shall make distributions of the reports in accordance with the following:

Archives, State	one copy
Court of Appeals of Georgia	23 copies
Executive Department	one copy
House Judiciary Committee	one copy
Law, Department of	six copies
Legislative Counsel	one copy
Judge of the Probate Court (each county)	one copy

Each probate court shall place a written order with the reporter on or before October 1. A written order from a probate court shall remain in effect until changed by a subsequent written order. The reporter shall not provide reports to any probate court without a written order.

Reporter

Assistant reporter's desk ..... one copy

Copyright ..... three copies

Reporter's clerical staff ..... one copy

Reporter's desk ..... one copy

Secretary of State ..... one copy

Senate Judiciary Committee ..... one copy

Superior Courts

District Attorneys (each) ..... one copy

Judges (each) ..... one copy

Each superior court judge shall place a written order with the reporter on or before October 1. A written order from a superior court judge shall remain in effect until changed by a subsequent written order. The reporter shall not provide reports to any superior court judge court without a written order.

Supreme Court of Georgia ..... 18 copies

University of Georgia Law School Library ..... four copies

Workers' Compensation, State Board of ..... six copies

The reporter may add additional recipients or additional copies to named recipients upon written order from the Chief Justice of the Supreme Court.

History. — Ga. L. 1920, p. 237, § 9; Code 1933, § 90-215; Code 1933, § 90-210, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1975, p. 741, § 5; Ga. L. 1982, p. 3, § 50; Ga. L. 1982, p. 702, §§ 1, 5; Ga. L. 1983, p. 3, § 39; Ga. L. 1986, p. 855, § 30; Ga. L. 1987, p. 3, § 50; Ga. L. 2008, p. 267, § 8/SB 482; Ga. L. 2010, p. 838, § 8/SB 388.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Workers' Compensation" was substituted for "Worker's Compensation" in paragraph (4) (now paragraph (3)).

OPINIONS OF THE ATTORNEY GENERAL

Placement of reports. — Whether a set of Georgia Reports, Session Laws, Official Code of Georgia, House and Senate Journals and Court Journals is required to be in the probate court of each county as well as in the county law library is governed by Ga. Law 1982, p. 793, and O.C.G.A. § 50-18-31. 1983 Op. Att'y Gen. No. U83-40.

County law libraries are available for use by the general public. 1983 Op. Att'y Gen. No. U83-40.

50-18-32. Production and sale of reports to citizens; liability for not having reports in stock; opportunity to explain failure to panel.

(a) In addition to the reports to be furnished to the state as previously provided, the publisher shall produce a sufficient number for sale to the citizens of the state. The publisher shall at all times during his contract keep on hand in the capital city of the state an adequate supply of the reports such publisher has published during that contract period for sale to the citizens of the state and to the state when it so requires.

(b) In the event the publisher does not have in stock any report published during the contract period that is needed by the state or any citizen of the state, the reporter shall, upon notice to the publisher, declare the contract breached; and the publisher shall become liable to the state for a sum, to be assessed by the reporter, payable to the state for each week that the report is not available but in no event shall the total of the sum assessed by the reporter exceed the amount of the publisher's bond. In the event of undue delay, the reporter may declare the contract ended. The bond given by the publisher shall be liable for any sum assessed.

(c) The reporter, prior to declaring the contract breached, shall seek the advice of a panel composed of the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, an appointee of the Governor who is not the Attorney General, the executive counsel, and the legislative counsel. The publisher shall have an opportunity to appear before this panel to explain the reason for his failure to have in stock a particular volume and to avoid liability for any sum which may be assessed against him. The panel can decide to provide the publisher an extended period of time to produce the required volumes of reports, or it may declare the publisher liable for a sum assessed by the reporter; and, if the reporter has so requested, it may declare the contract with the publisher ended. In any case, the decision of the panel is final.

History. — Ga. L. 1920, p. 237, § 9; Code 1933, § 90-222; Code 1933, § 90-212, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1982, p. 892, §§ 1, 4; Ga. L. 1988, p. 426, § 1.

50-18-33. Statement of charges to be paid or arbitrated; payment funds to come from particular appropriation; price of reports.

(a) Upon delivery of the volumes of each report to the proper recipient, the publisher shall present to the reporter an itemized statement of charges for which the state is liable. If the statement appears erroneous to the reporter, he shall contact the publisher in an effort to correct the errors. In the event no agreement can be reached, the Attorney General shall act as arbiter between the reporter and the publisher.

(b) If the reporter is satisfied as to the correctness of the statement of charges, he shall pay the publisher accordingly. The payment shall be made from funds appropriated to the courts by the General Assembly for the publication and distribution of the reports of the Supreme Court and the Court of Appeals. This particular appropriation is to be administered by the reporter.

(c) The price at which the reports shall be furnished to the state and to the citizens of the state shall not exceed the price set forth in the contract.

History. — Ga. L. 1920, p. 237, § 10; Code 1933, §§ 90-213, 90-217; Code 1933, § 90-213, enacted by Ga. L. 1972, p. 460, § 1.

50-18-34. Copyright belongs to state.

The reports shall be copyrighted and the copyright shall belong to the state.

History. — Ga. L. 1920, p. 237, § 13; Code 1933, § 90-218; Code 1933, § 90-214, enacted by Ga. L. 1972, p. 460, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Copyright and Literary Property, § 57.

C.J.S. — 18 C.J.S., Copyrights and Intellectual Property, §§ 105, 106, 139, 154 et seq.

50-18-35. Publisher to maintain means to reproduce volumes.

During the term of his contract, the publisher shall maintain the means to reproduce any volume published during the term of the contract at a time subsequent to the printing of that volume.

History. — Code 1933, § 90-215, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1982, p. 892, §§ 2, 5.

50-18-36. Upon expiration of contract, publisher authorized to sell reports; price.

Upon the expiration of his contract, the publisher may sell all unsold copies of the reports to any person, firm, corporation, or entity, public or private. The price of any such copies shall remain the same as fixed by the contract under which such copies were published.

History. — Ga. L. 1920, p. 237, § 12; Code 1933, § 90-221; Code 1933, § 90-217, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1982, p. 892, §§ 3, 6.

50-18-37. Rules compilation.

The reporter shall publish a rules compilation in electronic format that is made accessible to the public through the Internet or other suitable electronic methods and shall update the rules compilation as necessary.

History. — Code 1981, § 50-18-37, enacted by Ga. L. 2010, p. 838, § 9/SB 388.

ARTICLE 3

GOVERNMENT DOCUMENTS

50-18-50 through 50-18-55.

Reserved. Repealed by Ga. L. 2001, p. 800, § 1, effective July 1, 2001.

Editor's notes. — This article, consisting of Code Sections 50-18-50 through 50-18-55, relating to the Georgia Government Documents Act, was based on Ga. L. 1968, p. 1186, §§ 1, 2, and 4 through 7, Ga. L. 1971, p. 216, §§ 1, 2, and 4 through 7, Ga. L. 1972, p. 1015, § 405, and Ga. L. 1992, p. 6, § 50.

ARTICLE 4

INSPECTION OF PUBLIC RECORDS

Cross references. — Inspection of files and records relating to juvenile court proceedings, § 15-11-58. Registry for uniform environmental covenants, § 44-16-12. Furnishing information to out-of-state coroners, § 45-16-10. Limited disclosure of autopsy photographs, § 45-16-27.

Editor's notes. — This article is commonly referred to as the "Open Records Law" or "Open Records Act," although those names are not official.

Law reviews. — For article surveying recent developments in administrative law, see 39 Mercer L. Rev. 33 (1987). For article, "State Administrative Agency Contested Case Hearings," see 24 Ga. St. B.J. 193 (1988). For article, "Georgia's Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine," see 40 Mercer L. Rev. 1 (1988). For article, "Education Law," see 53 Mercer L. Rev. 281 (2001). For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001). For article, "Must Government Contractors 'Submit' to Their Own Destruction?: Georgia's Trade Secret Disclosure Exemption and United HealthCare of Georgia, Inc. v. Georgia

Department of Community Health," see 60 Mercer L. Rev. 825 (2009). For article, "General Overview of Procurement Process," see 10 Ga. St. B.J. 12 (2005).

JUDICIAL DECISIONS

Denial of defendant's motion to inspect files. — When the defendant filed a post-trial motion to inspect the state's files on the cases of two codefendants, who, by the time this motion was made, had been acquitted, and the state responded that, assuming the state's files were "public records" within the meaning of the law, these cases were still under investigation for possible federal prosecutions, the trial court did not err when the court denied the defendant's motion. Castell v. State, 250 Ga. 776, 301 S.E.2d 234 (1983), aff'd, 252 Ga. 418, 314 S.E.2d 210 (1984).

Applicability of article. — O.C.G.A. Art. 4, Ch. 18, T. 50 does not provide for open and affirmative disclosure of county official's communications with the official's attorney or for disclosure by county sheriff of sheriff's policies with respect to training deputies. Dodson v. Floyd, 529 F. Supp. 1056 (N.D. Ga. 1981).

OPINIONS OF THE ATTORNEY GENERAL

Information concerning degrees and awards by University of Georgia. — Unless and until the University of Georgia designates information concerning degrees and awards to be directory information, as defined by 20 U.S.C. § 1232g(b)(1), gives public notice and allows reasonable time for response, or until a student consents to release of such information, 20 U.S.C. § 1232g, the Family Educational and Private Rights Act, requires the information to remain confidential. Thus, the Open Records Act, O.C.G.A. Art. 4, Ch. 18, T. 50, does not require disclosure of such information. 1981 Op. Att'y Gen. No. 81-48.

Salary information of county employee accessible to public. — When salary information of county employee is contained solely within the employee's personnel file, it is not accessible to the public; however, when such information is included as part of another public record, the information is accessible to the public. 1981 Op. Att'y Gen. No. U81-40.

50-18-70. Legislative intent; definitions.

(a) The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that public records should be made available for public inspection without delay. This article shall be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only those portions of records addressed by such exception.

(b) As used in this article, the term:

(1) "Agency" shall have the same meaning as in Code Section 50-14-1 and shall additionally include any association, corporation, or

other similar organization that has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state, their officers, or any combination thereof and derives more than 33 1/3 percent of its general operating budget from payments from such political subdivisions.

(2) "Public record" means all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.

History. — Ga. L. 1959, p. 88, § 1; Code 1981, § 50-18-70; Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, § 1; Ga. L. 1992, p. 1061, § 5; Ga. L. 1992, p. 1545, § 1; Ga. L. 1992, p. 2829, § 2; Ga. L. 1993, p. 1394, § 2; Ga. L. 1993, p. 1436, §§ 1, 2; Ga. L. 1994, p. 618, § 1; Ga. L. 1998, p. 128, § 50; Ga. L. 1999, p. 552, §§ 1, 2; Ga. L. 2012, p. 173, § 1-38/HB 665; Ga. L. 2012, p. 218, § 2/HB 397.

Cross references. — Right of shareholders to inspect books and records of corporations, § 14-2-1602. Confidentiality of records relating to adoption proceedings, § 19-8-18. Opening of primary and election records of Secretary of State for inspection by public, § 21-2-51. Opening of primary and election records of election superintendents for inspection by public, § 21-2-72. Disclosure and publication of vital records, § 31-10-25. Inspection of motor vehicle records, § 40-3-24. Confidentiality of reports, files, and other documents, relating to probation, § 42-8-40. Confidentiality of records of State Board of Pardons and Paroles, § 42-9-53. Limited disclosure of autopsy photographs, § 45-16-27. Confidentiality of income tax information, §§ 48-7-60, 48-7-61.

Code Commission notes. — Ga. L. 1992, p. 1061, § 5, added new subsections (d) and (e). Ga. L. 1992, p. 1545, § 1, added new subsection (c) and redesignated former subsection (c) as subsection (d). Ga. L. 1992, p. 2829, § 2, added a new subsection (d). Pursuant to Code Section 28-9-5, in 1992, former subsection (c) was redesignated as subsection (f), and the new subsection added by Ga. L. 1992, p. 2829, § 2, was redesignated as subsection (g).

Pursuant to Code Section 28-9-3, in 2012, the amendment of this Code section by Ga. L. 2012, p. 173, § 1-38/HB 665, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 218, § 2/HB 397, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Law reviews. — For article discussing the right of access to public records of local government, see 13 Ga. L. Rev. 97 (1978). For article, "Informational Privacy Under the Open Records Act," see 32 Mercer L. Rev. 393 (1980). For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981). For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986). For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990). For annual survey of local government law, see 44 Mercer L. Rev. 309 (1992). For survey article on administrative law for the period from June 1, 1997 through May 31, 1999, see 51 Mercer L. Rev. 103 (1999). For annual survey article discussing developments in education law, see 52 Mercer L. Rev. 221 (2000). For article, "General Overview of Procurement Process," see 10 Ga. St. B.J. 12 (2005). For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005). For annual survey of criminal law, see 58

Mercer L. Rev. 83 (2006). For annual survey of zoning and land use law, see 58 Mercer L. Rev. 477 (2006). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007). For survey article on local government law, see 60 Mercer L. Rev. 263 (2008). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012). For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012). For annual survey on trial practice and procedure, see 64 Mercer L. Rev. 305 (2012). For article, "Prison Accountability and Performance Measures," see 63 Emory L. J. 339 (2013). For annual survey on local government law, see 68 Mercer L. Rev. 199 (2016). For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992). For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 265 (1994). For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 262 (1999). For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 268 (1999).

JUDICIAL DECISIONS

Analysis

General Consideration
Public Records
Balancing of Interests
Exceptions

General Consideration

Legislative intent. — General Assembly did not intend that all public records of law enforcement officers and officials be open for inspection by a citizen as soon as such records are prepared. Houston v. Rutledge, 237 Ga. 764, 229 S.E.2d 624 (1976).

Intent of General Assembly was to afford to public at large access to public records with the exceptions of certain information which is exempt from disclosure. Griffin-Spalding County Hosp. Auth. v. Radio Station WKEU, 240 Ga. 444, 241 S.E.2d 196 (1978).

Recovery of compensatory or punitive damages prohibited. — Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., does not permit recovery of compensatory or punitive damages. Wallace v. Greene County, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Purpose of inspection of government documents provisions is not only to encourage public access to information in order that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions, but also to foster confidence in government through openness to the public. Athens Observer, Inc. v. Anderson, 245 Ga. 63, 263 S.E.2d 128 (1980) (see O.C.G.A. T. 50, C. 18, A. 4).

Purpose of the Open Records Act, O.C.G.A. T. 50, C. 18, A. 4, is to encourage public access to government information and to foster confidence in government through openness to the public. McFrugal Rental of Riverdale, Inc. v. Garr, 262 Ga. 369, 418 S.E.2d 60 (1992).

Actions to enjoin disclosure of information authorized. — Open Records Act, O.C.G.A. § 50-18-70 et seq., provides the jurisdictional basis for a cause of action by individuals to enjoin the disclosure of legally protected information. Bowers v. Shelton, 265 Ga. 247, 453 S.E.2d 741 (1995).

Construction of statutory exemptions. — Any purported statutory exemption from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., must be narrowly construed. Hardaway Co. v. Rives, 262 Ga. 631, 422 S.E.2d 854 (1992).

Inquiries under Open Records Act. — In suits under the Open Records Act, O.C.G.A. § 50-18-70 et seq., the first inquiry is whether the records are "public records"; if the records are, the second inquiry is whether the records are pro-

tected from disclosure under the list of exemptions or under any other statute; if the records are not exempt, then the question is whether the records should be protected by court order, but only if there is a claim that disclosure would invade individual privacy. Hardaway Co. v. Rives, 262 Ga. 631, 422 S.E.2d 854 (1992).

If a person or an agency having custody of the records fails to affirmatively respond to an open records request within three business days by notifying the requesting party of the determination as to whether access will be granted, the Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., has been violated; under such circumstances, the person or agency has necessarily failed to grant reasonable access to the files in the person or agency's custody. Wallace v. Greene County, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Diligence for purposes of habeas corpus did not require making Open Records Act requests. — "Diligence" for purposes of habeas corpus does not require that defendants submit multiple, wide-ranging Open Records Act, O.C.G.A. § 50-14-1, et seq., requests to every state actor or agency that might possess records pertinent to their cases in order to determine whether the state lived up to the state's disclosure obligations. Watkins v. Ballinger, 308 Ga. 387, 840 S.E.2d 378 (2020).

Official immunity barred defamation claim. — City manager (CM) had official immunity in a defamation case under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and O.C.G.A. § 36-33-4 since: (1) the city finance director (FD) did not show that a statement the CM made to the media regarding the CM's concerns in the FD's department was outside the scope of the CM's authority; (2) the CM did not disclose anything to the FD's prospective employer (PE) that the PE did not obtain through a Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., request; and (3) there was no policy that prohibited the CM from verbally responding in conjunction with the CM's Open Records Act response. Smith v. Lott, 317 Ga. App. 37, 730 S.E.2d 663 (2012).

Oral requests allowed. — Fact that some of the newspaper's requests to examine records pertaining to the sheriff's "inmate telephone account," were oral rather than written did not diminish their efficacy under the Open Records Act, O.C.G.A. § 50-18-70 et seq., for there is no requirement that those requests be in writing. Howard v. Sumter Free Press, Inc., 272 Ga. 521, 531 S.E.2d 698 (2000).

Request not made. — Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., claim against a county attorney was properly dismissed as no records request was made to the attorney. Wallace v. Greene County, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Standing of Secretary of State to object to request. — Georgia Secretary of State had standing to object to a request under the Open Records Act for election records held by a county. Under O.C.G.A. §§ 21-2-30, 21-2-31, 21-2-32, 21-2-50 et seq., and 45-13-20 et seq., the Secretary was charged with the supervision of all elections in Georgia and thus had the right to seek judicial intervention. Smith v. DeKalb County, 288 Ga. App. 574, 654 S.E.2d 469 (2007), cert. denied, No. S08C0596, 2008 Ga. LEXIS 291 (Ga. 2008).

Reasonable access to files. — Custodian of public records complies with an open records request when the custodian grants reasonable access to the files in the custodian's custody; the custodian is not required to comb through the files and locate, inspect, and produce the documents sought. Felker v. Lukemire, 267 Ga. 296, 477 S.E.2d 23 (1996).

Denial of access to records was unauthorized. — In denying a request for records under the Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., an agency was allowed to rely only on the legal authority specified in a response denying an initial request so an insurance commissioner was not allowed to deny an ORA request for records relating to an investigation of an insurer only on the insurer's proffered basis of the pendency of the investigation, and as the insurer had already been given the chance to review the report and resolve the matter, but later withdrew the insurer's request for a hearing, the commissioner's general policy of not releasing reports until the

General Consideration (Cont'd)

subject of the investigation had a chance to review the report and resolve the matter was unauthorized. Hoffman v. Oxendine, 268 Ga. App. 316, 601 S.E.2d 813 (2004).

Meaning of administrative proceedings. — Procedures set forth in O.C.G.A. § 31-6-40 et seq., for consideration of a certificate of need by the Health Planning Agency and appeal to the Health Planning Review Board, establish administrative proceedings within the meaning of O.C.G.A. § 50-18-70(d). Clayton County Hosp. Auth. v. Webb, 208 Ga. App. 91, 430 S.E.2d 89 (1993).

Privity between the plaintiffs. — In a suit brought by the plaintiff alleging a violation of the Georgia Open Records Act, O.C.G.A. § 50-18-70, et seq., the trial court erred in finding that the doctrine of res judicata barred the plaintiff's action because there was no privity between the plaintiffs in the prior lawsuit and the current action. Sampson v. Ga. Dep't of Juvenile Justice, 328 Ga. App. 733, 760 S.E.2d 203 (2014).

Standing to recover loaned FBI documents. — United States had standing to bring suit in a federal court to recover FBI documents loaned to a city during a homicide investigation, even though a state court had ordered disclosure of the documents pursuant to the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., and some documents had already been disclosed. United States v. Napper, 887 F.2d 1528 (11th Cir. 1989).

Burden on custodian to explain denial of access. — If there has been a request for identifiable public records within the possession of the custodian thereof, the burden is cast on that party to explain why the records should not be furnished. Napper v. Georgia Television Co., 257 Ga. 156, 356 S.E.2d 640 (1987).

Effect of pendency of habeas-corpus petition. — Pendency of a habeas-corpus petition filed by the defendant who was convicted of two of the "Atlanta child murders" did not justify a blanket nondisclosure of the files of other victims which had been introduced to demonstrate a "pattern" among the murders. Napper v. Georgia Television Co., 257 Ga. 156, 356 S.E.2d 640 (1987).

When a habeas court found an inmate's ineffective assistance claim was not procedurally barred, under O.C.G.A. § 9-14-48(d), for failing to raise the claim on direct appeal because the inmate "was not legally permitted to access the criminal records" of two men with the inmate at the time of the murder or of the man to whom the inmate confessed immediately after the murder, under the Georgia Open Records Act, O.C.G.A. § 50-18-70, until after the inmate completed the direct appeal, this did not overcome procedural bars to raising new claims of ineffective assistance of counsel because it did not specify what "criminal records" had been newly discovered that showed prejudice of constitutional proportions. Schofield v. Meders, 280 Ga. 865, 632 S.E.2d 369 (2006), cert. denied, 549 U.S. 1126, 127 S. Ct. 958, 166 L.Ed.2d 729 (2007).

Board of Regents of the University System of Georgia is subject to the Open Records Act, O.C.G.A. § 50-18-70 et seq., since the board is an agency of the state. Board of Regents v. Atlanta Journal, 259 Ga. 214, 378 S.E.2d 305 (1989).

Private, nonprofit hospital corporations that served as vehicles through which public hospital authorities carried out their official responsibilities were subject to the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., and the Open Records Act, O.C.G.A. § 50-18-70 et seq. Northwest Ga. Health Sys. v. Times-Journal, Inc., 218 Ga. App. 336, 461 S.E.2d 297 (1995).

Proposed inquest closed to public. — Relief sought in a newspaper publisher's suit against a coroner to prohibit the coroner from closing to the public a scheduled inquest was governed by the Open Meetings Law, O.C.G.A. § 50-14-1 et seq., and the Open Records Law, O.C.G.A. § 50-18-70 et seq. Kilgore v. R.W. Page Corp., 259 Ga. 556, 385 S.E.2d 406 (1989).

Access by personal computer not required. — Although a database of real estate deed records was a public record within the meaning of the Open Records Act, O.C.G.A. § 50-18-70 et seq., the clerk of court was not required to create a new program to provide public access with

personal computers. Jersawitz v. Hicks, 264 Ga. 553, 448 S.E.2d 352 (1994).

Applicability of 1989 amendment to insurance code. — A 1989 amendment to the insurance code, which exempts certain documents from the open records law, applied to a case which was on appeal at the time the amendment became effective. Evans v. Belth, 193 Ga. App. 757, 388 S.E.2d 914 (1989).

Mandamus not proper remedy. — Judgment dismissing the plaintiff's mandamus action against a city seeking to compel compliance with the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., was affirmed because the Act's civil penalties provision afforded the plaintiff a remedy as complete and convenient as mandamus by providing its own cause of action for enforcement in O.C.G.A. § 50-18-73(a). Blalock v. Cartwright, 300 Ga. 884, 799 S.E.2d 225 (2017).

Private right of action exists under the Georgia Open Records Act, O.C.G.A. § 50-18-70, et seq.; thus, mandamus relief is not only unnecessary but improper and, to the extent that cases like Evans v. Georgia Bureau of Investigation, 297 Ga. 318 (773 SE2d 725) (2015), suggest otherwise, those cases are disapproved. Blalock v. Cartwright, 300 Ga. 884, 799 S.E.2d 225 (2017).

Request for injunction to force compliance with Open Records Act, O.C.G.A. § 50-18-70 et seq., was premature since, at the time the request was made, the plaintiff retained an adequate legal remedy, namely the right to seek the defendants' records through discovery procedures in the plaintiff's federal action. Millar v. Fayette County Sheriff's Dep't, 241 Ga. App. 659, 527 S.E.2d 270 (1999).

Trial court incorrectly held that counterclaim alleging violations of the Open Records Act, O.C.G.A. § 50-18-70 et seq., were based on the prayer for relief contained in the original complaint filed by a housing authority, and since the housing authority failed to show that the factual issues regarding the counterclaim must have been decided in the authority's favor, the trial court erred in granting summary judgment in favor of the housing authority on this claim. Strange v. Hous. Auth. of Summerville, 268 Ga. App. 403, 602 S.E.2d 185 (2004).

Abuse of discretion not found. — Trial court did not abuse the court's discretion in denying an individual's petition for mandamus, attorney's fees, and expenses under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., as the individual sued without following-up with the city on the records request; the individual failed to show that the city acted without substantial justification in not complying with the Act as required by O.C.G.A. § 50-18-73(b). Everett v. Rast, 272 Ga. App. 636, 612 S.E.2d 925 (2005).

Attorney fees. — County's summary judgment motion was properly denied as: (1) the county violated the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., by failing to respond to a bidder's request within three business days; (2) the county did not produce any documents for over a month and did not provide all requested documents until after a civil suit for attorney's fees was filed; and (3) the county further failed to explain the county's dilatory conduct in any evidence submitted with the county's summary judgment motion. Benefit Support, Inc. v. Hall County, 281 Ga. App. 825, 637 S.E.2d 763 (2006), cert. denied, No. S07C0306, 2007 Ga. LEXIS 214 (Ga. 2007).

Cited in Rentz v. City of Moultrie, 231 Ga. 579, 203 S.E.2d 216 (1974); Morton v. Skrine, 242 Ga. 844, 252 S.E.2d 408 (1979); Doe v. Sears, 245 Ga. 83, 263 S.E.2d 119 (1980); Bennett v. State, 158 Ga. App. 421, 280 S.E.2d 429 (1981); Price v. Fulton County Comm'n, 170 Ga. App. 736, 318 S.E.2d 153 (1984); City of Atlanta v. Pacific & S. Co., 257 Ga. 587, 361 S.E.2d 484 (1987); Conklin v. Zant, 263 Ga. 165, 430 S.E.2d 589 (1993); Ford v. City of Oakwood, 905 F. Supp. 1063 (N.D. Ga. 1995); Bogle v. McClure, 332 F.3d 1347 (11th Cir. 2003); Peacock v. Spivey, 278 Ga. App. 338, 629 S.E.2d 48 (2006); Fulton DeKalb Hosp. Auth. v. Miller & Billips, 293 Ga. App. 601, 667 S.E.2d 455 (2008); Martin v. Ledbetter, 342 Ga. App. 208, 802 S.E.2d 432 (2017); Campaign for Accountability v. Consumer Credit Research Found., 303 Ga. 828, 815 S.E.2d 841 (2018); Gay v. State, 351 Ga. App. 811, 833 S.E.2d 305 (2019).

Public Records

"Public records" defined. — Documents, papers, and records prepared and maintained in the course of the operation of a public office are "public records" within the meaning of this section, and it is immaterial that such documents, papers, and records were not required to be prepared and maintained pursuant to a statute or ordinance. Houston v. Rutledge, 237 Ga. 764, 229 S.E.2d 624 (1976); Irvin v. Macon Tel. Publishing Co., 253 Ga. 43, 316 S.E.2d 449 (1984).

The 1980 amendment of the definition of "public records" in O.C.G.A. § 50-14-1(b) does not indicate a legislative intent to modify the definition of "public records" set forth in Houston v. Ruthledge, 237 Ga. 764, 229 S.E.2d 624 (1976). Irvin v. Macon Tel. Publishing Co., 253 Ga. 43, 316 S.E.2d 449 (1984).

Tax records that the individual submitted to the city in the individual's successful attempt to get certified as a disadvantaged business eligible to be awarded city contracts pursuant to that designation were "public records" because the records were received by the city in the course of the city's operations and were used by the city to determine whether the individual qualified for the program; also, since the individual could not show an exception existed to the corporation's request for disclosure of those records for the limited purpose of evaluating whether the city properly designated the individual as a disadvantaged business, the trial court properly granted summary judgment to the corporation on the corporation's disclosure request. City of Atlanta v. Corey Entm't, Inc., 278 Ga. 474, 604 S.E.2d 140 (2004).

Time for responding to records request. — Under O.C.G.A. § 50-18-70(f), the three-day time period to respond to a records request commences upon delivery of the request to the agency, rather than the particular employee in charge of the records. Unified Gov't v. Athens Newspapers, LLC, 284 Ga. 192, 663 S.E.2d 248 (2008).

Communications to county officials from attorney are county records and, therefore, are not privileged communications between an attorney and client. Crow v. Brown, 332 F. Supp. 382 (N.D. Ga. 1971), aff'd, 457 F.2d 788 (5th Cir. 1972).

Report to state university. — Report representing the final analysis and recommendations after a study by paid consultants to a state university, evaluating the mathematical departments, is a public record. Athens Observer, Inc. v. Anderson, 245 Ga. 63, 263 S.E.2d 128 (1980).

Applications for position of university president. — Applications submitted by candidates for the position of Georgia State University president, and the resumes and vitae, which were products of the applicants themselves, although the resumes and vitae were materials upon which, in part, "confidential evaluations" were based, were not evaluations. Hence the resumes and vitae were not exempt from disclosure. Board of Regents v. Atlanta Journal, 259 Ga. 214, 378 S.E.2d 305 (1989).

Financial records of University of Georgia Athletic Association. — Because the president of the University of Georgia is charged with controlling the intercollegiate sports program at the university and because the maintenance of documents relating to the assets, liabilities, income, and expenses of the intercollegiate sports program is an integral part thereof, regardless of whether the documents are prepared by employees of a private Athletic Association or by the president as treasurer of that association, it is clear that they are documents, papers, and records prepared and maintained in the course of the operation of a public office, and are therefore "public records" under the Open Records Act, O.C.G.A. § 50-18-70 et seq. Macon Tel. Publishing Co. v. Board of Regents, 256 Ga. 443, 350 S.E.2d 23 (1986).

Records pertaining to University of Georgia athletics. — With respect to information pertaining to athletics at the University of Georgia, the following are public records: initial reports, prepared by coaches, of outside income; contracts between coaches and suppliers of equipment and apparel for athletes; and information related to radio and television broadcasts, whether produced by the university or as part of the university's exclusive rights to broadcast football and basketball games.

However, contracts between individual coaches and outside entities to make speaking appearances or to provide commentary during certain basketball broadcasts were not public records since there was no evidence that the documents related to athletic events involving the university. Dooley v. Davidson, 260 Ga. 577, 397 S.E.2d 922 (1990).

Records related to construction of racing hall of fame. — Records relating to bids to build a racing hall of fame and to host a football game were subject to the Open Records Act (Act), O.C.G.A. § 50-18-70 et seq., because public officials participated in the preparation and promotion of the bids, the bids required spending public funds or use of public resources, and the bid documents were "received" within the meaning of the Act. Cent. Atlanta Progress, Inc. v. Baker, 278 Ga. App. 733, 629 S.E.2d 840 (2006).

Student organization court records of the University of Georgia concerning alleged university rules and regulations violations on the part of fraternities and sororities were "public records" subject to the "Open Records Act", O.C.G.A. § 50-18-70 et seq., and not exempted by O.C.G.A. § 50-18-72(a) by virtue of any federal legislation. Red & Black Publishing Co. v. Board of Regents, 262 Ga. 848, 427 S.E.2d 257 (1993).

Consultant appearance contract of a university athletic coach relates to a private activity, is not a public record, and need not be disclosed. Cremins v. Atlanta Journal, 261 Ga. 496, 405 S.E.2d 675 (1991).

Records of private university's police force. — Records of a campus police force of a private university were not subject to disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., as the university was a private institution that did not receive any funding from the state, the campus police were employees of that entity pursuant to the authority of O.C.G.A. § 20-8-2, and the fact that the police performed a public function did not make their records into public records; the fact that the campus police were given authority to perform certain functions by the Campus Policemen Act, O.C.G.A. § 20-8-1 et seq., and the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., did not make the campus police officers or employees of a public office or agency for purposes of the Open Records Act. The Corp. of Mercer Univ. v. Barrett & Farahany, L.L.P., 271 Ga. App. 501, 610 S.E.2d 138 (2005).

Personnel records of school bus drivers in the possession of a private company transporting pupils under a contract with a city school system were "public records" subject to the Open Records Act, O.C.G.A. § 50-18-70 et seq. Hackworth v. Board of Educ., 214 Ga. App. 17, 447 S.E.2d 78 (1994).

Private corporation's records were public. — Despite private status of corporations created as part of a reorganization of county hospital authority, when assets of the authority were transferred to one or more of the corporations, and the records of all of the corporations remained in the possession and control of the authority, the private corporations were subject to the Open Records Act, O.C.G.A. § 50-18-70 et seq., and the requested documents were "public records" under that Act. Clayton County Hosp. Auth. v. Webb, 208 Ga. App. 91, 430 S.E.2d 89 (1993).

Real property ad valorem digests, returns, and related records, not having been made confidential by law, are subject to inspection under O.C.G.A. § 50-18-70. Pensyl v. Peach County, 252 Ga. 450, 314 S.E.2d 434 (1984).

Records of criminal investigations fall within the provisions of O.C.G.A. § 50-18-70 if the criminal investigation has been completed. Cox Enters., Inc. v. Harris, 256 Ga. 299, 348 S.E.2d 448 (1986).

Investigatory reports. — Investigatory report concerning claims of misconduct against an employee of the State Board of Pardons and Paroles was a public record and was not exempt from disclosure under O.C.G.A. § 50-18-72. Fincher v. State, 231 Ga. App. 49, 497 S.E.2d 632 (1998).

Records of Georgia Bureau of Investigation's investigation of Department of Agriculture employees and administrative law judge's order reviewing that investigation were public records subject to disclosure. Irvin v. Macon Tel.

Public Records (Cont'd)

Publishing Co., 253 Ga. 43, 316 S.E.2d 449 (1984).

Retrial possibility not grounds for nondisclosure of investigatory files. — When a murder conviction and death sentence resulting from the prosecution have been affirmed on appeal, but a rape conviction has been reversed on a ground that leaves the state free to retry the defendant, the possible retrial of the defendant does not warrant nondisclosure the defendant of criminal investigatory files, when the agency custodians of the files at issue failed to carry the custodian's burden of showing an imminent proceeding on the rape charge against the defendant to exempt such files from disclosure pursuant to O.C.G.A. § 50-18-72(a)(4). Parker v. Lee, 259 Ga. 195, 378 S.E.2d 677 (1989).

Information incorporated into investigatory case file. — Although motor vehicle records used by police during the "Atlanta child murders" case were not open for public inspection under the Public Records Act, O.C.G.A. § 50-18-70 et seq., this did not preclude public disclosure when a law-enforcement officer who had inspected the records incorporated information therefrom into an investigatory case file. Napper v. Georgia Television Co., 257 Ga. 156, 356 S.E.2d 640 (1987).

Records of Georgia DOT. — Neither the "state matter" privilege nor the "secret of state" privilege exempted cost estimates of the DOT from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq. Hardaway Co. v. Rives, 262 Ga. 631, 422 S.E.2d 854 (1992).

Disclosure by bank that customer was involved with some motor vehicles financed through the bank was not an invasion of privacy based on public disclosure of private facts as, at the time of the disclosure, motor vehicle certificates of title were public records open to public inspection. Williams v. Coffee County Bank, 168 Ga. App. 149, 308 S.E.2d 430 (1983).

Peer review reports construed. — Reports generated as part of the state's hospital licensing activities rather than as peer review records are not protected from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., or by O.C.G.A. § 31-7-15(d). Georgia Hosp. Ass'n v. Ledbetter, 260 Ga. 477, 396 S.E.2d 488 (1990).

Hospital accreditation review organization records. — Hospital accreditation records generated by a nonprofit organization are not protected from disclosure as the records of a confidential review organization under O.C.G.A. § 31-7-133 because the organization is not a "review organization" comprised primarily of "professional health care providers" as those terms are defined by O.C.G.A. § 31-7-131. Georgia Hosp. Ass'n v. Ledbetter, 260 Ga. 477, 396 S.E.2d 488 (1990).

Because hospital accreditation surveys do not fit into any of the categories of records exempted from disclosure, the policy underlying the Open Records Act, O.C.G.A. § 50-18-70 et seq., mandates the survey's release. The public has a legitimate interest in the records which make up the Department of Human Resources' hospital licensing decisions. Georgia Hosp. Ass'n v. Ledbetter, 260 Ga. 477, 396 S.E.2d 488 (1990).

Records of state health benefit plan administrator. — Records kept by the administrator of the State Health Benefit Plan were public records under O.C.G.A. § 50-18-70(a). Although the administrator was a private entity, its administration of the Plan involved the expenditure of substantial public funds, and public officials were significantly involved in it; the administrator was the vehicle through which the Georgia Department of Community Health carried out its public function of administering the Plan; and the records were maintained, at least in part, in order for the administrator to comply with its contractual obligations in administering the Plan. United HealthCare of Ga., Inc. v. Ga. Dep't of Cmty. Health, 293 Ga. App. 84, 666 S.E.2d 472 (2008).

Records available for public inspection. — Public records prepared and maintained in a concluded investigation of alleged or actual criminal activity should be available for public inspection. Houston v. Rutledge, 237 Ga. 764, 229 S.E.2d 624 (1976).

Trial court properly granted summary judgment to the corporation on the corporation's request for disclosure of the individual's tax records, which the corporation sought for the limited purpose of determining whether the individual's business properly qualified as a disadvantaged business regarding the awarding to it of a city contract for airport advertising, as Georgia's Open Records Act, O.C.G.A. § 50-18-70 et seq., favored the disclosure of public records and neither the individual nor the city could find a specific exception that applied to bar disclosure under such circumstances. City of Atlanta v. Corey Entm't, Inc., 278 Ga. 474, 604 S.E.2d 140 (2004).

Failure to provide access to documents in criminal charge not fatal. — Although a criminal defendant may have access to government records as a member of the public, the access is not based on that person's status as a criminal defendant. Accordingly, there was no basis for making a governmental unit's compliance with the Open Records Act, O.C.G.A. § 50-18-70, a prerequisite to the success of the state's prosecution of this defendant for speeding. Stone v. State, 257 Ga. App. 492, 571 S.E.2d 488 (2002).

Police reports concerning rape were public records obtainable by a student newspaper; the reports were not exempt under O.C.G.A. § 50-18-72 since the reports were not the subject of a pending investigation and involved a matter which had been terminated. Doe v. Board of Regents, 215 Ga. App. 684, 452 S.E.2d 776 (1994).

Under a strict construction of the Open Records Act, O.C.G.A. § 50-18-70 et seq., and because no active or ongoing investigation in a 1992 rape and murder case was shown, the trial court erred in granting a county summary judgment in support of the county's refusal to provide the newspaper access to the relevant police records in that case as no legitimate and valid reason was presented denying that the newspaper was entitled to disclosure of the records the county maintained; moreover, there were no suspects or evidence that would likely lead to identifying a suspect, and there was only a slight possibility that the county's submission of the DNA to a database would ever result in progress in solving the case. Athens Newspapers, LLC v. Unified Gov't, 284 Ga. App. 465, 643 S.E.2d 774 (2007), aff'd in part, rev'd in part, 284 Ga. 192, 663 S.E.2d 248 (2008).

Applicability of rape victim confidentiality statute. — Campus newspaper was entitled to university police reports concerning an incident of alleged rape but, in accordance with the rape victim confidentiality statute, O.C.G.A. § 16-6-23, with the victim's name and identifying information redacted. Doe v. Board of Regents, 215 Ga. App. 684, 452 S.E.2d 776 (1994).

Confidential tax information not disclosable. — Confidential tax information in an investigative file of the Attorney General was not subject to disclosure under O.C.G.A. § 50-18-70. Bowers v. Shelton, 265 Ga. 247, 453 S.E.2d 741 (1995).

Agreement not to use requested information. — If the requesting party signs a statement agreeing not to use the requested information for commercial purposes, there is no basis under O.C.G.A. § 50-18-70 to deny access to the records. Clayton County Hosp. Auth. v. Webb, 208 Ga. App. 91, 430 S.E.2d 89 (1993).

Testimony given at public inquest. — When a coroner, who is a public official, makes an inquest and opens the inquest to the public, and the testimony given at the public inquest is recorded and transcribed at public expense, the coroner has waived any right to contend that the transcript is not a public record. R.W. Page Corp. v. Kilgore, 257 Ga. 179, 356 S.E.2d 870 (1987).

Sealed election record not open record subject to disclosure. — Because the superior court had not ordered that its seal be lifted under O.C.G.A. § 21-2-500(a), a CD-ROM containing election information was by law prohibited or specifically exempted from being open to inspection by the general public and thus was not an open record subject to disclosure under O.C.G.A. § 50-18-70(b). Smith v. DeKalb County, 288 Ga. App. 574, 654 S.E.2d 469 (2007), cert. denied, No. S08C0596, 2008 Ga. LEXIS 291 (Ga. 2008).

Public Records (Cont'd)

Information obtained created public reports. — Because relators obtained the realtors' information under the Freedom of Information Act and Georgia Open Records Act, O.C.G.A. § 50-14-1 et seq., requests, the responses to the requests were "reports" under the False Claims Act's public disclosure bar in 31 U.S.C. § 3730(e)(4)(A) (amended), and thus publicly disclosed, so dismissal of the realtors' qui tam suit, alleging the defendants, employees of a federal agency and a university and the university's research foundation, provided false information to obtain research funds, for lack of subject matter jurisdiction was proper. United States v. Walker, No. 10-14642, 2011 U.S. App. LEXIS 17929 (11th Cir. Aug. 26, 2011) (Unpublished).

E-mails sought not existing public record. — Trial court did not err in granting the Georgia Department of Agriculture summary judgment in a corporation's action seeking to compel the Department to comply with the corporation's request for records under the Georgia Open Records Act (GORA), O.C.G.A. § 50-18-70 et seq., because the Department provided the corporation with reasonable access to the information the corporation sought; because the information the corporation sought, e-mail correspondence, was not an existing public record, non-disclosure thereof did not violate GORA, and the Department did not maintain the e-mails on the Department's system and would have to extract the e-mails from backup tapes using a laborious compilation process. Griffin Indus. v. Ga. Dep't of Agric., 313 Ga. App. 69, 720 S.E.2d 212 (2011).

Balancing of Interests

Judicial determination of necessity for inspection. — When a controversy arises between a citizen and a public official, the judiciary has the rather important duty of determining whether inspection or noninspection of the public records is in the public interest; the judiciary must balance the interest of the public in favor of inspection against the interest of the public in favor of noninspection in deciding this issue. Athens Observer, Inc. v. Anderson, 245 Ga. 63, 263 S.E.2d 128 (1980); Atchison v. Hospital Auth., 245 Ga. 494, 265 S.E.2d 801 (1980).

Trial court must weigh factors for and against inspection. — In determining whether allowing members of the public to inspect records would be in the public interest, the trial court must weigh factors militating in favor of inspection (i.e., the interest of the citizens in knowing what their government officials are doing) against factors militating against inspection (i.e., whether this would unduly disrupt the state activity involved). In this regard, the court must weigh benefits accruing to the government from nondisclosure against the harm which may result to the public if such records are not made available for inspection. Northside Realty Assocs. v. Community Relations Comm'n, 240 Ga. 432, 241 S.E.2d 189 (1978).

Court need not review disclosed records. — There is nothing in the Open Records Act, O.C.G.A. § 50-18-70 et seq., which imposes a duty on the trial court to make a supervisory review of records disclosed under that Act. Trammel v. Martin, 200 Ga. App. 435, 408 S.E.2d 477 (1991).

Degree of citizens' right to inspection of all public records. — Judiciary must balance the interest of the public in favor of inspection against the interest of the public in favor of noninspection in deciding whether inspection or noninspection of the public records is in the public interest. Northside Realty Assocs. v. Community Relations Comm'n, 240 Ga. 432, 241 S.E.2d 189 (1978).

Burden shifts to defendant to show reasons for nondisclosure. — When it was found that the plaintiff (citizen) had made a request for identifiable public records within the defendant's (police department's) possession, the burden was cast on the defendant to explain why the records should not be furnished. Brown v. Minter, 243 Ga. 397, 254 S.E.2d 326, cert. denied, 444 U.S. 844, 100 S. Ct. 88, 62 L. Ed. 2d 57 (1979).

Special or personal interest not required. — Under O.C.G.A. § 50-18-70, a citizen seeking an opportunity to copy and inspect a public record need not show any special or personal interest therein.

Northside Realty Assocs. v. Community Relations Comm'n, 240 Ga. 432, 241 S.E.2d 189 (1978).

Courts are not authorized to deny members of the public requests to inspect documents merely because those making requests have no special or personal interest in the documents. Northside Realty Assocs. v. Community Relations Comm'n, 240 Ga. 432, 241 S.E.2d 189 (1978).

Disclosure of county hospital employees' occupational information. — Disclosure of the names, salaries, and job titles of county hospital employees is not an invasion of personal privacy as contemplated by the General Assembly to permit an exemption from disclosure, nor is the public interest in disclosure outweighed by benefits to the hospital accruing from nondisclosure. Richmond County Hosp. Auth. v. Southeastern Newspapers Corp., 252 Ga. 19, 311 S.E.2d 806 (1984).

Effect of employment at nonresident corporation. — Neither this section nor any other provision of the law disqualifies a citizen of this state from exercising rights under that section because the citizen happens to be an employee of a nonresident corporation and may share the information received with the citizen's employer. Atchison v. Hospital Auth., 245 Ga. 494, 265 S.E.2d 801 (1980).

Access required. — Trial court erred in entering summary judgment for a county and a county manager in an employee's suit for attorney fees arising out of a Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., request as the employee showed that the ORA was violated as the manager did not respond to the request within the required three-day period; the case was remanded for a determination of whether the ORA violation was without substantial justification or whether special circumstances existed that counseled against awarding attorney fees. Wallace v. Greene County, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Exceptions

Exceptions generally. — Exceptions permitted under O.C.G.A. § 50-18-70 include disclosure of information regarding on-going investigations, the names of informants, and in exceptional and necessarily limited cases, the names of complainants. Brown v. Minter, 243 Ga. 397, 254 S.E.2d 326, cert. denied, 444 U.S. 844, 100 S. Ct. 88, 62 L. Ed. 2d 57 (1979).

Agency not synonymous with employee in investigation for death while in custody. — County's sheriff and district attorney were not required to release records relating to an inmate's death in custody under the Open Records Act, O.C.G.A. § 50-14-1, et seq., because the records came within the "pending prosecution" exemption to disclosure in O.C.G.A. § 50-18-72(a)(4). The exception for agencies under investigation did not apply because "agency," as defined in O.C.G.A. §§ 50-14-1(a)(1)(C) and 50-18-70(b), was not synonymous with "employee," and the agency itself was not under investigation. Media Gen. Operations, Inc. v. St. Lawrence, 337 Ga. App. 428, 787 S.E.2d 778 (2016).

Records not in existence. — Trial court properly held that a CD-ROM that contained passwords, encryption codes, and other security information would compromise election security and thus was exempt from disclosure under O.C.G.A. § 50-18-72(a)(15)(A)(iv). Although the requestor argued that the state could copy the CD-ROM without including such information, O.C.G.A. § 50-18-70(d) provided that an agency was not required to create records that were not in existence at the time of the request. Smith v. DeKalb County, 288 Ga. App. 574, 654 S.E.2d 469 (2007), cert. denied, No. S08C0596, 2008 Ga. LEXIS 291 (Ga. 2008).

Records not open for public inspection. — Public records that are prepared and maintained in a current and continuing investigation of possible criminal activity should not be open for public inspection. Houston v. Rutledge, 237 Ga. 764, 229 S.E.2d 624 (1976).

Personnel records. — Mere placement of records of Georgia Bureau of Investigation's investigation in the personnel file of an investigated public employee did not transform the records into personnel-related records. Irvin v. Macon Tel. Publishing Co., 253 Ga. 43, 316 S.E.2d 449 (1984).

Exceptions (Cont'd)

Personnel records of municipal employees not entitled to blanket exemption from the Georgia Open Records Act. — Former employee failed to show a violation of the employee's right to privacy by a city manager's release of the employee's personnel records because personnel records of municipal employees were not entitled to any blanket exemption from the Georgia Open Records Act, O.C.G.A. § 50-18-70. Goddard v. City of Albany, 285 Ga. 882, 684 S.E.2d 635 (2009).

Clinical records. — Disclosure provisions of O.C.G.A. § 50-18-70(b) do not apply to clinical records as defined by O.C.G.A. § 37-3-1(2). Southeastern Legal Found., Inc. v. Ledbetter, 260 Ga. 803, 400 S.E.2d 630 (1991).

Mental health records of a person who allegedly shot a number of people in a shopping mall were "clinical records" within the meaning of O.C.G.A. § 37-3-1(2), and therefore not subject to inspection under the Open Records Act, O.C.G.A. § 50-18-70 et seq. Southeastern Legal Found., Inc. v. Ledbetter, 260 Ga. 803, 400 S.E.2d 630 (1991).

Medical review committee findings provided for in O.C.G.A. § 31-7-143, in the control of any government agency, is not subject to inspection or release under the provisions of O.C.G.A. § 50-18-70 and any such material should be redacted from any reports which the agency is otherwise required to make available for inspection or release to the public. Emory Univ. Hosp. v. Sweeney, 220 Ga. App. 502, 469 S.E.2d 772 (1996).

Trade secrets. — When a company made reasonable efforts to restrict the dissemination of trade secret information except for providing the information to the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources, trade secret status was not lost simply because the company did not notify the EPD each time that the company provided EPD with information containing trade secrets. Theragenics Corp. v. Department of Natural Resources, 244 Ga. App. 829, 536 S.E.2d 613 (2000), aff'd, Ga. Dep't of Natural Res. v. Theragenics Corp., 273 Ga. 724, 545 S.E.2d 904 (2001).

Given the highly competitive nature of the asphalt industry in the State of Georgia, the trial court did not err in permanently enjoining the DOT from giving unredacted copies of documents, which contained trade secrets and confidential technical specifications relating to the mix design, to a competitor of a group of contractors; further, the public could ascertain whether a contractor's asphalt product met DOT requirements by examining information on the forms, which was not included in the trial court's injunction, and the records did not fall within the exception to Open Records Act disclosure because the contractors were not required by law to submit the information to the DOT. Douglas Asphalt Co. v. E. R. Snell Contr., Inc., 282 Ga. App. 546, 639 S.E.2d 372 (2006), cert. denied, No. S07C0498, 2007 Ga. LEXIS 140 (2007).

Quick start records. — Supreme Court of Georgia interpreted O.C.G.A. § 50-18-72(a)(47) to provide that Quick Start records disclosing an economic development project are excepted only to the extent that no binding commitment has been secured, but the exception for Quick Start records relating to job applicants or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity is not so limited. Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

Applicable exception not shown. — Trial court properly granted summary judgment to the corporation as the individual did not show that an exception applied to the corporation's request that the individual disclose the individual's tax records to the corporation for the limited purpose of determining whether the city properly awarded the individual a city contract following the individual's certification as a disadvantaged business pursuant to a federal program. City of Atlanta v. Corey Entm't, Inc., 278 Ga. 474, 604 S.E.2d 140 (2004).

Cannot strike counterclaim for attorney's fees. — Georgia Supreme Court affirmed the judgment of the Georgia Court of Appeals in Geer v. Phoebe Putney Health System, Inc., 350 Ga. App. 127 (2019), that held that Georgia's anti-SLAPP statute, O.C.G.A.

§ 9-11-11.1, could not be invoked to strike a counterclaim for attorney fees brought under the Open Records Act, O.C.G.A. § 50-18-73(b), in response to a suit to enforce a request under Georgia's Open Records Act. Geer v. Phoebe Putney Health Sys., 310 Ga. 279, 849 S.E.2d 660 (2020).

OPINIONS OF THE ATTORNEY GENERAL

"Public record" defined. — Public record is one made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public or to serve as a memorial of official transactions for public reference. 1971 Op. Att'y Gen. No. U71-9.

Aspect which makes documents subject to public scrutiny. — Mere fact that a document is deposited or filed in a public office, or with a public officer, or is in the custody of a public officer, does not make the document a public record; the crucial aspect which makes applications and related materials subject to public scrutiny is the necessity for a board to keep these documents in the discharge of a board's proper duty. 1976 Op. Att'y Gen. No. 76-126.

Georgia courts have adopted a balancing test in construing O.C.G.A. § 50-18-70. 1981 Op. Att'y Gen. No. U81-47.

Use of term "law" in O.C.G.A. § 50-18-70 likely encompasses agency rules and regulations. 1981 Op. Att'y Gen. No. 81-50.

Subpoena not required for inspection or copying. — Citizen requesting to inspect and copy public records subject to the Open Records Act cannot be required to first obtain a subpoena. 1980 Op. Att'y Gen. No. 80-105.

Requests for computer-generated information. — Information does not fall outside the scope of the Open Records Act, O.C.G.A. § 50-18-70 et seq., because the information is stored by means of magnetic tape or diskette rather than in a more traditional form. When the requested information can be retrieved by a minimal computer search, an agency must comply. The parameters of the Open Records Act, O.C.G.A. § 50-18-70 et seq., cannot be altered by contract and any such provisions are unenforceable. 1989 Op. Att'y Gen. 89-32.

Grand jury lists are public records. — Under former Code 1933, § 89-601 (see O.C.G.A. § 45-6-6), grand jury lists are public records and as such are matters which are open to inspection by citizens at a reasonable time and place; any citizen, even a newspaper publisher, may copy grand jury lists and also publish the lists in a newspaper, if the citizen so desires. 1967 Op. Att'y Gen. No. 67-371.

Suits on account, notes, mortgage foreclosures, and garnishments were "public records" since they were required by law to be kept, as well as within former Code 1933, § 89-601 (see O.C.G.A. § 45-6-6), since they were contained in books kept by a public officer under the laws of Georgia. Therefore, as public records these matters should be open to inspection by citizens at a reasonable time and place. 1967 Op. Att'y Gen. No. 67-340.

Section 8 housing documents. — Documents pertaining to inspection of Section 8 housing are subject to open records requests. 1991 Op. Att'y Gen. No. 91-33.

Investigative report may be withheld from inspection. — Police officer's investigative report prepared for submission to the officer's superiors is not a record which must be available for inspection or copying. 1975 Op. Att'y Gen. No. U75-92.

Personnel records of local board need not be available for public inspection. — This section does not require personnel records of a local board of education to be made available to the general public for inspection or copying, and should the board so desire, local school boards may lawfully maintain a policy of confidentiality concerning such files. 1977 Op. Att'y Gen. No. 77-56.

Personnel records of employees of university system are state records within meaning of this section. 1965-66 Op. Att'y Gen. No. 66-88.

State employees accept conditions imposed by law of salary disclosure. — As for those employees who might not

desire to have salary information disclosed, in accepting employment by the state, the employees necessarily accepted the conditions imposed by law upon that employment. 1965-66 Op. Att'y Gen. No. 66-88.

Trade secrets and other confidential business information. — Trade secrets and other confidential business information received by the state energy office from the federal government and businesses in the private sector are not within the purview of this section, and may be treated as confidential by that state agency. 1974 Op. Att'y Gen. No. U74-113.

No duty for board to initiate furnishing of public records. — Open Records Law provides for inspection and copying of public records by citizens, but does not require the Department of Education to itself prepare and furnish copies of public records to interested persons. 1976 Op. Att'y Gen. No. U76-43.

No absolute right of parent to inspect child's records. — This section is generally interpreted to intend that records kept on behalf of the public shall be open and that those kept for the benefit of an individual shall not. Common sense and good judgment should prevail, but there is no absolute legal right on the part of a parent to inspect a minor child's school records. 1972 Op. Att'y Gen. No. U72-74.

Records available to nonresidents. — Records should be made available for inspection upon request by any nonresident of Georgia unless disclosure is prohibited by court order or otherwise exempted by law. 1993 Op. Att'y Gen. No. 93-27.

Records of justice of peace are open. — Records in the office of the justice of the peace are public records of a court and are open for inspection by the general public, including a notary public, ex officio justice of the peace. 1962 Op. Att'y Gen. p. 101.

Licensure applications are public records. — Licensure applications submitted to the State Board of Registration of Used Car Dealers and their necessary parts are public records and, therefore, applications and related material become state records open to public scrutiny when the records are received by the board; financial statements submitted are a necessary part of this application and are, therefore, open for public inspection, and it would not be permissible for the board to return the financial statements to the applicant without subjecting the applicant to public scrutiny. 1976 Op. Att'y Gen. No. 76-126.

Licensure of nursing home programs is subject to the Open Records Law. 1965-66 Op. Att'y Gen. No. 65-93.

No disclosure of information from records by telephone. — Records may be made available for inspection by members of the public who might come in and make a request, but no such information is to be given by telephone. 1965-66 Op. Att'y Gen. No. 66-88.

Access to information on electors. — Names, addresses, and zip codes of electors must be furnished upon request for the fees set forth in O.C.G.A. § 21-2-234. Any additional identifying information as may be collected and maintained must also be made available for inspection and copying and a reasonable fee may be charged for expenses incurred for copies furnished. 1984 Op. Att'y Gen. No. 84-39.

Inmate records. — O.C.G.A. § 50-18-70 does not mandate that inmate records are to be open for public inspection since Department of Offender Rehabilitation (now Department of Corrections) rules and regulations, which have the force and effect of law, require that inmate records not be open for public inspection. 1981 Op. Att'y Gen. No. 81-50.

Department of Offender Rehabilitation (now Department of Corrections) may properly release to Social Security Administration (SSA) inmate records necessary to enable SSA to perform SSA's statutory duties; so long as information released is necessary for SSA to carry out SSA's statutorily prescribed duties, the department will not be liable for invasion of an inmate's privacy. 1981 Op. Att'y Gen. No. 81-50.

Disclosure of medical payments. — Department of Medical Assistance (now Department of Community Health) must disclose maximum payments available to

providers under the various reimbursement schedules. 1980 Op. Att'y Gen. No. 80-50.

Criminal history confidential. — Information obtained pursuant to criminal history background check under O.C.G.A. § 16-11-129 is confidential. Information obtained pursuant to criminal history background check, required by O.C.G.A. § 16-11-129, from taking of fingerprints and checking of these fingerprints with those presently on file with the Georgia Crime Information Center is of a confidential nature and prohibited from public disclosure. 1981 Op. Att'y Gen. No. U81-47.

Revolver permits. — Only names of persons issued permits to carry revolvers and date of issuance are matters of public record. 1981 Op. Att'y Gen. No. U81-47.

Utility accounts of a municipality are not exempt from disclosure under the Open Records Law, O.C.G.A. § 50-18-70 et seq. 1982 Op. Att'y Gen. No. U82-36.

Utility billing and payment records of public officials. — Billing and payment records of public employees and officials to a municipally owned and operated public utility system are subject to disclosure, barring the proper application of any exception. 2000 Op. Att'y Gen. No. 2000-4.

Alcohol beverage invoices submitted for tax purposes. — Invoices reflecting sales of alcohol beverages by wholesalers to local retailers furnished to a local governing authority for the purpose of computing local alcohol excise tax are public records under O.C.G.A. § 50-18-70 and should be disclosed. 1985 Op. Att'y Gen. No. U85-44.

Copying copyrighted records on file. — Copying of copyrighted manuals, rates, and rules which must be filed with the insurance commissioner would not constitute an unfair use and hence would not amount to an infringement but, to the contrary, would constitute a fair use within the purpose for which the filing was made with the commissioner. 1965-66 Op. Att'y Gen. No. 66-178.

Notices of plant closings received from private employers by the Georgia Department of Labor pursuant to the "Worker Adjustment and Retraining Notification Act" are subject to public disclosure under the Georgia Open Records Law, O.C.G.A. § 50-18-70 et seq. 1989 Op. Att'y Gen. 89-38.

Official's personal storage of tax records. — It is not proper for county tax commissioner to store tax records in the commissioner's home. 1975 Op. Att'y Gen. No. U75-75.

Members of the General Assembly have no greater right than any other citizen to inspect records deemed confidential under the Open Records Act, O.C.G.A. § 50-18-70 et seq. 1988 Op. Att'y Gen. No. U88-33.

Distribution of decisions of Office of State Administrative Hearings. — Decisions of the Office of State Administrative Hearings are public records subject to distribution unless the decisions contain information subject to a confidentiality provision. 1999 Op. Att'y Gen. No. 99-13.

Workers' compensation records. — All records of the State Board of Workers' Compensation pertaining to accidents, injuries, and settlements are confidential, unless a party can meet the statutory requirements for access or has authority pursuant to the Child Support Recovery Act, O.C.G.A. § 19-11-1 et seq. 1991 Op. Att'y Gen. No. 91-5.

Records of the State Board of Workers' Compensation Fraud and Compliance Division are subject to disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., except when such disclosure is exempted by the Act, prohibited by law, or prohibited by court order. 1997 Op. Att'y Gen. No. 97-20.

Job training bid documents. — Documents used in the competitive bidding process under the federal Job Training Partnership Act of 1982 are subject to the Open Records Act, O.C.G.A. § 50-18-70 et seq. 1991 Op. Att'y Gen. No. 91-11.

Salary and expense information of nonprofit contractors receiving "arts grants" funds through the Office of Planning and Budget based upon the recommendation of the Georgia Council for the Arts must be made available for public inspection. 1995 Op. Att'y Gen. No. 95-31.

Contracts with federal agencies. — Agencies covered by the Georgia Open Records Act, O.C.G.A. § 50-14-1 et seq., may not by contract with a federal agency create an exception to the Act and make otherwise public documents in the hands of the agency confidential unless the contract provision is mandated by federal law or regulation. 2005 Op. Att'y Gen. No. U2005-1.

Death certificates. — Federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d) does not prevent the release of information on copies of death certificates about the cause of death of an individual, as well as conditions leading to the person's death and information regarding surgical proceedings conducted on the deceased, if any, that are released under the Georgia Open Records Act, O.C.G.A. § 50-14-1 et seq. 2007 Op. Att'y Gen. No. 2007-4.

Access to information in Registration and Title Information System. — The Department of Revenue is authorized to provide access to the information contained in the Georgia Registration and Title Information System only for the purposes mandated by the Driver's Privacy Protection Act of 1994, 18 U.S.C. §§ 2721—2725, or to those state agencies designated in O.C.G.A. §§ 33-34-9, 40-2-130(c), and 40-3-23(d). 2008 Op. Att'y Gen. No. 2008-2.

Access to deeds, liens, and plats. — Georgia Superior Court Clerks' Cooperative Authority is required to produce images and index data in response to Open Records Act, O.C.G.A. § 50-18-70 et seq., requests for information contained on the online information system for deeds, liens, and plats, but may do so in accordance with a fee schedule adopted pursuant to O.C.G.A. § 15-6-94. 2012 Op. Att'y Gen. No. 12-5.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 12B Am. Jur. Pleading and Practice Forms, Freedom of Information Act, § 46.

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 17, 22, 26 et seq.

Am. Jur. Trials. — Litigation Under the Freedom of Information Act, 50 Am. Jur. Trials 407.

C.J.S. — 76 C.J.S., Records, § 43 et seq.

ALR. — Right to examine records or documents of municipality relating to public utility conducted by it, 102 A.L.R. 756.

Enforceability by mandamus of right to inspect public records, 169 A.L.R. 653.

Validity, construction, and application of statutory provisions relating to public access to police records, 82 A.L.R.3d 19.

Restricting access to records of disciplinary proceedings against attorneys, 83 A.L.R.3d 749.

Discovery or inspection of state bar records of complaints against or investigations of attorneys, 83 A.L.R.3d 777.

Restricting access to judicial records of concluded adoption proceedings, 83 A.L.R.3d 800.

Accused's right to discovery or inspection of "rap sheets" or similar police records about prosecution witnesses, 95 A.L.R.3d 832.

What constitutes preliminary drafts or notes provided by or for state or local governmental agency, or intra-agency memorandums, exempt from disclosure or inspection under state freedom of information acts, 26 A.L.R.4th 639.

Patient's right to disclosure of his or her own medical records under state freedom of information act, 26 A.L.R.4th 701.

What are "records" of agency which must be made available under state freedom of information act, 27 A.L.R.4th 680.

What constitutes an agency subject to application of state freedom of information act, 27 A.L.R.4th 742.

What constitutes "trade secrets" exempt from disclosure under state freedom of information act, 27 A.L.R.4th 773.

State freedom of information act requests: right to receive information in particular medium or format, 86 A.L.R.4th 786.

Propriety of publishing identity of sexual assault victim, 40 A.L.R.5th 787.

Disclosure of electronic data under state

public records and freedom of information acts, 54 A.L.R.6th 653.

Disclosure, under State Freedom of Information or Records Act, of video obtained by police or other law enforcement authorities from dash camera, mobile video recorder, or security or surveillance camera, 48 A.L.R.7th Art. 2.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

What constitutes "agency" for purposes of Freedom of Information Act (5 U.S.C.A § 552), 165 A.L.R. Fed. 591.

Actions brought under Freedom of Information Act, 5 U.S.C.A. § 522 et seq. — Supreme Court cases, 167 A.L.R. Fed. 545.

50-18-71. Right of access; timing; fees; denial of requests; impact of electronic records.

(a) All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure. Records shall be maintained by agencies to the extent and in the manner required by Article 5 of this chapter.

(b)(1)(A) Agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request; provided, however, that nothing in this chapter shall require agencies to produce records in response to a request if such records did not exist at the time of the request. In those instances where some, but not all, records are available within three business days, an agency shall make available within that period those records that can be located and produced. In any instance where records are unavailable within three business days of receipt of the request, and responsive records exist, the agency shall, within such time period, provide the requester with a description of such records and a timeline for when the records will be available for inspection or copying and provide the responsive records or access thereto as soon as practicable.

(B) A request made pursuant to this article may be made to the custodian of a public record orally or in writing. An agency may, but shall not be obligated to, require that all written requests be made upon the responder's choice of one of the following: the agency's director, chairperson, or chief executive officer, however denominated; the senior official at any satellite office of an agency; a clerk specifically designated by an agency as the custodian of agency records; or a duly designated open records officer of an agency; provided, however, that the absence or unavailability of the designated agency officer or employee shall not be permitted to delay the agency's response. At the time of inspection, any person may make photographic copies or other electronic reproductions of the records using suitable portable devices brought to the place of inspection.

Notwithstanding any other provision of this chapter, an agency may, in its discretion, provide copies of a record in lieu of providing access to the record when portions of the record contain confidential information that must be redacted.

(2) Any agency that designates one or more open records officers upon whom requests for inspection or copying of records may be delivered shall make such designation in writing and shall immediately provide notice to any person upon request, orally or in writing, of those open records officers. If the agency has elected to designate an open records officer, the agency shall so notify the legal organ of the county in which the agency's principal offices reside and, if the agency has a website, shall also prominently display such designation on the agency's website. In the event an agency requires that requests be made upon the individuals identified in subparagraph (B) of paragraph (1) of this subsection, the three-day period for response to a written request shall not begin to run until the request is made in writing upon such individuals. An agency shall permit receipt of written requests by email or facsimile transmission in addition to any other methods of transmission approved by the agency, provided such agency uses email or facsimile in the normal course of its business.

(3) The enforcement provisions of Code Sections 50-18-73 and 50-18-74 shall be available only to enforce compliance and punish noncompliance when a written request is made consistent with this subsection and shall not be available when such request is made orally.

(c)(1) An agency may impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the production of records pursuant to this article. An agency shall utilize the most economical means reasonably calculated to identify and produce responsive, nonexcluded documents. Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply when certified copies or other records to which a specific fee may apply are sought. In all other instances, the charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.

(2) In addition to a charge for the search, retrieval, or redaction of records, an agency may charge a fee for the copying of records or data, not to exceed 10¢ per page for letter or legal size documents or, in the case of other documents, the actual cost of producing the copy. In the case of electronic records, the agency may charge the actual cost of the media on which the records or data are produced.

(3) Whenever any person has requested to inspect or copy a public record and does not pay the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully estimated and agreed to pursuant to this article, and the agency has incurred the agreed-upon costs to make the records available, regardless of whether the requester inspects or accepts copies of the records, the agency shall be authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments by such agency.

(d) In any instance in which an agency is required to or has decided to withhold all or part of a requested record, the agency shall notify the requester of the specific legal authority exempting the requested record or records from disclosure by Code section, subsection, and paragraph within a reasonable amount of time not to exceed three business days or in the event the search and retrieval of records is delayed pursuant to this subsection or pursuant to subparagraph (b)(1)(A) of this Code section, then no later than three business days after the records have been retrieved. In any instance in which an agency will seek costs in excess of $25.00 for responding to a request, the agency shall notify the requester within a reasonable amount of time not to exceed three business days and inform the requester of the estimate of the costs, and the agency may defer search and retrieval of the records until the requester agrees to pay the estimated costs unless the requester has stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs. In any instance in which the estimated costs for production of the records exceeds $500.00, an agency may insist on prepayment of the costs prior to beginning search, retrieval, review, or production of the records. Whenever any person who has requested to inspect or copy a public record has not paid the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully incurred, an agency may require prepayment for compliance with all future requests for production of records from that person until the costs for the prior production of records have been paid or the dispute regarding payment resolved.

(d.1) Any other provision of this Code section to the contrary notwithstanding, the period within which any production, access, response, or notice is required from an agency with respect to a request for records, other than salary information for nonclerical staff, of intercollegiate sports programs of any unit of the University System of Georgia, including athletic departments and related private athletic associations, shall be 90 business days from the date the agency received the request.

(e) Requests by civil litigants for records that are sought as part of or for use in any ongoing civil or administrative litigation against an

agency shall be made in writing and copied to counsel of record for that agency contemporaneously with their submission to that agency. The agency shall provide, at no cost, duplicate sets of all records produced in response to the request to counsel of record for that agency unless the counsel of record for that agency elects not to receive the records.

(f) As provided in this subsection, an agency's use of electronic record-keeping systems must not erode the public's right of access to records under this article. Agencies shall produce electronic copies of or, if the requester prefers, printouts of electronic records or data from data base fields that the agency maintains using the computer programs that the agency has in its possession. An agency shall not refuse to produce such electronic records, data, or data fields on the grounds that exporting data or redaction of exempted information will require inputting range, search, filter, report parameters, or similar commands or instructions into an agency's computer system so long as such commands or instructions can be executed using existing computer programs that the agency uses in the ordinary course of business to access, support, or otherwise manage the records or data. A requester may request that electronic records, data, or data fields be produced in the format in which such data or electronic records are kept by the agency, or in a standard export format such as a flat file electronic American Standard Code for Information Interchange (ASCII) format, if the agency's existing computer programs support such an export format. In such instance, the data or electronic records shall be downloaded in such format onto suitable electronic media by the agency.

(g) Requests to inspect or copy electronic messages, whether in the form of email, text message, or other format, should contain information about the messages that is reasonably calculated to allow the recipient of the request to locate the messages sought, including, if known, the name, title, or office of the specific person or persons whose electronic messages are sought and, to the extent possible, the specific data bases to be searched for such messages.

(h) In lieu of providing separate printouts or copies of records or data, an agency may provide access to records through a website accessible by the public. However, if an agency receives a request for data fields, an agency shall not refuse to provide the responsive data on the grounds that the data is available in whole or in its constituent parts through a website if the requester seeks the data in the electronic format in which it is kept. Additionally, if an agency contracts with a private vendor to collect or maintain public records, the agency shall ensure that the arrangement does not limit public access to those records and that the vendor does not impede public record access and method of delivery as established by the agency or as otherwise provided for in this Code section.

(i) Any computerized index of county real estate deed records shall be printed for purposes of public inspection no less than every 30 days, and any correction made on such index shall be made a part of the printout and shall reflect the time and date that such index was corrected.

(j) No public officer or agency shall be required to prepare new reports, summaries, or compilations not in existence at the time of the request.

(k) Scanned ballot images created by a voting system authorized by Chapter 2 of Title 21 shall be public records subject to disclosure under this article.

History. — Ga. L. 1959, p. 88, § 2; Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, § 2; Ga. L. 1992, p. 1061, § 6; Ga. L. 1996, p. 313, § 1; Ga. L. 2012, p. 218, § 2/HB 397; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2016, p. 6, § 1/SB 323; Ga. L. 2021, p. 14, § 51/SB 202; Ga. L. 2021, p. 922, § 50/HB 497.

The 2021 amendments. — The first 2021 amendment, effective March 25, 2021, added subsection (k). The second 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" twice in the last sentence of paragraph (b)(2), and near the middle of subsection (g).

Editor's notes. — Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are adminis-

tered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 139 (2012). For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 31 (2016).

For note on 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 344 (1992).

JUDICIAL DECISIONS

Intent of General Assembly was to afford to public at large access to public records with the exceptions of certain information which is exempt from disclosure. Griffin-Spalding County Hosp. Auth. v. Radio Station WKEU, 240 Ga. 444, 241 S.E.2d 196 (1978).

Reasonable access to files. — Custodian of public records complies with an open records request when the custodian grants reasonable access to the files in custody; the custodian is not required to comb through the files and locate, inspect, and produce the documents sought. Felker v. Lukemire, 267 Ga. 296, 477 S.E.2d 23 (1996).

Trial court erred in entering summary judgment for a county and a county manager in an employee's suit for attorney fees arising out of a Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., request as the employee showed that the ORA was violated as the manager did not respond to the request within the required three-day period; the case was remanded for a determination of whether the ORA violation was without substantial justification or whether special circumstances existed that counseled against awarding attorney fees. Wallace v. Greene County, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Disclosures. — The phrase "exempted from disclosure" in O.C.G.A. § 50-18-71(a) of the Open Records Act, O.C.G.A. § 50-14-1 et seq., did not mean prohibited from disclosure, and the phrase "disclosure shall not be required" as used in O.C.G.A. § 50-18-72(a) did not mean that disclosure was prohibited. Campaign for Accountability v. Consumer Credit Research Found., 303 Ga. 828, 815 S.E.2d 841 (2018).

Open Records Act not applicable. — Trial court did not err in denying the plaintiff's request for a mandamus nisi because the Open Records Act, O.C.G.A. § 50-14-1 et seq., was not available to enforce compliance with the plaintiff's requests for information from the county board of tax assessors regarding property tax assessments as those requests were made pursuant to another statute and not the Open Records Act. Hansen v. DeKalb County Board of Tax Assessors, 295 Ga. 385, 761 S.E.2d 35 (2014).

Consideration of cost of disclosing information. — Case was remanded for further determination of the most economical cost for providing information since the record did not establish that the county used the most economical means for providing copies of at least part of the information requested. Trammel v. Martin, 200 Ga. App. 435, 408 S.E.2d 477 (1991).

Fees. — Imposition of a fee is allowed only when the citizen seeking access requests copies of documents or requests action by the custodian that involves an unusual administrative cost or burden. Thus, a fee may not be imposed under O.C.G.A. § 50-18-71 when a citizen seeks only to inspect records that are routinely subject to public inspection such as deeds, city ordinances, or zoning maps. McFrugal Rental of Riverdale, Inc. v. Garr, 262 Ga. 369, 418 S.E.2d 60 (1992).

O.C.G.A. § 15-6-96 prevails over O.C.G.A. § 50-18-71 and any other part of the Open Records Act, O.C.G.A. § 50-18-70 et seq., to the extent they conflict with the ability of superior court clerks to contract to market records of their offices for profit. Powell v. VonCanon, 219 Ga. App. 840, 467 S.E.2d 193 (1996).

County tax commissioner, tax assessor, and commissioner could charge no more than the actual cost of a computer disk or tape and an hourly charge for administrative costs of no more than the salary of the lowest paid full-time employee who could perform the request for information on

public real estate records. Powell v. VonCanon, 219 Ga. App. 840, 467 S.E.2d 193 (1996).

Cannot strike counterclaim for attorney fees. — Georgia Supreme Court affirmed the judgment of the Georgia Court of Appeals in Geer v. Phoebe Putney Health System, Inc., 350 Ga. App. 127 (2019) that held that Georgia's anti-SLAPP statute, O.C.G.A. § 9-11-11.1, could not be invoked to strike a counterclaim for attorney fees brought under the Open Records Act, O.C.G.A. § 50-18-73(b), in response to a suit to enforce a request under Georgia's Open Records Act. Geer v. Phoebe Putney Health Sys., 310 Ga. 279, 849 S.E.2d 660 (2020).

Indigents. — There is no provision in O.C.G.A. § 50-18-71 for the excusal of the payment of fees upon filing a pauper's affidavit. McBride v. Wetherington, 199 Ga. App. 7, 403 S.E.2d 873 (1991).

Strict compliance required. — District attorney's failure to cite the Code section, subsection, and paragraph, pursuant to which the state was denying the applicant's request, violated O.C.G.A. § 50-18-71(d) for which strict compliance was required. Chua v. Johnson, 336 Ga. App. 298, 784 S.E.2d 449 (2016).

Mandamus not proper remedy. — Judgment dismissing the plaintiff's mandamus action against a city seeking to compel compliance with the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., was affirmed because the Act's civil penalties provision afforded the plaintiff a remedy as complete and convenient as mandamus by providing its own cause of action for enforcement in O.C.G.A. § 50-18-73(a). Blalock v. Cartwright, 300 Ga. 884, 799 S.E.2d 225 (2017).

Private right of action exists under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq.; thus, mandamus relief is not only unnecessary but improper and, to the extent that cases like Evans v. Georgia Bureau of Investigation, 297 Ga. 318 (773 SE2d 725) (2015), suggest otherwise, those cases are disapproved. Blalock v. Cartwright, 300 Ga. 884, 799 S.E.2d 225 (2017).

Cited in Northside Realty Assocs. v. Community Relations Comm'n, 240 Ga. 432, 241 S.E.2d 189 (1978); Atchison v. Hospital Auth., 245 Ga. 494, 265 S.E.2d 801 (1980); Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Requests for computer-generated information. — Information does not fall outside the scope of the Open Records Act, O.C.G.A. § 50-18-70 et seq., because the information is stored by means of magnetic tape or diskette rather than in more traditional form. When the requested information can be retrieved by a minimal computer search, an agency must comply. The parameters of the Open Records Act, O.C.G.A. § 50-18-70 et seq., cannot be altered by contract and any such provisions are unenforceable. 1989 Op. Att'y Gen. 89-32.

Prison inmate's medical records. — Department of Offender Rehabilitation (now Department of Corrections) may supply copies of a former inmate's prison medical records to a person other than an inmate who is neither a doctor nor the agent of a hospital. As a condition precedent to delivery of such records, however, the department should demand proof of the requesting party's authority and might also condition delivery upon tender of payment sufficient to cover the department's expenses in copying the material requested. 1973 Op. Att'y Gen. No. 73-77.

No disclosure of information from records by telephone. — Records may be made available for inspection by members of the public who might come in and make a request, but no such information is to be given by telephone. 1965-66 Op. Att'y Gen. No. 66-88.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 19, 20.

C.J.S. — 76 C.J.S., Records, §§ 43, 46.

ALR. — Construction and application of public domain doctrine allowing courts to disregard FOIA law enforcement exemption based on prior public release of requested records, 3 A.L.R. Fed. 3d 5.

Construction and application of public domain or official acknowledgment doctrine allowing courts to disregard FOIA exemption, other than law enforcement exemption, based on prior public release of requested records, 17 A.L.R. Fed. 3d 1.

50-18-71.1 and 50-18-71.2.

Repealed by Ga. L. 2012, p. 218, § 2/HB 397, effective April 17, 2012.

Editor's notes. — These Code sections were based on Ga. L. 1992, p. 1061, § 7; Ga. L. 1996, p. 313, § 2; Ga. L. 1999, p. 552, § 3; Ga. L. 2008, p. 829, § 3/HB 1020.

50-18-72. When public disclosure not required.

(a) Public disclosure shall not be required for records that are:

(1) Specifically required by federal statute or regulation to be kept confidential;

(2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;

(3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records is reasonably likely to disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation;

(4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving such investigation and prosecution has become final or otherwise terminated; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution; and provided, further, that the release of booking photographs shall only be permissible in accordance with Code Section 35-1-19;

(5) Individual Georgia Uniform Motor Vehicle Accident Reports, except upon the submission of a written statement of need by the

requesting party to be provided to the custodian of records and to set forth the need for the report pursuant to this Code section; provided, however, that any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report shall be entitled, either personally or through a lawyer or other representative, to receive a copy of such report; and provided, further, that Georgia Uniform Motor Vehicle Accident Reports shall not be available in bulk for inspection or copying by any person absent a written statement showing the need for each such report pursuant to the requirements of this Code section. For the purposes of this subsection, the term "need" means that the natural person or legal entity who is requesting in person or by representative to inspect or copy the Georgia Uniform Motor Vehicle Accident Report:

(A) Has a personal, professional, or business connection with a party to the accident;

(B) Owns or leases an interest in property allegedly or actually damaged in the accident;

(C) Was allegedly or actually injured by the accident;

(D) Was a witness to the accident;

(E) Is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;

(F) Is a prosecutor or a publicly employed law enforcement officer;

(G) Is alleged to be liable to another party as a result of the accident;

(H) Is an attorney stating that he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;

(I) Is gathering information as a representative of a news media organization; provided, however, that such representative submits a statement affirming that the use of such accident report is in compliance with Code Section 33-24-53. Any person who knowingly makes a false statement in requesting such accident report shall be guilty of a violation of Code Section 16-10-20;

(J) Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, that this subparagraph shall apply only to accident reports on accidents that occurred more than 60 days prior to the request and which shall have the name,

street address, telephone number, and driver's license number redacted; or

(K) Is a governmental official, entity, or agency, or an authorized agent thereof, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties;

(6) Jury list data, including, but not limited to, persons' names, dates of birth, addresses, ages, race, gender, telephone numbers, social security numbers, and when it is available, the person's ethnicity, and other confidential identifying information that is collected and used by The Council of Superior Court Clerks of Georgia for creating, compiling, and maintaining state-wide master jury lists and county master jury lists for the purpose of establishing and maintaining county jury source lists pursuant to the provisions of Chapter 12 of Title 15; provided, however, that when ordered by the judge of a court having jurisdiction over a case in which a challenge to the array of the grand or trial jury has been filed, The Council of Superior Court Clerks of Georgia, superior court clerk, or jury clerk shall provide data within the time limit established by the court for the limited purpose of such challenge. The Council of Superior Court Clerks of Georgia, superior court clerk, or jury clerk shall not be liable for any use or misuse of such data;

(7) Records consisting of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee;

(8) Records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged;

(9) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned;

(10) Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, the project is terminated or abandoned, or the agency in possession of the records takes a public vote regarding the sealed bid or sealed proposal, whichever comes first;

(11) Records which identify persons applying for or under consideration for employment or appointment as executive head of an agency or of a unit of the University System of Georgia; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position of executive head of an agency or five business days prior to the meeting at which final action or vote is to be taken on the position of president of a unit of the University System of Georgia, all documents concerning as many as three persons under consideration whom the agency has determined to be the best qualified for the position shall be subject to inspection and copying. Prior to the release of these documents, an agency may allow such a person to decline being considered further for the position rather than have documents pertaining to such person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or appointment process without conducting interviews or discussing or deliberating in executive session in a manner otherwise consistent with Chapter 14 of this title, it shall not be required to delay final action on the position. The agency shall not be required to release such records of other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency shall furnish the number of applicants and the composition of the list by such factors as race and sex. The agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process;

(12) Reserved;

(13) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Board of Regents of the University System of Georgia when the owner or donor of such records wishes to place restrictions on access to the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale. This exemption shall not apply to any records prepared in the course of the operation of state or local governments of the State of Georgia;

(14) Records that contain information from the Department of Community Affairs inventory and register relating to the location and character of a historic property or of historic properties as those terms are defined in Code Sections 12-3-50.1 and 12-3-50.2 if the Department of Community Affairs determines that disclosure will create a substantial risk of harm, theft, or destruction to the property or properties or the area or place where the property or properties are located;

(15) Records of farm water use by individual farms as determined by water-measuring devices installed pursuant to Code Section

12-5-31 or 12-5-105; provided, however, that compilations of such records for the 52 large watershed basins as identified by the eight-digit United States Geologic Survey hydrologic code or an aquifer that do not reveal farm water use by individual farms shall be subject to disclosure under this article;

(16) Agricultural or food system records, data, or information that are considered by the Department of Agriculture to be a part of the critical infrastructure, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "critical infrastructure" shall have the same meaning as in 42 U.S.C. Section 5195c(e). Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(17) Records, data, or information collected, recorded, or otherwise obtained that is deemed confidential by the Department of Agriculture for the purposes of the national animal identification system, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "national animal identification program" means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herdmates from their premises of origin. Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(18) Records that contain site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats on public or private property if the Department of Natural Resources determines that disclosure will create a substantial risk of harm, theft, or destruction to the species or habitats or the area or place where the species or habitats are located; provided, however, that the owner or owners of private property upon which rare species of plants or animals occur or upon which sensitive natural habitats are located shall be entitled to such information pursuant to this article;

(19) Records that reveal the names, home addresses, telephone numbers, security codes, email addresses, or any other data or information developed, collected, or received by counties or municipalities in connection with neighborhood watch or public safety notification programs or with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm

systems, or other electronic security systems; provided, however, that initial police reports and initial incident reports shall remain subject to disclosure pursuant to paragraph (4) of this subsection;

(20)(A) Records that reveal an individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number if so designated in a public record, personal email address or cellular telephone number, day and month of birth, and information regarding public utility, television, internet, or telephone accounts held by private customers, provided that nonitemized bills showing amounts owed and amounts paid shall be available. Items exempted by this subparagraph shall be redacted prior to disclosure of any record requested pursuant to this article; provided, however, that such information shall not be redacted from such records if the person or entity requesting such records requests such information in a writing signed under oath by such person or a person legally authorized to represent such entity which states that such person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting; and provided, further, that such access shall be limited to social security numbers and day and month of birth; and provided, further, that the news media organization exception in this subparagraph shall not apply to paragraph (21) of this subsection.

(B) This paragraph shall have no application to:

(i) The disclosure of information contained in the records or papers of any court or derived therefrom including without limitation records maintained pursuant to Article 9 of Title 11;

(ii) The disclosure of information to a court, prosecutor, or publicly employed law enforcement officer, or authorized agent thereof, seeking records in an official capacity;

(iii) The disclosure of information to a public employee of this state, its political subdivisions, or the United States who is obtaining such information for administrative purposes, in which case, subject to applicable laws of the United States, further access to such information shall continue to be subject to the provisions of this paragraph;

(iv) The disclosure of information as authorized by the order of a court of competent jurisdiction upon good cause shown to have access to any or all of such information upon such conditions as may be set forth in such order;

(v) The disclosure of information to the individual in respect of whom such information is maintained, with the authorization thereof, or to an authorized agent thereof; provided, however, that the agency maintaining such information shall require proper identification of such individual or such individual's agent, or proof of authorization, as determined by such agency;

(vi) The disclosure of the day and month of birth and mother's birth name of a deceased individual;

(vii) The disclosure by an agency of credit or payment information in connection with a request by a consumer reporting agency as that term is defined under the federal Fair Credit Reporting Act (15 U.S.C. Section 1681, et seq.);

(viii) The disclosure by an agency of information in its records in connection with the agency's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debts owed to the agency or individuals or entities whom the agency assists in the collection of debts owed to the individual or entity;

(ix) The disclosure of information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes; or

(x) The disclosure of the date of birth within criminal records.

(C) Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10-4. Any person injured thereby shall have a cause of action for invasion of privacy.

(D) In the event that the custodian of public records protected by this paragraph has good faith reason to believe that a pending request for such records has been made fraudulently, under false pretenses, or by means of false swearing, such custodian shall apply to the superior court of the county in which such records are maintained for a protective order limiting or prohibiting access to such records.

(E) This paragraph shall supplement and shall not supplant, overrule, replace, or otherwise modify or supersede any provision of statute, regulation, or law of the federal government or of this state

as now or hereafter amended or enacted requiring, restricting, or prohibiting access to the information identified in subparagraph (A) of this paragraph and shall constitute only a regulation of the methods of such access where not otherwise provided for, restricted, or prohibited;

(21) Records concerning public employees that reveal the public employee's home address, home telephone number, personal mobile or wireless telephone number, day and month of birth, social security number, insurance information, medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data and information other than compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee's immediate family members or dependents. This paragraph shall not apply to public records that do not specifically identify public employees or their jobs, titles, or offices. For the purposes of this paragraph, the term 'public employee' means any officer, employee, or former employee of:

(A) The State of Georgia or its agencies, departments, or commissions;

(B) Any county or municipality or its agencies, departments, or commissions;

(C) Other political subdivisions of this state;

(D) Teachers in public and charter schools and nonpublic schools;

(E) Early care and education programs administered through the Department of Early Care and Learning; or

(F) The federal government or its agencies, departments, or commissions;

(21.1)(A) Records of the Department of Human Services concerning any foster parent or former foster parent that reveal his or her home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, or unlisted telephone number if so designated in a public record or that reveal the identity of his or her immediate family members or dependents.

(B) For the purposes of this paragraph, the term "foster parent or former foster parent" means individuals who were approved to serve in such capacity by the Division of Family and Children Services of the Department of Human Services or a child-placing agency licensed in accordance with Code Section 49-5-12;

(22) Records of the Department of Early Care and Learning that contain the:

(A) Names of children and day and month of each child's birth;

(B) Names, addresses, telephone numbers, or email addresses of parents, immediate family members, and emergency contact persons; or

(C) Names or other identifying information of individuals who report violations to the department;

(23) Public records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. For purposes of this paragraph, the term "electronic signature" has the same meaning as that term is defined in Code Section 10-12-2;

(24) Records acquired by an agency for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing program, including, but not limited to, the formation of carpools, vanpools, or buspools, the provision of transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting;

(25)(A) Records the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, which shall be limited to the following:

(i) Security plans and vulnerability assessments for any public utility, technology infrastructure, building, facility, function, or activity in effect at the time of the request for disclosure or pertaining to a plan or assessment in effect at such time;

(ii) Any plan for protection against terrorist or other attacks that depends for its effectiveness in whole or in part upon a lack of general public knowledge of its details;

(iii) Any document relating to the existence, nature, location, or function of security devices designed to protect against terror-

ist or other attacks that depend for their effectiveness in whole or in part upon a lack of general public knowledge;

(iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts;

(v) Any document or plan for protection relating to the existence, nature, location, or function of cybersecurity devices, programs, or systems designed to protect computer, information technology, or communication systems against terrorist or other attacks that depend for their effectiveness in whole or in part upon a lack of general public knowledge; and

(vi) Records of any government sponsored programs concerning training relative to governmental security measures which would identify persons being trained or instructors or would reveal information described in divisions (i) through (v) of this subparagraph.

(B) In the event of litigation challenging nondisclosure pursuant to this paragraph by an agency of a document covered by this paragraph, the court may review the documents in question in camera and may condition, in writing, any disclosure upon such measures as the court may find to be necessary to protect against endangerment of life, safety, or public property.

(C) As used in division (i) of subparagraph (A) of this paragraph, the term "activity" means deployment or surveillance strategies, actions mandated by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protection, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism, and proposed or actual plans and responses to requesting and receiving the National Pharmacy Stockpile;

(25.1) School safety plans prepared pursuant to Code Section 20-2-1185, whether in the possession of a local school system, a local law enforcement agency, a local emergency management agency, the Department of Education, the Georgia Emergency Management and Homeland Security Agency, or any other public entity;

(25.2) Records of a person's name and driver's license information collected and maintained for purposes of Code Section 20-2-1127;

(26) Unless the request is made by the accused in a criminal case or by his or her attorney, public records of an emergency 9-1-1 system, as defined in paragraph (5) of Code Section 46-5-122, containing information which would reveal the name, address, or telephone

number of a person placing a call to a public safety answering point. Such information may be redacted from such records if necessary to prevent the disclosure of the identity of a confidential source, to prevent disclosure of material which would endanger the life or physical safety of any person or persons, or to prevent the disclosure of the existence of a confidential surveillance or investigation;

(26.1) In addition to the exemption provided by paragraph (26) of this subsection, audio recordings of a 9-1-1 telephone call to a public safety answering point which contain the speech in distress or cries in extremis of a caller who died during the call or the speech or cries of a person who was a minor at the time of the call, except to the following, provided that the person seeking the audio recording of a 9-1-1 telephone call submits a sworn affidavit that attests to the facts necessary to establish eligibility under this paragraph:

(A) A duly appointed representative of a deceased caller's estate;

(B) A parent or legal guardian of a minor caller;

(C) An accused in a criminal case when, in the good faith belief of the accused, the audio recording of the 9-1-1 telephone call is relevant to his or her criminal proceeding;

(D) A party to a civil action when, in the good faith belief of such party, the audio recording of the 9-1-1 telephone call is relevant to the civil action;

(E) An attorney for any of the persons identified in subparagraphs (A) through (D) of this paragraph; or

(F) An attorney for a person who may pursue a civil action when, in the good faith belief of such attorney, the audio recording of the 9-1-1 telephone call is relevant to the potential civil action;

(26.2) Audio and video recordings from devices used by law enforcement officers in a place where there is a reasonable expectation of privacy when there is no pending investigation, except to the following, provided that the person seeking the audio or video recording submits a sworn affidavit that attests to the facts necessary to establish eligibility under this paragraph:

(A) A duly appointed representative of a deceased's estate when the decedent was depicted or heard on such recording;

(B) A parent or legal guardian of a minor depicted or heard on such recording;

(C) An accused in a criminal case when, in the good faith belief of the accused, such recording is relevant to his or her criminal proceeding;

(D) A party to a civil action when, in the good faith belief of such party, such recording is relevant to the civil action;

(E) An attorney for any of the persons identified in subparagraphs (A) through (D) of this paragraph; or

(F) An attorney for a person who may pursue a civil action when, in the good faith belief of such attorney, such recording is relevant to the potential civil action;

(27) Records of athletic or recreational programs, available through the state or a political subdivision of the state, that include information identifying a child or children 12 years of age or under by name, address, telephone number, or emergency contact, unless such identifying information has been redacted;

(28) Records of the State Road and Tollway Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon any toll project;

(29) Records maintained by public postsecondary educational institutions in this state and associated foundations of such institutions that contain personal information concerning donors or potential donors to such institutions or foundations; provided, however, that the name of any donor and the amount of donation made by such donor shall be subject to disclosure if such donor or any entity in which such donor has a substantial interest transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. As used in this paragraph, the term "transact business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount in excess of $10,000.00 in the aggregate in a calendar year; and the term "substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity;

(30) Records of the Metropolitan Atlanta Rapid Transit Authority or of any other transit system that is connected to that system's TransCard, SmartCard, or successor or similar system which would reveal the financial records or travel history of any individual who is a purchaser of a TransCard, SmartCard, or successor or similar fare medium. Such financial records shall include, but not be limited to, social security number, home address, home telephone number, email address, credit or debit card information, and bank account information but shall not include the user's name;

(31) Building mapping information produced and maintained pursuant to Article 10 of Chapter 3 of Title 38;

(32) Notwithstanding the provisions of paragraph (4) of this subsection, any physical evidence or investigatory materials that are evidence of an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 and are in the possession, custody, or control of law enforcement, prosecution, or regulatory agencies;

(33) Records that are expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-7-127;

(34) Any trade secrets obtained from a person or business entity that are required by law, regulation, bid, or request for proposal to be submitted to an agency. An entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10. If such entity attaches such an affidavit, before producing such records in response to a request under this article, the agency shall notify the entity of its intention to produce such records as set forth in this paragraph. If the agency makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the entity submitting the affidavit of its intent to disclose the information within ten days unless prohibited from doing so by an appropriate court order. In the event the entity wishes to prevent disclosure of the requested records, the entity may file an action in superior court to obtain an order that the requested records are trade secrets exempt from disclosure. The entity filing such action shall serve the requestor with a copy of its court filing. If the agency makes a determination that the specifically identified information does constitute a trade secret, the agency shall withhold the records, and the requester may file an action in superior court to obtain an order that the requested records are not trade secrets and are subject to disclosure;

(35) Data, records, or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of, or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented;

(36) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on

medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity, until such information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This paragraph shall apply to, but shall not be limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works;

(37) Any record that would not be subject to disclosure, or the disclosure of which would jeopardize the receipt of federal funds, under 20 U.S.C. Section 1232g or its implementing regulations;

(38) Unless otherwise provided by law, records consisting of questions, scoring keys, and other materials constituting a test that derives value from being unknown to the test taker prior to administration which is to be administered by an agency, including, but not limited to, any public school, any unit of the Board of Regents of the University System of Georgia, any public technical school, the State Board of Education, the Office of Student Achievement, the Professional Standards Commission, or a local school system, if reasonable measures are taken by the owner of the test to protect security and confidentiality; provided, however, that the State Board of Education may establish procedures whereby a person may view, but not copy, such records if viewing will not, in the judgment of the board, affect the result of administration of such test. These limitations shall not be interpreted by any court of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics;

(39) Records disclosing the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Community Health, the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity;

(40) Any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to weapons carry licenses, or pursuant to any other requirement for maintaining records relative to the possession of firearms, except to the extent that such records relating to licensing and possession of firearms are sought by law enforcement agencies or a judge of the probate court as provided by law;

(41) Records containing communications subject to the attorney-client privilege recognized by state law; provided, however,

that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further, that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to the attorney-client privilege. Attorney-client communications, however, may be obtained in a proceeding under Code Section 50-18-73 to prove justification or lack thereof in refusing disclosure of documents under this Code section provided the judge of the court in which such proceeding is pending shall first determine by an in camera examination that such disclosure would be relevant on that issue. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

(42) Confidential attorney work product; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further, that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to confidentiality as attorney work product. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

(43) Records containing tax matters or tax information that is confidential under state or federal law;

(44) Records consisting of any computer program or computer software used or maintained in the course of operation of a public office or agency; provided, however, that data generated, kept, or received by an agency shall be subject to inspection and copying as provided in this article;

(45) Records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer liability insurance or self-insurance coverage to any agency;

(46) Documents maintained by any agency, as such term is defined in subparagraph (a)(1)(A) of Code Section 50-14-1, which pertain to an economic development project until the economic development project is secured by binding commitment, provided that any such documents shall be disclosed upon proper request after a binding commitment has been secured or the project has been terminated. No later than five business days after the Department of Economic Development secures a binding commitment and the department has committed the use of state funds from the OneGeorgia Authority or funds from Regional Economic Business Assistance for the project pursuant to Code Section 50-8-8, or other provisions of law, the Department of Economic Development shall give notice that a binding commitment has been reached by posting on its website notice of the project in conjunction with a copy of the Department of Economic Development's records documenting the bidding commitment made in connection with the project and the negotiation relating thereto and by publishing notice of the project and participating parties in the legal organ of each county in which the economic development project is to be located. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than $25 million by the business or the hiring of more than 50 employees by the business;

(47) Records related to a training program operated under the authority of Article 3 of Chapter 4 of Title 20 disclosing an economic development project prior to a binding commitment having been secured, relating to job applicants, or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than $25 million by the business or the hiring of more than 50 employees by the business;

(48) Records that are expressly exempt from public inspection pursuant to Code Section 47-20-87;

(49) Data, records, or information acquired by the Commissioner of Labor or the Department of Labor as part of any investigation required pursuant to Code Section 39-2-18, relating to minors employed as actors or performers;

(50) Held by the Georgia Superior Court Clerks' Cooperative Authority or any other public or private entity for and on behalf of a

clerk of superior court; provided, however, that such records may be obtained from a clerk of superior court unless otherwise exempted from disclosure; or

(51) Reports submitted to the Department of Revenue, the Atlanta-region Transit Link "ATL" Authority, or the Department of Transportation by a for-hire ground transport service provider as required pursuant to Code Section 48-13-143.

(b) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.

(c)(1) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case.

(2) Except as provided in subsection (d) of this Code section, in the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following:

(A) A photograph;

(B) A photocopy;

(C) A facsimile; or

(D) Another reproduction.

(3) The provisions of this article regarding fees for production of a record, including, but not limited to, subsections (c) and (d) of Code Section 50-18-71, shall apply to exhibits produced according to this subsection.

(d) Any physical evidence that is used as an exhibit in a criminal or civil trial to show or support an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 shall not be open to public inspection except by court order. If the judge approves inspection of such physical evidence, the judge shall designate, in writing, the facility owned or operated by an agency of the state or local government where such physical evidence may be inspected. If the judge permits inspection, such property or material shall not be photographed, copied, or reproduced by any means. Any person who violates the provisions of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years, a fine of not more than $100,000.00, or both.

History. — Ga. L. 1967, p. 455, § 1; Ga. L. 1970, p. 163, § 1; Code 1981, § 50-18-72, enacted by Ga. L. 1982, p. 1789, § 1; Ga. L. 1986, p. 1090, § 2; Ga. L. 1987, p. 377, § 1; Ga. L. 1988, p. 13, § 50; Ga. L. 1988, p. 243, § 3; Ga. L. 1989, p. 553, § 2; Ga. L. 1989, p. 827, § 1; Ga. L. 1990, p. 341, § 1; Ga. L. 1992, p. 1061, § 8; Ga. L. 1993, p. 968, § 1; Ga. L. 1993, p. 1336, § 1; Ga. L. 1993, p. 1669, § 1; Ga. L. 1995, p. 704, § 1; Ga. L. 1996, p. 6, § 50; Ga. L. 1997, p. 1052, § 2; Ga. L. 1998, p. 1652, § 1; Ga. L. 1999, p. 552, §§ 4, 4.1; Ga. L. 1999, p. 809, §§ 4, 5; Ga. L. 1999, p. 1222, §§ 1, 2; Ga. L. 2000, p. 136, § 50; Ga. L. 2000, p. 1556, §§ 1, 2; Ga. L. 2001, p. 4, § 50; Ga. L. 2001, p. 327, § 1; Ga. L. 2001, p. 331, § 1; Ga. L. 2001, p. 491, § 1; Ga. L. 2001, p. 820, § 13; Ga. L. 2002, p. 415, § 50; Ga. L. 2003, p. 602, § 1; Ga. L. 2003, p. 880, § 2; Ga. L. 2004, p. 107, § 22; Ga. L. 2004, p. 161, § 15; Ga. L. 2004, p. 341, § 1A; Ga. L. 2004, p. 410, § 9; Ga. L. 2004, p. 770, § 1; Ga. L. 2005, p. 334, § 30-2/HB 501; Ga. L. 2005, p. 558, § 1/HB 437; Ga. L. 2005, p. 595, § 1/SB 121; Ga. L. 2005, p. 660, § 11/HB 470; Ga. L. 2005, p. 1133, § 1/HB 340; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2006, p. 536, § 1/HB 955; Ga. L. 2007, p. 87, § 1/SB 212; Ga. L. 2007, p. 160, § 1/HB 101; Ga. L. 2008, p. 564, § 2/SB 33; Ga. L. 2008, p. 829, § 4/HB 1020; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 37, §§ 1, 1.1, 1.2/SB 26; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 698, § 7/HB 126; Ga. L. 2010, p. 243, §§ 1, 2/HB 1086; Ga. L. 2010, p. 286, § 23/SB 244; Ga. L. 2010, p. 415, § 2/HB 249; Ga. L. 2010, p. 963, § 2-21/SB 308; Ga. L. 2011, p. 59, §§ 3-1, 1-68/HB 415; Ga. L. 2011, p. 611, § 1/HB 261; Ga. L. 2011, p. 705, § 5-29/HB 214; Ga. L. 2012, p. 211, § 4/SB 402; Ga. L. 2012, p. 218, § 2/HB 397; Ga. L. 2012, p. 775, § 50/HB 942; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2014, p. 418, § 2/HB 828; Ga. L. 2014, p. 451, § 15/HB 776; Ga. L. 2014, p. 692, § 1/HB 449; Ga. L. 2014, p. 742, § 2/HB 845; Ga. L. 2014, p. 866, § 50/SB 340; Ga. L. 2015, p. 805, § 13/HB 492; Ga. L. 2015, p. 943, § 5/HB 366; Ga. L. 2015, p. 1046, § 5/SB 94; Ga. L. 2015, p. 1065, § 2-3/SB 135; Ga. L. 2016, p. 6, § 2/SB 323; Ga. L. 2018, p. 753, § 3/HB 763; Ga. L. 2018, p. 927, § 4-1/HB 906; Ga. L. 2019, p. 302, § 1-2/HB 459; Ga. L. 2020, p. 38, § 9/SB 473; Ga. L. 2020, p. 493, § 50/SB 429; Ga. L. 2020, p. 903, § 2-3/HB 105; Ga. L. 2021, p. 110, § 2/HB 134; Ga. L. 2021, p. 559, § 2/SB 32; Ga. L. 2021, p. 922, § 50/HB 497.

The 2019 amendment, effective July 1, 2019, added paragraph (a)(25.2).

The 2020 amendments. — The first 2020 amendment, effective July 1, 2020, substituted "Department of Community Affairs" for "Department of Natural Resources" twice in paragraph (a)(14). The second 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "Code Section 35-1-19" for "Code Section 35-1-18" at the end of paragraph (a)(4). The third 2020 amendment, effective August 5, 2020, deleted "or" at the end of paragraph (a)(49); added "; or" at the end of paragraph (a)(50); and inserted paragraph (a)(51). See Editor's notes for applicability.

The 2021 amendments. — The first 2021 amendment, effective April 29, 2021, deleted "and" at the end of division (a)(25)(A)(iv); added division (a)(25)(A)(v); and redesignated former division (a)(25)(A)(v) as division (a)(25)(A)(vi). The second 2021 amendment, effective May 6, 2021, in paragraph (a)(21), in the first sentence, inserted "personal mobile or wireless telephone number," near the beginning, substituted "insurance information" for "insurance or information" near the middle, and substituted "data and information" for "data or information" in the middle; deleted "or" from the end of subparagraph (a)(21)(D); added "or" at the end of subparagraph (a)(21)(E); and added subparagraph (a)(21)(F). The third 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" near the middle of paragraph (a)(19), in the middle of the first sentence of subparagraph (a)(20)(A), in subparagraph (a)(22)(B), and in the middle of the second sentence of paragraph (a)(30); and substituted "internet" for "Internet" in the middle of the first sentence of subparagraph (a)(20)(A).

Cross references. — Privilege against self incrimination, § 24-5-506. Confiden-

tiality of records of medical peer review groups, § 31-7-133. Confidentiality of portions of license applications directed to joint-secretary, § 43-1-2(k).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, paragraph (a)(21), as enacted by Ga. L. 2008, p. 829, § 4, was redesignated as paragraph (a)(22); "or" was deleted at the end of paragraph (a)(20); and "; or" was substituted for a period at the end of paragraph (a)(21).

Pursuant to Code Section 28-9-5, in 2012, "or" was deleted at the end of paragraph (a)(46), "; or" was substituted for a period at the end of paragraph (a)(47), and paragraph (a)(24) as added by Ga. L. 2012, p. 211, § 1/SB 402 was redesignated as paragraph (a)(48).

Pursuant to Code Section 28-9-5, in 2015, paragraph (a)(49), as added by Ga. L. 2015, p. 1065, § 2-3/SB 135, was redesignated as paragraph (a)(50), "or" was deleted at the end of paragraph (a)(48), and "; or" was substituted for the period at the end of paragraph (a)(49).

Pursuant to Code Section 28-9-5, in 2018, a semicolon was substituted for a period at the end of paragraph (a)(12).

Pursuant to Code Section 28-9-5, in 2019, a semicolon was substituted for a period at the end of paragraph (a)(25.2).

Pursuant to Code Section 28-9-5, in 2020, "through its Division of Historic Preservation" was deleted following "Department of Community Affairs" in paragraph (a)(14).

Pursuant to Code Section 28-9-5 and the intent of Ga. L. 2020, p. 38/SB 473, in 2020, the amendment to paragraph (a)(18) by Ga. L. 2020, p. 38, § 9/SB 473 was not given effect.

Editor's notes. — Ga. L. 1999, p. 809, § 1, not codified by the General Assembly, provides that the social security numbers on driver's licenses and other pertinent personal identifying information appearing on Georgia Uniform Motor Vehicle Accident Reports is often used for fraudulent purposes and for invading the privacy of individuals; therefore, access to the Georgia Uniform Motor Vehicle Accident Reports should be restricted.

Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2004.'"

Ga. L. 2004, p. 161, § 16, not codified by the General Assembly, provides that "all appointments of guardians of the person or property made pursuant to former Title 29 shall continue in effect and shall thereafter be governed by the provisions of this Act."

Ga. L. 2005, p. 595, § 2/SB 121, not codified by the General Assembly, makes paragraph (a)(18) of this Code section applicable to all requests for copies of records or to inspect records filed or submitted on or after May 2, 2005, and that are pending on May 2, 2005.

Ga. L. 2010, p. 963, § 3-1/SB 308, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.

Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Ga. L. 2011, p. 59, § 4-1(b)/HB 415, not codified by the General Assembly, provides that the amendment to this Code section by that Act shall apply to open records requests pending on May 3, 2011, or made on and after May 3, 2011.

Ga. L. 2012, p. 211, § 1/SB 402, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Employees' Retirement System of Georgia Enhanced Investment Authority Act.'"

Ga. L. 2012, p. 218, § 18/HB 397, not codified by the General Assembly, provides, in part, that "the provisions of paragraph (47) of subsection (a) of Code Section 50-18-72 as enacted by this Act shall apply to any request for public records made prior to the effective date of this Act. Agencies shall be permitted to assert the provisions of paragraph (47) of subsection (a) of Code Section 50-18-72 as enacted by this Act as a basis for withholding documents covered by that paragraph in any

pending or subsequently filed litigation regarding a request that occurred prior to the effective date of this Act." This Act became effective April 17, 2012.

Ga. L. 2020, p. 903, § 4-1/HB 105, not codified by the General Assembly, provides that the amendment of that Act applies to sales of transportation on or after April 1, 2020.

Ga. L. 2020, p. 903, § 4-1/HB 105, approved by the Governor August 5, 2020, provided that the amendment of this Code section is effective April 1, 2020. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. L. Rev. 25 (1997). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007). For article, "Must Government Contractors 'Submit' to Their Own Destruction?: Georgia's Trade Secret Disclosure Exemption and United HealthCare of Georgia, Inc. v. Georgia Department of Community Health," see 60 Mercer L. Rev. 825 (2009). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011). For article, "Crimes and Offenses," see 27 Ga. St. U. L. Rev. 131 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 139 (2012). For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 79 (2015). For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 31 (2016). For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017). For annual survey on local government law, see 71 Mercer L. Rev. 189 (2019).

For note on 1989 amendment to this Code section, see 6 Ga. St. U. L. Rev. 324 (1989). For note on 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 344 (1992). For note on 2000 amendment of this Code section, see 17 Ga. St. U. L. Rev. 316 (2000). For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 328 (2001).

For comment, "Confidentiality and Dissemination of Personal Information: An Examination of State Laws Governing Data Protection," see 41 Emory L.J. 1185 (1992).

JUDICIAL DECISIONS

Analysis

General Consideration
Application

General Consideration

Intent of General Assembly was to afford to public at large access to public records with the exceptions of certain information which the law exempts from disclosure. Griffin-Spalding County Hosp. Auth. v. Radio Station WKEU, 240 Ga. 444, 241 S.E.2d 196 (1978).

This section manifests the intent of the General Assembly that reports which include the elements of the tort of invasion of privacy are to be exempted from the disclosure requirements of the law; the right of privacy, protectable in tort, however extends only to unnecessary public scrutiny. Athens Observer, Inc. v. Anderson, 245 Ga. 63, 263 S.E.2d 128 (1980).

Construction. — Georgia Supreme Court concludes that the right of access afforded by the Open Records Act, O.C.G.A. § 50-18-70(b) et seq., is a public right of the people as a whole and, as such, it could not vest in any particular persons, whether upon the making of a request for public records, or upon the filing of an action to enforce the public right; thus, there is no constitutional impediment to the retroactive modification of the Act by subsequent legislation. Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

Construction of statutory exemptions. — Any purported statutory exemption from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., must be narrowly construed. Hardaway Co. v. Rives, 262 Ga. 631, 422 S.E.2d 854 (1992); City of Brunswick v. Atlanta Jour-

nal & Constitution, 214 Ga. App. 150, 447 S.E.2d 41 (1994).

Supreme Court of Georgia interpreted O.C.G.A. § 50-18-72(a)(47) to provide that Quick Start records disclosing an economic development project are excepted only to the extent that no binding commitment has been secured, but the exception for Quick Start records relating to job applicants or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity is not so limited. Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

Statutory exception in O.C.G.A. § 50-18-72(a)(47) may constitutionally be applied retroactively. Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

In a suit wherein requestors sought access to Quick Start records under O.C.G.A. § 50-18-72(a)(47), the statute applied retroactively to the case but the case required a remand for the trial court to sort out the extent to which the specific parts of the requests sought only records that were excepted under § 50-18-72(a)(47) and to dismiss the lawsuit as to those parts of the requests. Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

Open Records Act, O.C.G.A. § 50-18-72(a)(47), provides explicitly that § 50-18-72(a)(47) shall apply retroactively to any request for public records made prior to the effective date of the Act. Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

Exemption for law enforcement records. — O.C.G.A. § 50-18-72(a)(4) exempts law enforcement records from disclosure to the extent the records are part of a pending investigation. A seemingly inactive investigation which has not yet resulted in a prosecution logically remains undecided, and is therefore "pending" until the investigation is concluded and the file closed. Unified Gov't v. Athens Newspapers, LLC, 284 Ga. 192, 663 S.E.2d 248 (2008).

Failure to cite exemption. — Under the Open Records Act, O.C.G.A. § 50-18-70 et seq., a city could not rely on the exemption under O.C.G.A. § 50-18-72(a)(4) because the city had not cited the statute in a timely written response as required by § 50-18-72(h). The city's response was untimely and not in writing, and in citing the statute in the city's answer, the city failed to cite the subsection and paragraph relied upon. Jaraysi v. City of Marietta, 294 Ga. App. 6, 668 S.E.2d 446 (2008).

Time for responding to records request. — Under O.C.G.A. §§ 50-18-70(f) and 50-18-72(h), the three-day time period to respond to a records request commences upon delivery of the request to the agency, rather than the particular employee in charge of the records. Unified Gov't v. Athens Newspapers, LLC, 284 Ga. 192, 663 S.E.2d 248 (2008).

When a city did not comply with the three-business-day time restriction for responding to an open records request, the city violated the Open Records Act, O.C.G.A. § 50-18-70 et seq., even if the city later made all of the requested documents available, and the trial court erred in granting summary judgment to the city. Jaraysi v. City of Marietta, 294 Ga. App. 6, 668 S.E.2d 446 (2008).

Inquiries under Open Records Act. — In suits under the Open Records Act, O.C.G.A. § 50-18-70 et seq., the first inquiry is whether the records are "public records"; if the records are, the second inquiry is whether the records are protected from disclosure under the list of exemptions or under any other statute; if the records are not exempt, then the question is whether the records should be protected by court order, but only if there is a claim that disclosure would invade individual privacy. Hardaway Co. v. Rives, 262 Ga. 631, 422 S.E.2d 854 (1992).

As a police department's investigation of an unsolved rape and murder remained "pending" under O.C.G.A. § 50-18-72(a)(4) until the file was closed, the county was not obliged to disclose records of the investigation to a newspaper under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq. Unified Gov't v. Athens Newspapers, LLC, 284 Ga. 192, 663 S.E.2d 248 (2008).

Records open to public inspection unless closed by specific exception. — Underlying implication of this section is that all records of all state, county, and municipal authorities are open to public

General Consideration (Cont'd)

inspection unless closed by a specific exception, and that the records of hospital authorities are not in any respect different from those of other authorities when the issue is one of whether the particular record is open to public inspection under the general provisions of this article or is closed to public inspection under a specific statutory exception. Doe v. Sears, 245 Ga. 83, 263 S.E.2d 119, appeal dismissed and cert. denied, 446 U.S. 979, 100 S. Ct. 2958, 64 L. Ed. 2d 836 (1980).

Trial court properly granted summary judgment to the corporation on the corporation's request that the individual disclose to the corporation the individual's tax records so that the corporation could evaluate whether the individual was properly awarded a city contract based on the city's designation of the individual's business as a disadvantaged business; the corporation sought the information for a legitimate, limited purpose and the individuals could not show a specific exception that would bar disclosure of those records. City of Atlanta v. Corey Entm't, Inc., 278 Ga. 474, 604 S.E.2d 140 (2004).

Agency limited to authority cited in denial of initial request. — Pursuant to O.C.G.A. § 50-18-72(h), in denying a request for records under the Open Records Act (ORA), an agency was allowed to rely only on the legal authority specified in a response denying an initial request so an insurance commissioner was not allowed to deny an ORA request for records relating to an investigation of an insurer only on the insurer's proffered basis of the pendency of the investigation, and as the insurer had already been given the chance to review the report and resolve the matter, but later withdrew the insurer's request for a hearing, the commissioner's general policy of not releasing reports until the subject of the investigation had a chance to review the report and resolve the matter was unauthorized. Hoffman v. Oxendine, 268 Ga. App. 316, 601 S.E.2d 813 (2004).

Construed with 42 U.S.C § 1395bb(a). — There is no requirement under O.C.G.A. § 50-18-72 that a report generated by or used by the state for state purposes be exempted from disclosure merely because that report would be kept confidential if generated or used by the federal government for federal purposes. Georgia Hosp. Ass'n v. Ledbetter, 260 Ga. 477, 396 S.E.2d 488 (1990).

Right to privacy determined by examining tort of invasion of privacy. — Invasion of personal privacy encompassed as an exception to the right of the public to access is to be determined by an examination of the tort of invasion of privacy. Harris v. Cox Enters., Inc., 256 Ga. 299, 348 S.E.2d 448 (1986).

Limits of right of privacy. — Right of privacy does not prohibit the communication of any matter though of a private nature when the publication is made under circumstances which would render it a privileged communication according to the law of libel and slander. Dennis v. Adcock, 138 Ga. App. 425, 226 S.E.2d 292 (1976).

Cited in Northside Realty Assocs. v. Community Relations Comm'n, 240 Ga. 432, 241 S.E.2d 189 (1978); Atchison v. Hospital Auth., 245 Ga. 494, 265 S.E.2d 801 (1980); City of Atlanta v. Pacific & S. Co., 257 Ga. 587, 361 S.E.2d 484 (1987); McBride v. Wetherington, 199 Ga. App. 7, 403 S.E.2d 873 (1991); Bogle v. McClure, 332 F.3d 1347 (11th Cir. 2003); Walker v. Johnson, 282 Ga. 168, 646 S.E.2d 44 (2007); Bd. of Regents of the Univ. Sys. of Ga. v. One Sixty Over Ninety, LLC, 351 Ga. App. 133, 830 S.E.2d 503 (2019); Geer v. Phoebe Putney Health Sys., 310 Ga. 279, 849 S.E.2d 660 (2020).

Application

Privacy rights of a private transportation company and school bus drivers could not outweigh the public interest in the disclosure of information in personnel records regarding the drivers. Hackworth v. Board of Educ., 214 Ga. App. 17, 447 S.E.2d 78 (1994).

Confidential tax information not disclosable. — Confidential tax information in an investigative file of the Attorney General was not subject to disclosure under O.C.G.A. § 50-18-72. Bowers v. Shelton, 265 Ga. 247, 453 S.E.2d 741 (1995).

Election records. — Trial court properly held that a CD-ROM that contained passwords, encryption codes, and other security information would compromise election security and thus was exempt from disclosure under O.C.G.A. § 50-18-72(a)(15)(A)(iv). Although the requestor argued that the state could copy the CD-ROM without including such information, O.C.G.A. § 50-18-70(d) provided that an agency was not required to create records that were not in existence at the time of the request. Smith v. DeKalb County, 288 Ga. App. 574, 654 S.E.2d 469 (2007), cert. denied, No. S08C0596, 2008 Ga. LEXIS 291 (Ga. 2008).

Law enforcement records. — Incident reports of a city police department were exempt from disclosure under O.C.G.A. § 50-18-72(a)(3) to the extent the reports contained confidential information, even though the reports would not be exempted under O.C.G.A. § 50-18-72(a)(4) as not being part of a pending investigation or prosecution. Atlanta Journal & Constitution v. City of Brunswick, 265 Ga. 413, 457 S.E.2d 176 (1995).

In an action by newspapers for disclosure of certain incident reports of a city police department, it was not error to bar the newspapers from an ex parte hearing held to determine the extent to which the reports might contain confidential information that would be exempt from disclosure; affirming City of Brunswick v. Atlanta Journal & Constitution, 214 Ga. App. 150, 447 S.E.2d 41 (1994). Atlanta Journal & Constitution v. City of Brunswick, 265 Ga. 413, 457 S.E.2d 176 (1995).

Law enforcement personnel. — When a complaint was delivered to a sheriff's captain who delivered the complaint to the deputy named as a defendant in the complaint, service upon the deputy was insufficient since the prohibition against disclosure of the home address of a law enforcement officer under O.C.G.A. § 50-18-72 did not validate the delivery to the captain as service under O.C.G.A. § 9-11-4(e)(7). Melton v. Wiley, 262 Fed. Appx. 921 (11th Cir. 2008) (Unpublished).

Incident reports maintained by a city on a series of sexual assaults could be exempted from disclosure if disclosure would reveal confidential information or endanger the lives of various individuals. City of Brunswick v. Atlanta Journal & Constitution, 214 Ga. App. 150, 447 S.E.2d 41 (1994), aff'd, 265 Ga. 413, 457 S.E.2d 176 (1995).

Police reports concerning rape were not protected by the "similar file" exemption of O.C.G.A. § 50-18-72(a)(2), because the documents were expressly governed by O.C.G.A. § 50-18-72(a)(4) and concerned a subject of "legitimate public inquiry." Doe v. Board of Regents, 215 Ga. App. 684, 452 S.E.2d 776 (1994).

University police reports concerning incident of alleged rape were public records obtainable by a student newspaper; the reports were not exempt under O.C.G.A. § 50-18-72(a)(4), since the reports were not the subject of a pending investigation and involved a matter which had been terminated. Doe v. Board of Regents, 215 Ga. App. 684, 452 S.E.2d 776 (1994).

No first amendment right to accident reports. — Private investigator seeking information for commercial solicitation has no first amendment constitutional right of special access to motor vehicle accident reports. Spottsville v. Barnes, 135 F. Supp. 2d 1316 (N.D. Ga. 2001).

Use of medical records in relevant court proceedings. — Although unauthorized publicity of the contents of hospital records, a patient's health, patient's anatomical debilities, and the opinions, diagnoses, and tests of the patient's doctors would fall within the restriction of this section, the section does not preclude the use of the records in relevant court proceedings, nor does the section provide a basis for a tort action for invasion of privacy when such material is admitted into evidence. Dennis v. Adcock, 138 Ga. App. 425, 226 S.E.2d 292 (1976) (see O.C.G.A. § 50-18-72).

Discovery request of voir dire notes premature. — Defendant's petition for a writ of mandamus pursuant to the Open Records Act, O.C.G.A. § 50-18-70 et seq., seeking discovery of the district attorney's

Application (Cont'd)

voir dire notes was premature as the defendant still retained the right to do so in a habeas proceeding. Hall v. Madison, 263 Ga. 73, 428 S.E.2d 345 (1993).

Private information protected. — Various factors weigh on the question of whether personal privacy protects information from disclosure. Among other things, the court should consider whether the information is unsubstantiated and based on hearsay, whether the information does not relate or relates only incidentally to the subject matter of the public record, and the remoteness in time of the events referred to. Harris v. Cox Enters., Inc., 256 Ga. 299, 348 S.E.2d 448 (1986).

Eminent domain cases. — Property has been "acquired" for purposes of the exemption set forth in O.C.G.A. § 50-18-72(a)(6) only after condemnation proceedings, including any litigation, have been completed. Real estate appraisals obtained by the Department of Transportation were not subject to disclosure when only the declaration of taking was filed and money was paid into court. Black v. Georgia DOT, 262 Ga. 342, 417 S.E.2d 655 (1992).

Pending-prosecution exemption of O.C.G.A. § 50-18-72(a)(4) refers to imminent adjudicatory proceedings of finite duration. The last phrase of that exemption is but one example of when a prosecution should not be considered "pending" for purposes of the exception. Parker v. Lee, 259 Ga. 195, 378 S.E.2d 677 (1989).

Invasion of privacy rights of murder victims. — In determining whether an invasion of the privacy rights of murder victims is warranted or unwarranted, the question can be stated in terms of whether the privacy interests of the deceased are outweighed by the interests of the public favoring disclosure. Napper v. Georgia Television Co., 257 Ga. 156, 356 S.E.2d 640 (1987).

"Investigative notes" not releasable. — "Investigative notes" are not within the category of law enforcement and prosecutorial documents authorized for release under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq.; investigative notes are "notes" not "reports," and cannot be classified as police arrest reports, accident reports, or incident reports. Lebis v. State, 212 Ga. App. 481, 442 S.E.2d 786 (1994).

Investigatory reports. — Investigatory report concerning claims of misconduct against an employee of the State Board of Pardons and Paroles was a public record and was not exempt from disclosure under O.C.G.A. § 50-18-72. Fincher v. State, 231 Ga. App. 49, 497 S.E.2d 632 (1998).

Hospital authority claimed certain records of its internal investigation of alleged sexual misconduct by its employees were exempt from disclosure under the attorney work product doctrine, pursuant to O.C.G.A. § 50-18-72(e)(2) of the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq. This claim failed, as the investigation, despite the involvement of counsel for the authority, was commenced not in response to any claims or threat of litigation, but because the authority received anonymous complaints from its employees about inappropriate sexual activity. Fulton DeKalb Hosp. Auth. v. Miller & Billips, 293 Ga. App. 601, 667 S.E.2d 455 (2008).

County's sheriff and district attorney were not required to release records relating to an inmate's death in custody under the Open Records Act, O.C.G.A. § 50-14-1 et seq., because the records came within the "pending prosecution" exemption to disclosure in O.C.G.A. § 50-18-72(a)(4). The exception for agencies under investigation did not apply because "agency," as defined in O.C.G.A. §§ 50-14-1(a)(1)(C) and 50-18-70(b), was not synonymous with "employee," and the agency itself was not under investigation. Media Gen. Operations, Inc. v. St. Lawrence, 337 Ga. App. 428, 787 S.E.2d 778 (2016).

Retrial possibility not grounds for nondisclosure of investigatory files. — When a murder conviction and death sentence resulting from the prosecution have been affirmed on appeal, but a rape conviction has been reversed on a ground that leaves the state free to retry the defendant, the possible retrial of the defendant does not warrant nondisclosure to the defendant of criminal investigatory files since the agency custodians of the

files at issue failed to carry the agency's burden of showing an imminent proceeding on the rape charge against the defendant to exempt such files from disclosure pursuant to O.C.G.A. § 50-18-72(a)(4). Parker v. Lee, 259 Ga. 195, 378 S.E.2d 677 (1989).

Tenants' rights of privacy protected from disclosure of certain information. — O.C.G.A. § 50-18-72 forbids disclosure to the general public from housing authority records or files of any information which would invade the constitutional, statutory, or common-law rights of the tenants to privacy. Doe v. Sears, 245 Ga. 83, 263 S.E.2d 119, appeal dismissed and cert. denied, 446 U.S. 979, 100 S. Ct. 2958, 64 L. Ed. 2d 836 (1980).

Ad valorem property tax records not confidential. — Ad valorem property tax records are not similar to medical records for the purpose of O.C.G.A. § 50-18-72 and are not required to be kept confidential. Pensyl v. Peach County, 252 Ga. 450, 314 S.E.2d 434 (1984).

County hospital employees' information disclosure. — Disclosure of the names, salaries, and job titles of county hospital employees is not an invasion of personal privacy as contemplated by the General Assembly to permit an exemption from disclosure, nor is the public interest in disclosure outweighed by benefits to the hospital accruing from nondisclosure. Richmond County Hosp. Auth. v. Southeastern Newspapers Corp., 252 Ga. 19, 311 S.E.2d 806 (1984).

Mere placement of records of Georgia Bureau of Investigation's investigation in the personnel file of an investigated public employee did not transform the records into personnel-related records. Irvin v. Macon Tel. Publishing Co., 253 Ga. 43, 316 S.E.2d 449 (1984).

Records of Georgia DOT. — Neither the "state matter" privilege nor the "secret of state" privilege exempted cost estimates of the DOT from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq. Hardaway Co. v. Rives, 262 Ga. 631, 422 S.E.2d 854 (1992).

Applications for position of university president. — Applications submitted by candidates for the position of Georgia State University president, and the resumes and vitae, which were products of the applicants themselves, although those materials were materials upon which, in part, "confidential evaluations" were based, were not evaluations. Hence, those materials were not exempt from disclosure. Board of Regents v. Atlanta Journal, 259 Ga. 214, 378 S.E.2d 305 (1989).

Records containing city cellular telephone bills, including numbers assigned to city cellular telephones, were not exempt from disclosure under O.C.G.A. § 50-18-72(a)(2). Dortch v. Atlanta Journal, 261 Ga. 350, 405 S.E.2d 43 (1991).

Trade secrets. — After a company made reasonable efforts to restrict the dissemination of trade secret information except for providing the information to the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources, trade secret status was not lost simply because the company did not notify the EPD each time that the company provided EPD with information containing trade secrets. Theragenics Corp. v. Department of Natural Resources, 244 Ga. App. 829, 536 S.E.2d 613 (2000), aff'd., Ga. Dep't of Natural Res. v. Theragenics Corp., 273 Ga. 724, 545 S.E.2d 904 (2001).

Given the highly competitive nature of the asphalt industry in the State of Georgia, the trial court did not err in permanently enjoining the DOT from giving unredacted copies of documents, which contained trade secrets and confidential technical specifications relating to the mix design, to a competitor of a group of contractors; further, the public could ascertain whether a contractor's asphalt product met DOT requirements by examining information on the forms, which was not included in the trial court's injunction, and the records did not fall within the exception to Open Records Act, O.C.G.A. § 50-18-70 et seq., disclosure because the contractors were not required by law to submit the information to the DOT. Douglas Asphalt Co. v. E. R. Snell Contr., Inc., 282 Ga. App. 546, 639 S.E.2d 372 (2006), cert. denied, No. S07C0498, 2007 Ga. LEXIS 140 (2007).

Trade secrets exemption of O.C.G.A. § 50-18-72(b)(1) means that public re-

Application (Cont'd)

cords are exempt from disclosure if the records constitute trade secrets, even if the records are submitted to a public agency, so long as the submission was "required by law"; under this construction, public records that remain in the sole possession of a private entity are exempt from disclosure if the records otherwise qualify as trade secrets under the two-part test set forth in O.C.G.A. § 10-1-761(4). As such, the trial court erred in concluding that documents of the administrator of the State Health Benefit Plan could not be exempt from disclosure because the documents were never "required by law to be submitted" to the Georgia Department of Community Health. United HealthCare of Ga., Inc. v. Ga. Dep't of Cmty. Health, 293 Ga. App. 84, 666 S.E.2d 472 (2008).

By voluntarily entering into a public contract to administer public funds, the administrator of the State Health Benefit Plan did not waive the right to have the administrator's documents protected as trade secrets. A private entity's voluntary participation in a government contract did not, standing alone, strip the entity's documents of its trade secret status. United HealthCare of Ga., Inc. v. Ga. Dep't of Cmty. Health, 293 Ga. App. 84, 666 S.E.2d 472 (2008).

Bidder on a public project failed to provide any evidence to support the bidder's claim that the detailed pricing information in the bidder's unredacted price proposal would enable a competitor to deduce how the bidder designed the bidder's systems and, therefore, merited protection under the trade secrets exemption to the Open Records Act, O.C.G.A. § 50-18-72(b)(1). State Rd. & Tollway Auth. v. Elec. Transaction Consultants Corp., 306 Ga. App. 487, 702 S.E.2d 486 (2010).

Nondisclosure of research correspondence. — Foundation that had partnered with a state university to study the effect of payday loans on consumer financial health could not prevent the disclosure of university records of the study under the Open Records Act's, O.C.G.A. § 50-14-1 et seq., exemptions for certain research materials, O.C.G.A. § 50-18-72(a)(35) and (36), because those exemptions did not prohibit release. Campaign for Accountability v. Consumer Credit Research Found., 303 Ga. 828, 815 S.E.2d 841 (2018).

Attorney fees. — Trial court erred in entering summary judgment for a county and a county manager in an employee's suit for attorney fees arising out of a Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., request as the employee showed that the ORA was violated as the manager did not respond to the request within the required three-day period; the case was remanded for a determination of whether the ORA violation was without substantial justification or whether special circumstances existed that counseled against awarding attorney fees. Wallace v. Greene County, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

County's summary judgment motion was properly denied as: (1) the county violated the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., by failing to respond to a bidder's request within three business days; (2) the county did not produce any documents for over a month and did not provide all requested documents until after a civil suit for attorney's fees was filed; and (3) the county further failed to explain the county's dilatory conduct in any evidence submitted with the county's summary judgment motion. Benefit Support, Inc. v. Hall County, 281 Ga. App. 825, 637 S.E.2d 763 (2006), cert. denied, No. S07C0306, 2007 Ga. LEXIS 214 (Ga. 2007).

OPINIONS OF THE ATTORNEY GENERAL

Trade secrets and confidential business information. — Trade secrets and other confidential business information received by the state energy office from the federal government and businesses in the private sector are not within the purview of the provisions on inspection of public records (see O.C.G.A. T. 50, C. 18,

A. 4), and may be treated as confidential by that state agency. 1974 Op. Att'y Gen. No. U74-113.

Disclosure requirements applicable to state trade secrets. — Trade secrets of any state department, agency, board, bureau, commission, or authority are not exempt from public disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., although information in the possession of such entity which is a trade secret of others must be protected from disclosure. If it is not clear that the requested information constitutes a trade secret of another, the entity contending that the information is a trade secret may exercise the entity's rights to protect the information pursuant to O.C.G.A. § 10-1-762. 1994 Op. Att'y Gen. No. 94-15.

Former prison inmate's prison medical records. — Department of Offender Rehabilitation (now Corrections) may supply copies of former inmate's prison medical records to person other than an inmate who is neither a doctor nor the agent of a hospital. As a condition precedent to delivery of such records, however, the department should demand proof of the requesting party's authority and might also condition delivery upon tender of payment sufficient to cover the department's expenses in copying the material requested. 1973 Op. Att'y Gen. No. 73-77.

Reports prepared in evaluating disability claim. — If the medical board of the Employees' Retirement System determines that the examining physician has met the criteria of O.C.G.A. § 31-33-2(c) in recommending nondisclosure of medical records prepared in the evaluation of a claim for disability retirement benefits, it is appropriate to refuse copies of those reports to the applicant who was examined. 1992 Op. Att'y Gen. No. 92-19.

Department of Natural Resources' satellite imagery database. — Department of Natural Resources is not required to provide public access to raw or unenhanced satellite data purchased from EOSAT (a firm that markets unenhanced satellite data), but it must provide public access to the enhanced database of satellite imagery. 1992 Op. Att'y Gen. No. 92-13.

Voter's unlisted telephone number included on voter registration card. — Voter registrars have no authority to request the inclusion of a telephone number on a voter registration card, and in the absence of statutory authority either to require or to request that an elector provide a telephone number, whether listed or unlisted, for a voter registration card, the disclosure of an unlisted number pursuant to an Open Records Act, O.C.G.A. § 50-18-70 et seq., request may constitute an unwarranted invasion of privacy. Hence, a voter's unlisted telephone number should not be disclosed by voter registrars under an Open Records Act request. 1990 Op. Att'y Gen. No. 90-5.

Prerequisites to disclosure of information in medical files. — No information contained in confidential medical files should be released to a requesting party unless some prior assurance is given that the requesting party is either the subject of the file in question or that the requesting party has in fact been authorized by that person to receive the information which the requesting party seeks. 1973 Op. Att'y Gen. No. 73-77.

Subsequent Injury Trust Fund Board meetings. — Portion of Subsequent Injury Trust Fund Board meetings in which the medical and rehabilitation records of an individual are discussed are not subject to the Open Meetings Law, O.C.G.A. § 50-18-70 et seq. 1991 Op. Att'y Gen. No. 91-8.

Public project records exempt from disclosure. — When a public agency is assembling more than one parcel of real property for a public project, records relative to that "transaction" and "property" as a whole are exempt from disclosure under O.C.G.A. § 50-18-72(a)(6) until all the property to be acquired is acquired or is abandoned or terminated from the project. 1995 Op. Att'y Gen. No. 95-10.

Community development block grant program information. — Information provided to the Department of Community Affairs in connection with the community development block grant program is not exempt from disclosure under O.C.G.A. § 50-18-72 unless such information constitutes a trade secret. 1989 Op. Att'y Gen. 89-35.

Burden of explaining why public records not subject to disclosure. — If there is a request for identifiable public records, the burden is cast upon the custodian of those records to explain why the records should not be disclosed. 1990 Op. Att'y Gen. No. 90-5.

Contracts with federal agencies. — Agencies covered by the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., may not by contract with a federal agency create an exception to the Act and make otherwise public documents in the hands of the agency confidential unless the contract provision is mandated by federal law or regulation. 2005 Op. Att'y Gen. No. U2005-1.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statutory provisions relating to public access to police records, 82 A.L.R.3d 19.

Disclosure of electronic data under state public records and freedom of information acts, 54 A.L.R.6th 653.

Disclosure, under State Freedom of Information or Records Act, of video obtained by police or other law enforcement authorities from dash camera, mobile video recorder, or security or surveillance camera, 48 A.L.R.7th Art. 2.

Construction and application of public domain doctrine allowing courts to disregard FOIA law enforcement exemption based on prior public release of requested records, 3 A.L.R. Fed. 3d 5.

Construction and application of public domain or official acknowledgment doctrine allowing courts to disregard FOIA exemption, other than law enforcement exemption, based on prior public release of requested records, 17 A.L.R. Fed. 3d 1.

Construction and application of exemption 7(E) of Freedom of Information Act ("FOIA"), 5 U.S.C.A. § 552(b)(7)(E), for records or information compiled for law enforcement purposes to extent that production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of law, 70 A.L.R. Fed. 2d 493.

When are government records "similar files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain personnel, medical, and "similar" files, 106 A.L.R. Fed. 94.

What is agency subject to Privacy Act Provisions (5 USCA § 552a), 150 A.L.R. Fed. 521.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

What are interagency or intra-agency memorandums or letters exempt from disclosure under the Freedom of Information Act (5 U.S.C.A. § 552(b)), 168 A.L.R. Fed. 143.

What matters are exempt from disclosure under Freedom of Information Act (5 U.S.C.A. § 552(b)) as "specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy," 169 A.L.R. Fed. 495.

What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of confidential source and, in some instances, of information furnished by confidential source (5 U.S.C.A. § 552(b)), 171 A.L.R. Fed. 193.

Construction and application of FOIA exemption 7(f), 5 U.S.C.A. § 552(b)(7)(F), which permits withholding of information compiled for law enforcement purposes if disclosure could reasonably be expected to endanger life or physical safety, 184 A.L.R. Fed. 435.

Use of affidavits to substantiate federal agency's claim of exemption from request for documents under Freedom of Information Act (5 U.S.C.A. § 552), 187 A.L.R. Fed. 1.

When are government records reasonably "expected to interfere with enforcement proceedings" so as to be exempt from disclosure under Freedom of Information Act provision (5 U.S.C.A. § 552(b)(7)(a))

exempting any information "compiled for law enforcement purposes" whenever it "could reasonably be expected to interfere with enforcement proceedings," 189 A.L.R. Fed. 1.

50-18-73. Jurisdiction to enforce article; attorney's fees and litigation expenses; good faith reliance as defense to action.

(a) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. In addition, the Attorney General shall have authority to bring such actions in his or her discretion as may be appropriate to enforce compliance with this article and to seek either civil or criminal penalties or both.

(b) In any action brought to enforce the provisions of this chapter in which the court determines that either party acted without substantial justification either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of such decision.

History. — Code 1981, § 50-18-73, enacted by Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, § 4; Ga. L. 1992, p. 1061, § 9; Ga. L. 1998, p. 595, § 2; Ga. L. 2012, p. 218, § 2/HB 397.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "it" was substituted for "if" in subsection (b).

Law reviews. — For review of 1998 legislation relating to state government, see 15 Ga. St. U.L. Rev. 242 (1998). For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006). For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012). For annual survey on local government law, see 71 Mercer L. Rev. 189 (2019).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992).

JUDICIAL DECISIONS

Actions to enjoin disclosure of information authorized. — Open Records Act, O.C.G.A. § 50-18-70 et seq., provides the jurisdictional basis for a cause of action by individuals to enjoin the disclosure of legally protected information. Bowers v. Shelton, 265 Ga. 247, 453 S.E.2d 741 (1995).

Trial court incorrectly held that counterclaim alleging violations of

the Open Records Act, O.C.G.A. § 50-18-70 et seq., was based on the prayer for relief contained in the original complaint filed by a housing authority, and since the housing authority failed to show that the factual issues regarding the counterclaim must have been decided in the authority's favor, the trial court erred in granting summary judgment in favor of the housing authority on this claim. Strange v. Hous. Auth. of Summerville, 268 Ga. App. 403, 602 S.E.2d 185 (2004).

Anit-SLAPP statute did not apply to counterclaim for attorney's fees. — In an Open Records Act, O.C.G.A. § 50-14-1 et seq., claim against a hospital, the requestor's motion to strike the hospital's counterclaim for attorney's fees pursuant to the anti-SLAPP statute, O.C.G.A. § 9-11-11.1(b)(1), was properly denied; O.C.G.A. § 50-18-73(b) required consideration of the fee claim at the end of the litigation, using "the record as a whole," not at the outset of the litigation. Geer v. Phoebe Putney Health Sys., 310 Ga. 279, 849 S.E.2d 660 (2020).

Award of attorney's fees is discretionary under O.C.G.A. § 50-18-73 and the decision of the superior court will be interfered with only if this discretion has been abused. Richmond County Hosp. Auth. v. Southeastern Newspapers Corp., 252 Ga. 19, 311 S.E.2d 806 (1984); GMS Air Conditioning, Inc. v. Department of Human Resources, 201 Ga. App. 136, 410 S.E.2d 341 (1991).

Trial court erred in entering summary judgment for a county and a county manager in an employee's claim for attorney fees arising out of a Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., request as the employee showed that the ORA was violated as the manager did not respond to the request within the required three-day period; the case was remanded for a determination of whether the ORA violation was without substantial justification or whether special circumstances existed that counseled against awarding attorney fees. Wallace v. Greene County, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Attorney's fees and costs award was proper. — Insofar as the court found a violation of the Open Records Act, O.C.G.A. § 50-18-70 et seq., and the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., and awarded attorney's fees and costs pursuant to O.C.G.A. § 50-18-73(b), the trial court ruled correctly. Decatur County v. Bainbridge Post Searchlight, Inc., 280 Ga. 706, 632 S.E.2d 113 (2006).

Abuse of discretion not found. — Trial court did not abuse the court's discretion in denying an individual's petition for mandamus, attorney's fees, and expenses under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., as the individual sued without following-up with the city on the records request; the individual failed to show that the city acted without substantial justification in not complying with the Act as required by O.C.G.A. § 50-18-73(b). Everett v. Rast, 272 Ga. App. 636, 612 S.E.2d 925 (2005).

Compensatory and punitive damages unauthorized. — O.C.G.A. § 50-18-73 authorizes an award of attorney's fees and expenses of litigation in actions brought to enforce the statute only if the court determines that the action constituting a violation of the statute was completely without merit as to law or fact. Compensatory and/or punitive damages are not authorized. McBride v. Wetherington, 199 Ga. App. 7, 403 S.E.2d 873 (1991).

E-mails sought not existing public record. — Trial court did not err in granting the Georgia Department of Agriculture summary judgment in a corporation's action seeking to compel the Department to comply with the corporation's request for records under the Georgia Open Records Act (GORA), O.C.G.A. § 50-18-70 et seq., because the Department provided the corporation with reasonable access to the information the corporation sought; because the information the corporation sought, e-mail correspondence, was not an existing public record, non-disclosure thereof did not violate GORA, and the Department did not maintain the e-mails on the Department's system and would have to extract the e-mails from backup tapes using a laborious compilation process. Griffin Indus. v. Ga. Dep't of Agric., 313 Ga. App. 69, 720 S.E.2d 212 (2011).

Mandamus. — Because O.C.G.A. § 50-18-73(a) of the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq.,

provided a remedy that was as complete and convenient as mandamus, the trial court did not err in dismissing the individuals' O.C.G.A. § 9-6-27(b) petition for mandamus. Tobin v. Cobb County Bd. of Educ., 278 Ga. 663, 604 S.E.2d 161 (2004).

Judgment dismissing the plaintiff's mandamus action against a city seeking to compel compliance with the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., was affirmed because the Act's civil penalties provision afforded the plaintiff a remedy as complete and convenient as mandamus by providing its own cause of action for enforcement in O.C.G.A. § 50-18-73(a). Blalock v. Cartwright, 300 Ga. 884, 799 S.E.2d 225 (2017).

Private right of action exists under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq.; thus, mandamus relief is not only unnecessary but improper and, to the extent that cases like Evans v. Georgia Bureau of Investigation, 297 Ga. 318 (2015), suggest otherwise, those cases are disapproved. Blalock v. Cartwright, 300 Ga. 884, 799 S.E.2d 225 (2017).

Summary judgment properly denied. — County's summary judgment motion was properly denied as: (1) the county violated the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., by failing to respond to a bidder's request within three business days; (2) the county did not produce any documents for over a month and did not provide all requested documents until after a civil suit for attorney's fees was filed; and (3) the county further failed to explain the county's dilatory conduct in any evidence submitted with the county's summary judgment motion. Benefit Support, Inc. v. Hall County, 281 Ga. App. 825, 637 S.E.2d 763 (2006), cert. denied, No. S07C0306, 2007 Ga. LEXIS 214 (Ga. 2007).

Cited in Pensyl v. Peach County, 252 Ga. 450, 314 S.E.2d 434 (1984); Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013); Martin v. Ledbetter, 342 Ga. App. 208, 802 S.E.2d 432 (2017); Campaign for Accountability v. Consumer Credit Research Found., 303 Ga. 828, 815 S.E.2d 841 (2018).

RESEARCH REFERENCES

ALR. — Exhaustion of administrative remedies as prerequisite to judicial action to compel disclosure under state freedom of information acts, 114 A.L.R.5th 283.

Construction and application of state freedom of information act provisions concerning award of attorney's fees and other litigation costs, 118 A.L.R.5th 1.

Allowance of punitive damages in state freedom of information actions, 13 A.L.R.6th 721.

50-18-74. Penalty for violations; procedure for commencement of prosecution.

(a) Any person or entity knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article, by knowingly and willingly failing or refusing to provide access to such records within the time limits set forth in this article, or by knowingly and willingly frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $1,000.00 for the first violation. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this article against any person who negligently violates the terms of this article in an amount not to exceed $1,000.00 for the first violation. A civil penalty or criminal fine not to exceed $2,500.00 per violation may be imposed for each

additional violation that the violator commits within a 12 month period from the date the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions. In addition, persons or entities that destroy records for the purpose of preventing their disclosure under this article may be subject to prosecution under Code Section 45-11-1.

(b) A prosecution under this Code section may only be commenced by issuance of a citation in the same manner as an arrest warrant for a peace officer pursuant to Code Section 17-4-40; such citation shall be personally served upon the accused. The defendant shall not be arrested prior to the time of trial, except that a defendant who fails to appear for arraignment or trial may thereafter be arrested pursuant to a bench warrant and required to post a bond for his or her future appearance.

History. — Code 1981, § 50-18-74, enacted by Ga. L. 1999, p. 552, § 5; Ga. L. 2012, p. 218, § 2/HB 397.

Editor's notes. — The former Code section, relating to unlawful refusal to provide access to public records or to allow copying of such records, was based on Ga. L. 1982, p. 1789, § 1, and was repealed and reserved by Ga. L. 1992, p. 1061, § 10, effective April 6, 1992.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

JUDICIAL DECISIONS

Attorney fees might be appropriate. — Trial court erred in entering summary judgment for a county and a county manager in an employee's claim for attorney fees arising out of a Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., request as the employee showed that the ORA was violated as the manager did not respond to the request within the required three-day period; the case was remanded for a determination of whether the ORA violation was without substantial justification or whether special circumstances existed that counseled against awarding attorney fees. Wallace v. Greene County, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Cannot strike counterclaim for attorney fees. — Georgia Supreme Court affirmed the judgment of the Georgia Court of Appeals in Geer v. Phoebe Putney Health System, Inc., 350 Ga. App. 127 (2019), that held that Georgia's anti-SLAPP statute, O.C.G.A. § 9-11-11.1, could not be invoked to strike a counterclaim for attorney fees brought under the Open Records Act, O.C.G.A. § 50-18-73(b), in response to a suit to enforce a request under Georgia's Open Records Act. Geer v. Phoebe Putney Health Sys., 310 Ga. 279, 849 S.E.2d 660 (2020).

RESEARCH REFERENCES

ALR. — Allowance of punitive damages in state freedom of information actions, 13 A.L.R.6th 721.

Construction and application of public domain doctrine allowing courts to disregard FOIA law enforcement exemption based on prior public release of requested records, 3 A.L.R. Fed. 3d 5.

Construction and application of public domain or official acknowledgment doctrine allowing courts to disregard FOIA exemption, other than law enforcement

exemption, based on prior public release of requested records, 17 A.L.R. Fed. 3d 1.

50-18-75. Redesignated.

Editor's notes. — Ga. L. 2017, p. 774, § 50/HB 323, redesignated former Code Section 50-18-75 as present Code Section 28-4-3.1.

50-18-76. Written matter exempt from disclosure under Code Section 31-10-25.

No form, document, or other written matter which is required by law or rule or regulation to be filed as a vital record under the provisions of Chapter 10 of Title 31, which contains information which is exempt from disclosure under Code Section 31-10-25, and which is temporarily kept or maintained in any file or with any other documents in the office of the judge or clerk of any court prior to filing with the Department of Public Health shall be open to inspection by the general public, even though the other papers or documents in such file may be open to inspection.

History. — Code 1981, § 50-18-76, enacted by Ga. L. 1991, p. 1943, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 218, § 2/HB 397.

Cross references. — Juvenile Court records, Uniform Rules for the Juvenile Courts of Georgia, Rule 3.1.

50-18-77. Inapplicable to public records.

The procedures and fees provided for in this article shall not apply to public records, including records that are exempt from disclosure pursuant to Code Section 50-18-72, which are requested in writing by a state or federal grand jury, taxing authority, law enforcement agency, or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation. The lawful custodian shall provide copies of such records to the requesting agency unless such records are privileged or disclosure to such agencies is specifically restricted by law.

History. — Code 1981, § 50-18-77, enacted by Ga. L. 1999, p. 809, § 6; Ga. L. 2012, p. 218, § 2/HB 397.

Law reviews. — For note on 1999 enactment of this Code section, see 16 Ga. St. U.L. Rev. 268 (1999).

ARTICLE 5

STATE RECORDS MANAGEMENT

50-18-90. Short title.

This article shall be known and may be cited as the "Georgia Records Act."

History. — Ga. L. 1972, p. 1267, § 1.

JUDICIAL DECISIONS

Cited in Griffin Indus. v. Ga. Dep't of Agric., 313 Ga. App. 69, 720 S.E.2d 212 (2011).

50-18-91. Definitions.

As used in this article, the term:

(1) "Agency" means any state office, department, division, board, bureau, commission, authority, or other separate unit of state government created or established by law.

(2) "Court record" means all documents, papers, letters, maps, books (except books formally organized in libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or, in the necessary performance of any judicial function, created or received by an official of the Supreme Court, Court of Appeals, and any superior, state, juvenile, probate, or magistrate court. "Court record" includes records of the offices of the judge, clerk, prosecuting attorney, public defender, court reporter, or any employee of the court.

(3) "Division" means the Division of Archives and History of the University System of Georgia.

(4) "Georgia State Archives" means an establishment maintained by the division for the preservation of those records and other papers that have been determined by the division to have sufficient historical and other value to warrant their continued preservation by the state and that have been accepted by the division for deposit in its custody.

(5) "Records" means all documents, papers, letters, maps, books (except books in formally organized libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in performance of functions by any agency.

(6) "Records center" means an establishment maintained by the division primarily for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or office space.

(7) "Record series" means documents or records having similar physical characteristics or relating to a similar function or activity that are filed in a unified arrangement.

(8) "Records management" means the application of management techniques to the creation, utilization, maintenance, retention, preservation, and disposal of records undertaken to reduce costs and improve efficiency of record keeping. "Records management" includes management of filing and microfilming equipment and supplies; filing and information retrieval systems; files, correspondence, reports, and forms management; historical documentation; micrographics; retention programming; and vital records protection.

(9) "Retention schedule" means a set of disposition instructions prescribing how long, where, and in what form a record series shall be kept.

(10) "Vital records" means any record vital to the resumption or continuation of operations, or both; to the re-creation of the legal and financial status of government in the state; or to the protection and fulfillment of obligations to citizens of the state.

History. — Ga. L. 1972, p. 1267, § 2; Ga. L. 1973, p. 691, §§ 1, 2; Ga. L. 1975, p. 675, § 1; Ga. L. 1978, p. 1372, § 4; Ga. L. 1983, p. 884, § 4-1; Ga. L. 1984, p. 22, § 50; Ga. L. 2002, p. 532, § 23; Ga. L. 2013, p. 594, § 2-3/HB 287.

OPINIONS OF THE ATTORNEY GENERAL

Authority of agency head. — Agency head has direct supervisory control over the agency records management officer and, subject to the approval of the State Records Committee, direct control over the agency's records management program. 1975 Op. Att'y Gen. No. 75-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 1.
C.J.S. — 76 C.J.S., Records, § 1 et seq.

50-18-92. Creation of State Records Committee; membership; duties; retention schedules; appeal to committee by agency heads; court records.

(a) There is created the State Records Committee, to be composed of the Governor, the Secretary of State, the chancellor of the University System of Georgia, an appointee of the Governor who is not the

Attorney General, the state auditor, and an officer of a governing body, as such terms are defined in subsection (a) of Code Section 50-18-99, to be appointed by the chancellor, or their designated representatives. It shall be the duty of the committee to review, approve, disapprove, amend, or modify retention schedules submitted by agency heads, school boards, county governments, and municipal governments through the division for the disposition of records based on administrative, legal, fiscal, or historical values. Except as provided in Code Section 50-18-96, the retention schedules, once approved, shall be authoritative, shall be directive, and shall have the force and effect of law. A retention schedule may be determined by four members of the committee. Retention schedules may be amended by the committee on change of program mission or legislative changes affecting the records. The chancellor of the University System of Georgia shall serve as chairperson of the committee and shall schedule meetings of the committee as required. Four members shall constitute a quorum. Each agency head has the right of appeal to the committee for actions taken under this Code section.

(b) Each court of this state may recommend to the State Records Committee and the Administrative Office of the Courts retention schedules for records of that court. The committee, with the concurrence of the Administrative Office of the Courts, shall adopt retention schedules for court records of each court. The destruction of court records by retention schedule shall not be construed as affecting the status of each court as a court of record.

History. — Ga. L. 1972, p. 1267, § 3; Ga. L. 1975, p. 675, § 2; Ga. L. 1978, p. 1372, § 1; Ga. L. 1981, p. 1422, § 2; Ga. L. 1988, p. 426, § 1; Ga. L. 2000, p. 1410, § 1; Ga. L. 2002, p. 532, § 24; Ga. L. 2013, p. 594, § 2-4/HB 287; Ga. L. 2016, p. 791, § 1/HB 976.

Cross references. — Preservation and disposition of primary and election records of Secretary of State, § 21-2-52. Maintenance and disposition of primary and election records of election superintendents, § 21-2-73.

OPINIONS OF THE ATTORNEY GENERAL

Authority of agency head. — Agency head has direct supervisory control over the agency records management officer and, subject to the approval of the State Records Committee, direct control over the agency's records management program. 1975 Op. Att'y Gen. No. 75-84.

Application to courts. — While language of 1981 amendment to O.C.G.A. § 50-18-92 conveys surface appearance of being obligatory, the retention schedule for records of a court still becomes effectual only with concurrence of the Administrative Office of the Courts. 1982 Op. Att'y Gen. No. 82-29.

Submission of schedules as prerequisite to their effectiveness. — Local record retention schedules must be submitted to the State Records Committee and approved pursuant to O.C.G.A. § 50-18-92 prior to having the force and effect of law. 1983 Op. Att'y Gen. No. U83-65.

County constitutional officers, other than court personnel, must provide records retention schedules to governing

bodies of the officers' respective counties.
1981 Op. Att'y Gen. No. 81-65.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 1, 2, 39, 40.
C.J.S. — 76 C.J.S., Records, §§ 1, 2.

50-18-93. Duties of division.

It shall be the duty of the division to:

(1) Establish and administer, under the direction of a state records management officer, who shall be employed under the rules and regulations of the State Personnel Board, a records management program;

(2) Develop and issue procedures, rules, and regulations establishing standards for efficient and economical management methods relating to the creation, maintenance, utilization, retention, preservation, and disposition of records, filing equipment, supplies, microfilming of records, and vital records programs;

(3) Assist state agencies in implementing records programs by providing consultative services in records management, conducting surveys in order to recommend more efficient records management practices, and providing training for records management personnel; and

(4) Operate a records center or centers which shall accept all records transferred to it through the operation of approved retention schedules, provide secure storage and reference service for the same, and submit written notice to the applicable agency of intended destruction of records in accordance with approved retention schedules.

History. — Ga. L. 1972, p. 1267, § 4; Ga. L. 1975, p. 675, § 3; Ga. L. 2002, p. 532, § 25; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-108/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

OPINIONS OF THE ATTORNEY GENERAL

Authority of agency head. — Agency head has direct supervisory control over the agency records management officer and, subject to the approval of the State Records Committee, direct control over the agency's records management program. 1975 Op. Att'y Gen. No. 75-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 1.

C.J.S. — 76 C.J.S., Records, §§ 3, 8, 11, 41.

50-18-94. Duties of agencies.

It shall be the duty of each agency to:

(1) Cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the government and of persons directly affected by the agency's activities;

(2) Cooperate fully with the division in complying with this article;

(3) Establish and maintain an active and continuing program for the economical and efficient management of records and assist the division in the conduct of records management surveys;

(4) Implement records management procedures and regulations issued by the division;

(5) Submit to the division, in accordance with the rules and regulations of the division, a recommended retention schedule for each record series in its custody, except that schedules for common-type files may be established by the division. No records will be scheduled for permanent retention in an office. No records will be scheduled for retention any longer than is absolutely necessary in the performance of required functions. Records requiring retention for several years will be transferred to the records center for low-cost storage at the earliest possible date following creation;

(6) Establish necessary safeguards against the removal or loss of records and such further safeguards as may be required by regulations of the division. The safeguards shall include notification to all officials and employees of the agency that no records in the custody of the agency are to be alienated or destroyed except in accordance with this article; and

(7) Designate an agency records management officer who shall establish and operate a records management program.

History. — Ga. L. 1972, p. 1267, § 5; Ga. L. 1975, p. 675, §§ 4, 5; Ga. L. 1978, p. 1372, § 2; Ga. L. 2002, p. 532, § 26.

OPINIONS OF THE ATTORNEY GENERAL

Authority of agency head. — Agency head has direct supervisory control over the agency records management officer and, subject to the approval of the State Records Committee, direct control over the agency's records management program. 1975 Op. Att'y Gen. No. 75-84.

Records acquired by Department of Human Resources. — Records acquired by the former Department of Family and Children Services (now Department of Human Resources) fall within this section. 1972 Op. Att'y Gen. No. 72-175.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 1.
C.J.S. — 76 C.J.S., Records, § 41.
ALR. — Power and duty of recorder to correct errors in public records of transfers or encumbrances of property, 156 A.L.R. 1321.

50-18-95. Agency heads retain authority to determine records required by departments; treatment of confidential records.

(a) Nothing in this article shall be construed to divest agency heads of the authority to determine the nature and form of records required in the administration of their several departments. Notwithstanding this Code section, agency heads shall carry out the provisions of Code Section 50-18-94.

(b) Any records designated confidential by law shall be so treated by the division in the maintenance, storage, and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted, or reconstructed.

History. — Ga. L. 1972, p. 1267, § 6; Ga. L. 1975, p. 675, § 6; Ga. L. 2002, p. 532, § 27.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 3.
C.J.S. — 76 C.J.S., Records, § 41 et seq.
ALR. — Validity, construction, and application of statutory provisions relating to public access to police records, 82 A.L.R.3d 19.

50-18-96. Retention of video recordings from law enforcement sources; destruction; presumption from destruction; fee for duplication.

(a) As used in this Code section, the term "governing body" shall have the same meaning as set forth in Code Section 50-18-99.

(b) Video recordings from law enforcement body-worn devices or devices located on or inside of law enforcement vehicles shall be retained for 180 days from the date of such recording except:

(1) If such recording is part of a criminal investigation, shows a vehicular accident, shows the detainment or arrest of an individual, or shows a law enforcement officer's use of force, it shall be retained for 30 months from the date of such recording; and

(2) If such recording contains evidence that is or can reasonably be anticipated to be necessary for pending litigation, it shall be retained for 30 months from the date of such recording, and if litigation is commenced during such period it shall be retained until a final adjudication of such litigation.

(c) The retention periods described in this Code section are de minimis.

(d) This Code section shall not require the destruction of such video recording after the required retention period.

(e) Any video recording destroyed pursuant to the retention schedule provided in this Code section shall be deemed to have been properly destroyed, and no evidentiary presumption shall be made that such recording was harmful to the governing body or any law enforcement officer depicted in such recording.

(f) A governing body or law enforcement officer shall not have a duty to redact or obscure people, objects, or information that appear in a video recording from any law enforcement body-worn device or device located on or inside of a law enforcement vehicle, nor shall such body or officer have any civil liability for such depiction.

(g) Notwithstanding fees imposed pursuant to Article 4 of this chapter, an additional fee of $10.00 shall be imposed for the copying of video recordings from law enforcement body-worn devices or devices located on or inside of a law enforcement vehicle.

History. — Code 1981, § 50-18-96, enacted by Ga. L. 2016, p. 791, § 2/HB 976.

Editor's notes. — Former Code Section 50-18-96, relating to copies of records as primary evidence, was repealed by Ga. L. 2011, p. 99, § 95/HB 24, effective January 1, 2013. The former Code section was based on Ga. L. 1972, p. 1267, § 8.

Ga. L. 2016, p. 864, § 50(3)/HB 737, part of an Act to revise, modernize, and correct the Code, purported to reserve the previously repealed Code section.

RESEARCH REFERENCES

Am. Jur. Trials. — Litigation Involving Use of Body Camera Footage as Evidence, 160 Am Jur. Trials 1.

Am. Jur. Proof of Facts. — Foundation for Contemporaneous Videotape Evidence, 16 Am. Jur. POF 3d 493.

C.J.S. — 23A C.J.S., Criminal Procedure and Rights of Accused, § 1473.

50-18-97. Effect of certified copies of records; fee.

The division may make certified copies under seal of any records or any preservation duplicates transferred or deposited in the Georgia State Archives or the records center or may make reproductions of such records. The certified copies or reproductions, when signed by the director of the division, shall have the same force and effect as if made by the agency from which the records were received. The division may establish and charge reasonable fees for such services.

History. — Ga. L. 1972, p. 1267, § 9; Ga. L. 2002, p. 532, § 28.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 19.

C.J.S. — 76 C.J.S., Records, § 43.

50-18-98. Title to records; access to records of constitutional officers.

(a) Title to any record transferred to the Georgia State Archives as authorized by this article shall be vested in the division. The division shall not destroy any record transferred to it by an agency without consulting with the proper official of the transferring agency prior to submitting a retention schedule requesting such destruction to the State Records Committee. Access to records of constitutional officers shall be at the discretion of the constitutional officer who created, received, or maintained the records, but no limitation on access to such records shall extend more than 25 years after creation of the records. As used in this Code section, the term "constitutional officer" means the Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, or Commissioner of Labor.

(b) Title to any record transferred to the records center shall remain in the agency transferring such record to the records center.

History. — Ga. L. 1972, p. 1267, § 10; Ga. L. 1973, p. 691, § 3; Ga. L. 1975, p. 675, § 8; Ga. L. 2002, p. 532, § 29; Ga. L. 2012, p. 173, § 1-39/HB 665.

OPINIONS OF THE ATTORNEY GENERAL

Applicability of O.C.G.A. § 50-18-98 to courts requires adoption of retention schedule by State Records Committee and concurrence in that retention schedule by the Administrative Office of the Courts. 1982 Op. Att'y Gen. No. 82-29.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 5.
C.J.S. — 76 C.J.S., Records, § 41.

50-18-99. Records management programs for local governments.

(a) As used in this Code section, the term:

(1) "Governing body" means the governing body of any county, municipality, or consolidated government. The term includes school boards of this state.

(2) "Office or officer" means any county office or officer or any office or officer under the jurisdiction of a governing body which maintains or is responsible for records.

(b) This article shall apply to local governments, except as modified in this Code section.

(c) All records created or received in the performance of a public duty or paid for by public funds by a governing body are deemed to be public property and shall constitute a record of public acts.

(d) Prior to July 1, 1983, each office or officer shall recommend to the governing body a retention schedule. This schedule shall include an inventory of the type of records maintained and the length of time each type of record shall be maintained in the office or in a record-holding area. These retention periods shall be based on the legal, fiscal, administrative, and historical needs for the record. Schedules previously approved by the State Records Committee will remain in effect until changed by the governing body.

(e) Prior to January 1, 1984, each governing body shall approve by resolution or ordinance a records management plan which shall include but not be limited to:

(1) The name of the person or title of the officer who will coordinate and perform the responsibilities of the governing body under this article;

(2) Each retention schedule approved by the governing body; and

(3) Provisions for maintenance and security of the records.

(f) The Board of Regents of the University System of Georgia, through the division, shall coordinate all records management matters for purposes of this Code section. The division shall provide local governments with a list of common types of records maintained together with recommended retention periods and shall provide training and assistance as required. The division shall advise local governments of records of historical value which may be deposited in the state archives. All other records shall be maintained by the local government.

(g) Except as otherwise provided by law, ordinance, or policy adopted by the office or officer responsible for maintaining the records, all records shall be open to the public or the state or any agency thereof.

History. — Ga. L. 1972, p. 1267, § 11; Ga. L. 1973, p. 691, § 4; Ga. L. 1978, p. 1372, § 3; Ga. L. 1981, p. 1422, § 1; Ga. L. 2002, p. 532, § 30; Ga. L. 2013, p. 594, § 2-5/HB 287.

OPINIONS OF THE ATTORNEY GENERAL

Scope of phrase "any county office or officer." — Term "office or officer" is defined to mean "any county office or officer or any office or officer under jurisdiction of a governing body which maintains or is responsible for records." Excluding such court personnel as are listed in O.C.G.A. § 50-18-91(2), the reference to "any county office or officer" would include all other county constitutional officers whether or not the officers are "under the jurisdiction" of the governing body of the officers' county. 1981 Op. Att'y Gen. No. 81-65.

Submission of schedules as prerequisite to their effectiveness. — Local record retention schedules must be submitted to the State Records Committee and approved pursuant to O.C.G.A. § 50-18-92 prior to having the force and effect of law. 1983 Op. Att'y Gen. No. U83-65.

County constitutional officers, other than court personnel, must provide records retention schedules to governing bodies of the officers' respective counties. 1981 Op. Att'y Gen. No. 81-65.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 1.

C.J.S. — 76 C.J.S., Records, § 1 et seq.

50-18-100. Lifting restrictions on access to confidential, classified, or restricted records after 75 years; earlier lifting.

(a) This Code section applies only to those records:

(1) That are confidential, classified, or restricted by Acts of the General Assembly or may be declared to be confidential, classified, or restricted by future Acts of the General Assembly, unless the future Acts specifically exempt these records from this Code section; and

(2) That have been, or are in the future, deposited in the Georgia State Archives or in other state operated archival institutions because of their value for historical research.

(b) All restrictions on access to records covered by this Code section are lifted and removed 75 years after the creation of the record.

(c) Restrictions on access to records covered by this Code section may be lifted and removed as early as 20 years after the creation of the record on unanimous approval in writing of the State Records Committee.

(d) Applications requesting that the State Records Committee review and consider lifting such restrictions may be made either by the director of the division or by the head of the agency that transferred the record to the archives.

(e) Notwithstanding any other provisions of this Code to the contrary, a date of birth or maiden name contained in genealogical research notes, papers, records, and publications donated to or acquired by the division shall be open to any qualified researcher.

History. — Ga. L. 1975, p. 675, § 10; Ga. L. 2002, p. 532, § 31.

Cross references. — Record of adoption, § 19-8-23.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 3, 17 et seq.

C.J.S. — 76 C.J.S., Records, § 43 et seq.

ALR. — Restricting access to judicial records, 175 A.L.R. 1260.

Validity, construction, and application of statutory provisions relating to public access to police records, 82 A.L.R.3d 19.

50-18-101. Use of confidential, classified, or restricted records for research; limitations.

(a) Records that by law are confidential, classified, or restricted may be used for research purposes by private researchers providing that:

(1) The researcher is qualified to perform such research;

(2) The research topic is designed to produce a study that would be of potential benefit to the state or its citizens; and

(3) The researcher will agree in writing to protect the confidentiality of the information contained in the records.

When the purpose of the confidentiality is to protect the rights of privacy of any person or persons who are named in the records, the researcher must agree not to refer to the persons, either in his notes or in his finished study or in any manner, in such a way that they can be

identified. When the purpose of the confidentiality is to protect other information, the researcher must agree not to divulge that information.

(b) The head of the agency that created the records, or his designee, shall determine whether or not the researcher and his research topic meet the qualifications set forth in subsection (a) of this Code section prior to accepting the signed agreement from the researcher and granting permission to use the confidential records.

(c) The use of such confidential records for research shall be considered a privilege and the agreement signed by the researcher shall be binding on him. Researchers who violate the confidentiality of these records shall be punished in the same manner as would government employees or officials found guilty of this offense.

History. — Ga. L. 1975, p. 675, § 11.
Cross references. — Confidentiality of raw research data, § 24-12-2.

OPINIONS OF THE ATTORNEY GENERAL

Private researchers allowed access to criminal history records. — Georgia Crime Information Center is permitted to allow private researchers access to criminal history record information and to impose such conditions on that access as the center deems appropriate. 1975 Op. Att'y Gen. No. U75-78.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 17, 22 et seq.
C.J.S. — 76 C.J.S., Records, §§ 44, 48 et seq.
ALR. — Restricting access to judicial records, 175 A.L.R. 1260.

50-18-102. Records as public property; disposing of records other than by approved retention schedule as misdemeanor; person acting under article not liable.

(a) All records created or received in the performance of duty and paid for by public funds are deemed to be public property and shall constitute a record of public acts.

(b) The destruction of records shall occur only through the operation of an approved retention schedule. The records shall not be placed in the custody of private individuals or institutions or semiprivate organizations unless authorized by retention schedules.

(c) The alienation, alteration, theft, or destruction of records by any person or persons in a manner not authorized by an applicable retention schedule is a misdemeanor.

(d) No person acting in compliance with this article shall be held personally liable.

History. — Ga. L. 1972, p. 1267, § 7; Ga. L. 1975, p. 675, § 7.

OPINIONS OF THE ATTORNEY GENERAL

Applicability of O.C.G.A. § 50-18-102 to courts requires adoption of a retention schedule by the State Records Committee and concurrence in that retention schedule by the Administrative Office of the Courts. 1982 Op. Att'y Gen. No. 82-29.

Authority of agency heads. — Agency head has direct supervisory control over the agency records management officer and, subject to the approval of the State Records Committee, direct control over the agency's records management program. 1975 Op. Att'y Gen. No. 75-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 11 et seq.

C.J.S. — 76 C.J.S., Records, § 41 et seq.

ALR. — What constitutes a public record or document within statute making falsification, forgery, mutilation, removal, or other misuse thereof an offense, 75 A.L.R.4th 1067.

50-18-103. Construction of laws and rules.

Whenever laws or rules and regulations prescribe where a record series must be kept, the custodian of the records shall be considered in compliance with the laws and rules and regulations if he transfers the records to a local holding area, a records center, or the Georgia State Archives when he does so in accordance with an approved retention schedule.

History. — Ga. L. 1975, p. 675, § 12.

Editor's notes. — Ga. L. 1975, p. 675, § 12(a), not codified by the General Assembly, provides that all laws or parts of laws prescribing how long or in what form records shall be kept are repealed.

ARTICLE 6

MICROFORMS

Editor's notes. — Ga. L. 1986, p. 1154, § 1, effective July 1, 1986, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 50-18-120 through 50-18-126 and was based on Ga. L. 1980, p. 519, § 1.

50-18-120. Authority for establishment of standards.

The authority for the establishment of microform standards shall be vested in the State Records Committee. All powers and duties of the State Records Committee as provided in Article 5 of this chapter shall be applicable to the establishment and maintenance of microform standards in this state. With respect to microform standards for the courts, the concurrence of The Council of Superior Court Clerks of

Georgia and the Judicial Council of Georgia shall be required for the establishment of such standards.

History. — Code 1981, § 50-18-120, enacted by Ga. L. 1986, p. 1154, § 1; Ga. L. 2012, p. 173, § 1-40/HB 665.

Cross references. — Authorization of use of photostatic and photographic equipment by clerks of superior courts, § 15-6-87. Admissibility of duplicates, § 24-10-1003. Admissibility of microfilm, microphotographic and other records, § 50-18-96.

OPINIONS OF THE ATTORNEY GENERAL

Application of article. — O.C.G.A. T. 50, C. 18, A. 6 does not apply to the judicial branch of government as the word agency, absent further definition, does not extend beyond the executive branch of government. 1982 Op. Att'y Gen. No. 82-29 (decided under former law making microform requirements applicable to any "agency" of state government).

50-18-121. Limitations on liability.

Any public official or his employee who makes a bona fide attempt at compliance with the standards established under this article shall not be liable for any damages arising from the failure of the microform to meet such standards.

History. — Code 1981, § 50-18-121, enacted by Ga. L. 1986, p. 1154, § 1.

ARTICLE 7

"MULTIRACIAL" CLASSIFICATION

Editor's notes. — Ga. L. 1994, p. 1360, § 4, not codified by the General Assembly, provides that the provisions of the Act apply to those applications, questionnaires, and other written documents printed or typed or otherwise originating after July 1, 1994; provided, however, that all documents printed and in stock on July 1, 1994, which bear the racial designation "other" shall be used and the stock depleted prior to reordering under the provisions of the Act even if the date occurs after July 1, 1994.

50-18-135. "Multiracial" classification requirement; reporting racial data to federal agencies.

(a) As used in this article, the term:

(1) "Multiracial" means having parents of different races.

(2) "State agency" means any state department, board, bureau, commission, authority, council, committee, and any other state agency or instrumentality.

(b) All written forms, applications, questionnaires, and other written documents or material produced by or for or used by any state agency

which request information on the racial or ethnic identification of a respondent and which contain an enumeration of racial and ethnic classifications from which such respondent must select one shall include among their choices the classification "multiracial."

(c) No such written document or computer software described in subsection (b) of this Code section shall bear the designation "other" as a racial or ethnic classification after July 1, 1994, unless such document was printed and in stock before July 1, 1994.

(d) In any instance in which it is required that racial data collected by a state agency be reported to a federal agency, the computation of all persons designated on state forms or other documents as multiracial shall be reported by such state agency as multiracial. However, if any such federal agency deems the multiracial designation unacceptable, then the reporting state agency shall, upon resubmission of such data, redesignate the multiracial population by allocating a percentage of the number of persons comprising such population to each federally acceptable racial or ethnic classification at the same rate as each such classification comprises the general population of the collected group.

History. — Code 1981, § 50-18-135, enacted by Ga. L. 1994, p. 1360, § 1.

Cross references. — Multiracial classification on forms, §§ 20-2-2041, 34-1-5.

CHAPTER 19

TRANSPORTATION SERVICES

Article 1

Purchase and Use of Motor Vehicles

Sec.

50-19-1. Establishment and operation of interagency motor pools; purchase of automobiles for state use; rules governing state vehicles.
50-19-2. Unlawful to operate vehicle owned or leased by the state or any branch, department, agency, commission, board, or authority of the state unless decal or seal affixed to front door; exceptions; penalty for violation.
50-19-3. Department of Agriculture authorized to purchase and maintain automobiles; regulation of use, replacement, number, and utilization of automobiles; contracting for services [Repealed].
50-19-4. Units of university system authorized to take possession of donated motor vehicles [Repealed].
50-19-5. Department of Veterans Service authorized to purchase ambulance; not subject to article restrictions [Repealed].
50-19-6. Various state entities authorized to purchase, lease, or accept automobiles; Office of Planning and Budget rules to govern operation, maintenance, use, service, and repair.
50-19-7. Mileage and actual travel expenses for state officials and employees; reimbursement.
50-19-8. Unlawful to transport campaign literature or persons soliciting votes when state paying mileage.
50-19-9. Penalty for violation of provisions relating to purchase or use of automobiles.

Article 2

State Aircraft

50-19-20 through 50-19-26 [Repealed].

ARTICLE 1

PURCHASE AND USE OF MOTOR VEHICLES

Cross references. — Provision that motor vehicles of Georgia State Patrol may not be used except in discharge of official duties, § 35-2-56. Registration and licensing of vehicles of state and subdivisions thereof, § 40-2-35.

50-19-1. Establishment and operation of interagency motor pools; purchase of automobiles for state use; rules governing state vehicles.

The Department of Administrative Services is authorized and empowered:

(1) To establish and operate an interagency motor pool near the state capitol and to establish and operate motor pools at such other locations as may be desirable to promote efficient and economical use of passenger-carrying automobiles by officers, officials, or employees of the state and of the various offices, agencies, departments, boards,

bureaus, commissions, institutions, authorities, or other entities of the state;

(2) To purchase passenger-carrying automobiles for the use of officers, officials, or employees of the state and of the various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state who are required to travel by automobile in performance of their official duties; and

(3) To provide a system of billings for the use of motor vehicles in any motor pool operated by the Department of Administrative Services and to collect, retain, and carry over from year to year in a reserve fund any moneys collected for the use of such motor vehicles.

History. — Ga. L. 1933, p. 106, § 3; Code 1933, § 40-2001; Ga. L. 1967, p. 381, § 1; Ga. L. 1968, p. 477, § 1; Ga. L. 1971, p. 64, § 1; Ga. L. 1972, p. 1125, § 1; Ga. L. 1984, p. 1077, §§ 1, 2; Ga. L. 2005, p. 117, § 17/HB 312.

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Vehicles which department authorized to service. — By use of the word "such" in describing the vehicles which the Department of Administrative Services is authorized to service and repair, this section provides only for service and maintenance for the motor vehicles which are a part of the interagency motor pool. Therefore, any other motor vehicles which are owned by the various departments, institutions, boards, bureaus, or agencies of the state are not subject to the provisions of this section which provide that maintenance and repair will be conducted by the Department of Administrative Services. 1975 Op. Att'y Gen. No. 75-120.

"Highly specialized motor vehicle equipment." — To the extent vehicles such as patrol cars operated by the Georgia State Patrol are specially designed and equipped for law enforcement and traffic control and may be considered "highly specialized motor vehicle equipment," the repair and maintenance of such vehicles would not be subject to regulation. 1975 Op. Att'y Gen. No. 75-120.

Department of Administrative Services is not authorized to regulate the maintenance and repair of any "highly specialized motor vehicle equipment" owned by the Department of Public Safety. 1975 Op. Att'y Gen. No. 75-120.

Policy prohibiting commercial advertising on state vehicles prevents the Department of Education from operating a donated Toyota van with the slogan "Another Toyota Vehicle Serving the Community" stenciled on the side. 1995 Op. Att'y Gen. No. 95-39.

Applicability as to development authority. — Development authority can expend funds for purchase or lease of an automobile for the use of the executive director as an authority is not the state, a part of the state, or an agency of the state. 1970 Op. Att'y Gen. No. U70-189.

State university is authorized to purchase vehicle to transport students to and from woodlands off the campus for the purpose of research in wildlife conservation. 1950-51 Op. Att'y Gen. p. 288.

Authority to purchase passenger bus. — Supervisor of purchases (now commissioner of administrative services) is authorized to purchase a passenger bus for the use of a state college in the transportation of students. 1950-51 Op. Att'y Gen. p. 308.

50-19-2. Unlawful to operate vehicle owned or leased by the state or any branch, department, agency, commission, board, or authority of the state unless decal or seal affixed to front door; exceptions; penalty for violation.

(a) It shall be unlawful for any person to operate on any public road in this state any motor vehicle which is owned or leased by the state or any branch, department, agency, commission, board, or authority of the state or which has been purchased or leased by any public official or public employee with state funds, unless there is affixed to the front door on each side of such vehicle a clearly visible decal or seal containing the name of or otherwise identifying the governmental entity owning or leasing such vehicle or on behalf of which entity funds were expended to purchase or lease such vehicle. This Code section shall not apply to any vehicle used for law enforcement or prosecution purposes or any vehicle assigned for the transportation of the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the executive head of any department of state government, the chancellor of the University System of Georgia, the Chief Justice of the Supreme Court of Georgia, any constitutional state official who is elected by the voters of the entire state, or any employees of the Georgia Lottery Corporation.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor.

History. — Ga. L. 1972, p. 1125, § 6; Ga. L. 2000, p. 486, § 2; Ga. L. 2007, p. 652, § 13/HB 518.

Cross references. — Decal or seal required on vehicles owned or leased by any county, municipality, regional development center, school system, commission, board, or public authority, § 36-80-20. Description, use, and display of great seal of state, § 50-3-30 et seq.

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Fingerprinting of offenders not required. — Violation of O.C.G.A. § 50-19-2 is not an offense designated as one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

50-19-3. Department of Agriculture authorized to purchase and maintain automobiles; regulation of use, replacement, number, and utilization of automobiles; contracting for services.

Reserved. Repealed by Ga. L. 2005, p. 117, § 18/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1972, p. 1125, § 3.

50-19-4. Units of university system authorized to take possession of donated motor vehicles.

Reserved. Repealed by Ga. L. 2005, p. 117, § 19/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1962, p. 710, § 2; Ga. L. 1972, p. 1125, § 4.

50-19-5. Department of Veterans Service authorized to purchase ambulance; not subject to article restrictions.

Reserved. Repealed by Ga. L. 2005, p. 117, § 20/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1953, Jan.-Feb. Sess., p. 131, § 1; Ga. L. 1969, p. 634, § 1; Ga. L. 1990, p. 45, § 1.

50-19-6. Various state entities authorized to purchase, lease, or accept automobiles; Office of Planning and Budget rules to govern operation, maintenance, use, service, and repair.

The various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state are authorized, subject to the approval of the Office of Planning and Budget consistent with legislative appropriations, to purchase, lease, or accept as donations passenger-carrying automobiles and other motor vehicles for the use of officers, officials, and employees in the performance of their official duties. The operation, use, maintenance, service, and repair of passenger-carrying automobiles shall be governed by the rules and regulations promulgated by the Office of Planning and Budget pursuant to Code Section 45-12-73.

History. — Ga. L. 1972, p. 1125, § 5; Ga. L. 1982, p. 3, § 50; Ga. L. 2005, p. 117, § 21/HB 312.

50-19-7. Mileage and actual travel expenses for state officials and employees; reimbursement.

The officers, officials, and employees of the executive, legislative, and judicial branches of state government shall be reimbursed for mileage at the same mileage rate established by the United States General Services Administration for federal employees pursuant to Federal Travel Regulation Amendment 2005-01 as of July 1, 2005, or subsequently amended, as traveling expense when traveling in the service of the state or any agency thereof by personal motor vehicle and, in

addition to mileage, shall be reimbursed for actual expenses incurred by reason of tolls and parking fees.

History. — Ga. L. 1933, p. 106, § 3; Code 1933, § 40-2002; Ga. L. 1950, p. 224, § 1; Ga. L. 1960, p. 79, § 1; Ga. L. 1962, p. 710, § 1; Ga. L. 1970, p. 118, § 1; Ga. L. 1972, p. 1125, § 2; Ga. L. 1975, p. 816, § 1; Ga. L. 1978, p. 1786, § 1; Ga. L. 1978, p. 1894, § 1; Ga. L. 1980, p. 350, § 1; Ga. L. 1981, p. 856, § 1; Ga. L. 1986, p. 356, § 1; Ga. L. 1995, p. 791, § 1/HB 474; Ga. L. 2000, p. 486, § 3; Ga. L. 2005, p. ES5, § 1/SB 1EX.

Cross references. — Reimbursement of expenses of state officials generally, § 45-7-20 et seq.

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Provisions of this section pertaining to travel allowance are inapplicable to expenditures by local school systems. 1974 Op. Att'y Gen. No. 74-67.

Employees of Department of Human Resources. — Only mileage allowance permitted to employees of Department of Human Resources is set forth in this section. 1976 Op. Att'y Gen. No. 76-97.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 288.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 386 et seq.

50-19-8. Unlawful to transport campaign literature or persons soliciting votes when state paying mileage.

It shall be unlawful for any officer of this state or any employee of any office, agency, department, board, bureau, commission, institution, authority, or other entity of the state while traveling in vehicles upon which the state is paying transportation mileage to transport any political campaign literature or matter or to engage in soliciting votes or to transport any person or persons soliciting votes in any election or primary.

History. — Ga. L. 1933, p. 106, § 7; Code 1933, § 40-2006; Ga. L. 2005, p. 117, § 22/HB 312.

JUDICIAL DECISIONS

Cited in Caldwell v. Bateman, 252 Ga. 144, 312 S.E.2d 320 (1984).

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Unclassified employees. — There is no prohibition on the contribution of off-duty time or of a financial contribution by employees in the unclassified service,

although the state department could still impose reasonable limitations on such political activities by employees in the unclassified service. 1984 Op. Att'y Gen. No. 84-71.

50-19-9. Penalty for violation of provisions relating to purchase or use of automobiles.

Any person violating any provision of this article or any other general law relating to purchase of automobiles with state funds or use of automobiles by state officers or employees shall be guilty of a misdemeanor and, upon conviction thereof, also shall be removed from office.

History. — Ga. L. 1933, p. 106, § 10; Code 1933, § 40-9902; Ga. L. 2005, p. 117, § 23/HB 312.

ARTICLE 2

STATE AIRCRAFT

50-19-20 through 50-19-26.

Reserved. Repealed by Ga. L. 2009, p. 848, § 3/SB 85, effective July 1, 2009.

Editor's notes. — This article was based on Ga. L. 1968, p. 130, §§ 1, 2, 7-11; Ga. L. 1972, p. 1015, § 2008; and Ga. L. 1986, p. 338, § 1.

CHAPTER 20

RELATIONS WITH NONPROFIT CONTRACTORS

Sec.
50-20-1. Legislative intent.
50-20-2. Definitions.
50-20-3. Requirements from nonprofit contractors; audits; political activities.
50-20-4. Audits and financial statements; role of state auditor.
50-20-5. State organizations required to report to state auditor.
50-20-6. Failure to comply; penalties.
50-20-7. Reporting packages, financial statements, audit reports, and other schedules to be public records.
50-20-8. Applicability.

Editor's notes. — Ga. L. 1998, p. 237, § 1, effective July 1, 1998, repealed the Code Sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 50-20-1 through 50-20-8, relating to relations with nonprofit contractors, and was based on Ga. L. 1976, p. 1414, §§ 1-7; Ga. L. 1977, p. 1045, §§ 1-8; Ga. L. 1978, p. 1547, §§ 1, 2; Ga. L. 1982, p. 3, § 50; Ga. L. 1983, p. 641, § 1; Ga. L. 1984, p. 22, § 50; Ga. L. 1988, p. 1377, § 1; Ga. L. 1988, p. 1415, § 1; Ga. L. 1989, p. 1317, §§ 6.29, 6.30; Ga. L. 1992, p. 904, § 1.

RESEARCH REFERENCES

ALR. — Validity, construction, and effect of requirement under state statute or local ordinance giving local or locally qualified contractors a percentage preference in determining lowest bid, 89 A.L.R.4th 587.

50-20-1. Legislative intent.

The intent of this chapter is to provide auditing and reporting requirements for nonprofit organizations which provide services and facilities to the state, to ensure the financial accountability of nonprofit contractors, and to develop adequate information concerning nonprofit contractors. The General Assembly finds that the state has a right and a duty to monitor nonprofit organizations which contract with the state to ensure that their activities are in the public interest and to ensure that public funds are used for proper purposes.

History. — Code 1981, § 50-20-1, enacted by Ga. L. 1998, p. 237, § 1.

50-20-2. Definitions.

As used in this chapter, the term:

(1) "Corrective action plan" means a plan of corrective action prepared by the nonprofit organization which addresses each audit

finding included in the auditor's report. The corrective action plan shall provide the name or names of the contact person or persons responsible for the corrective action, the corrective action planned, and the anticipated completion date. If the nonprofit organization does not agree with audit findings or believes corrective action is not required, the corrective action plan shall then include an explanation and specific reasons.

(2) "Generally accepted accounting principles" means generally accepted accounting principles specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants.

(3) "Generally accepted auditing standards" means auditing standards issued by the American Institute of Certified Public Accountants for the conduct and reporting of financial audits.

(4) "Generally accepted government auditing standards" means generally accepted government auditing standards issued by the comptroller general of the United States, which are applicable to financial audits.

(5) "Nonprofit organization" means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve, or expand its operations. The term nonprofit organization includes nonprofit institutions of higher education and hospitals. For financial reporting purposes guidelines issued by the American Institute of Certified Public Accountants should be followed in determining nonprofit status.

(6) "Reporting package" means a package of documents containing a specified audit report, a summary schedule of prior year audit findings, and a corrective action plan for unresolved prior year and current year audit findings. Each audit report should include a schedule of findings and questioned costs and, if deemed necessary by the head of the contracting state organization, a schedule of state awards expended.

(7) "Schedule of state awards expended" means a schedule arranged by state program name and contract number which reflects revenues, expenditures, or expenses and amounts owed to or due from each state organization. Amounts listed for each program should include state or federal funds, or both, which pass through state organizations to the nonprofit contractor.

(8) "State awards" means state or federal funds, or both, received from state organizations through contractual agreement.

(9) "State awards expended" means the disbursement or obligation of state awards by a nonprofit organization.

(10) "State funds" means that portion of contracts funded by state appropriations or other revenue sources retained by the contracting state organization but does not include federal pass-through assistance. State funds represent the basis for determination of appropriate audit requirements set forth in paragraphs (1) and (2) of subsection (b) of Code Section 50-20-3.

(11) "State organization" means any organization included within the state financial reporting entity. Such organizations include all departments, boards, bureaus, commissions, authorities and other such organizations whose financial activities and balances are included within the State of Georgia Comprehensive Annual Financial Report.

(12) "Summary schedule of prior year audit findings" means a schedule reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings which were listed as uncorrected.

History. — Code 1981, § 50-20-2, enacted by Ga. L. 1998, p. 237, § 1; Ga. L. 2013, p. 141, § 50/HB 79.

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1976, p. 1414, § 6, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations of this Code section.

Applicability only to entities normally engaging in nonprofit endeavors. — For these provisions to apply, the entity contracting with the state agency must be one normally and generally engaged in nonprofit endeavors, and not simply an organization which, for the purposes of one specific contract, receives no profit for services provided a state agency. 1977 Op. Att'y Gen. No. 77-27 (decided under Ga. L. 1976, p. 1414, § 6).

Nonprofit contractors. — Law covers all noncompetitively bid contracts, other than individual employment contracts, that are entered into between a state agency and a nonprofit contractor when the nonprofit contractor receives public funds of any kind under the contract. 1976 Op. Att'y Gen. No. 76-64 (decided under Ga. L. 1976, p. 1414, § 6).

Private individuals who contract with the Department of Natural Resources for the preparation of nominations for the National Register of Historic Places or for the restoration or maintenance of sites of historical value through moneys provided by National Park Service restoration grants are not nonprofit contractors in the sense in which that term is defined and used in the law. 1977 Op. Att'y Gen. No. 77-27 (decided under Ga. L. 1976, p. 1414, § 6).

Contracts between state agencies and university system. — Law is not applicable to contracts between the Department of Natural Resources and universities and their units or extensions

which are part of the University System of Georgia or the university system of another state since the exemption in this section removes the Board of Regents and its governed institutions from the definition of "nonprofit contractor" used in the section. However, these provisions would, in most instances, be applicable to contracts with private colleges and universities. 1976 Op. Att'y Gen. No. 76-88 (decided under Ga. L. 1976, p. 1414, § 6).

General nature of nonprofit corporations and organizations. — As a general rule, nonprofit corporations and organizations are those presumably designed for the attainment or conference upon others of spiritual or cultural benefits, or benefits of a philanthropic nature. 1977 Op. Att'y Gen. No. 77-27 (decided under Ga. L. 1976, p. 1414, § 6).

50-20-3. Requirements from nonprofit contractors; audits; political activities.

(a) Before entering into a financial agreement with a nonprofit organization, the head of the contracting state organization shall require the nonprofit organization to furnish financial and such other information as he or she may deem necessary to establish whether or not the nonprofit organization is financially viable and capable of providing services contemplated in the contract and that the agreement does not violate Chapter 10 of Title 45 related to conflicts of interest. Such information may include financial statements, Internal Revenue Service exempt status determination letters, Internal Revenue Service exempt organization information returns, and other related materials.

(b) State organizations which have entered into a financial agreement with a nonprofit organization shall require:

(1) A nonprofit organization which has expended $100,000.00 or more during its fiscal year in state funds to provide for and cause to be made annually an audit of the financial affairs and transactions of all the nonprofit organization's funds and activities. The audit shall be performed in accordance with generally accepted auditing standards;

(2) A nonprofit organization which has expended less than $100,000.00 in a fiscal year in state funds shall forward to the state auditor and each contracting state organization a copy of the nonprofit organization's financial statements. If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the annual financial statements must be accompanied by the statement of the president or person responsible for the nonprofit organization's financial statements:

(A) Stating the president's or other person's belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(B) Describing any respects in which the statements were not prepared on a basis consistent with the statements prepared for the preceding year.

(3) A nonprofit organization which receives funds from a state organization and which meets the federal audit requirements of the Single Audit Act Amendments of 1996 shall submit audit reports and reporting packages performed in accordance with Office of Management and Budget regulations.

(c) All financial statements required in paragraphs (1) and (3) of subsection (b) of this Code section shall be prepared in conformity with generally accepted accounting principles.

(d) Audits made in accordance with this Code section shall be in lieu of any financial audit or reporting requirements under individual state awards. Audits and financial statements required under this Code section, however, shall neither limit the authority of state organizations or the state auditor to conduct or arrange for additional audits of nonprofit organizations contracting with the state. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors and shall be funded by the contracting state organization.

(e) Reporting packages or financial statements shall be forwarded to the state auditor and each contracting state organization within 180 days after the close of the nonprofit organization's fiscal year. The state auditor, for good cause, may waive the requirement for completion of an audit within 180 days. Such waiver shall be for an additional period of not more than 90 days, and no such waiver shall be granted for more than two successive years to the same nonprofit organization. The state auditor may prescribe an electronic format for financial statement and audit package submission purposes.

(f) Nonprofit organizations which receive funds from state organizations shall refrain from political activities, including endorsement of any political candidate or party, use of machinery, equipment, postage, stationery, or personnel on behalf of any candidate or any question of public policy subject to referendum.

History. — Code 1981, § 50-20-3, enacted by Ga. L. 1998, p. 237, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1976, p. 1414, § 3 and former O.C.G.A. § 50-20-3, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Nonprofit contractors. — Law covers all noncompetitively bid contracts, other

than individual employment contracts, that are entered into between a state agency and a nonprofit contractor when the nonprofit contractor receives public funds of any kind under the contract. 1976 Op. Att'y Gen. No. 76-64 (decided under Ga. L. 1976, p. 1414, § 3).

Contracts between state agencies and university system. — Law is not applicable to contracts between the Department of Natural Resources and universities and their units or extensions which are part of the University System of Georgia or the university system of another state since the exemption in the law removed the Board of Regents and its governed institutions from the definition of "nonprofit contractor" used in the law. However, these sections would, in most instances, be applicable to contracts with private colleges and universities. 1976 Op. Att'y Gen. No. 76-88 (decided under Ga. L. 1976, p. 1414, § 3).

Participation in Job Training Partnership Act. — Nonprofit contractors which participate in the Job Training Partnership Act of 1982, 29 U.S.C. § 1501 et seq., are not required to comply with the reporting requirements of former O.C.G.A. § 50-20-3. 1983 Op. Att'y Gen. No. 83-55 (decided under O.C.G.A. § 50-20-3).

Political activities prohibited by the law are limited to: (1) the endorsement of any political candidate or party; (2) the use of machinery, equipment, postage, stationery, or personnel in behalf of any candidate or any question of public policy subject to a referendum; and (3) the display of political posters, stickers, or other printed material. 1977 Op. Att'y Gen. No. 77-15 (decided under Ga. L. 1976, p. 1414, § 3).

Salary and expense information of noncontractors receiving "arts grants" funds through the Office of Planning and Budget based upon the recommendation of the Georgia Council for the Arts must be made available for public inspection. 1995 Op. Att'y Gen. No. 95-31 (decided under O.C.G.A. § 50-20-3).

50-20-4. Audits and financial statements; role of state auditor.

(a) The state auditor shall review the nonprofit organization's reporting package or financial statements to ensure compliance with the requirements for audits and financial statement presentation for nonprofit organizations. If the state auditor finds such requirements have not been met, the state auditor within 60 days of receipt of the reporting package or financial statements shall submit a list of deficiencies to be corrected to the nonprofit organization and, if appropriate, to the auditor who performed the audit and to the affected state organizations.

(b) If the state auditor has not received the required reporting package or financial statements by the date specified in subsection (e) of Code Section 50-20-3, the state auditor shall within 30 days of such date notify the appropriate state organizations to cease all payments to the nonprofit organization.

(c) The state auditor shall promptly notify appropriate law enforcement officials of any reported irregularities or illegal acts.

History. — Code 1981, § 50-20-4, enacted by Ga. L. 1998, p. 237, § 1.

50-20-5. State organizations required to report to state auditor.

(a) It shall be the duty of the contracting state organization to determine the financial viability of the nonprofit organization as described in subsection (a) of Code Section 50-20-3 before entering into a financial agreement with a nonprofit organization and to monitor the performance of the nonprofit organization under terms of the financial agreement.

(b) State organizations entering into agreements with nonprofit organizations shall report to the state auditor all such agreements and shall provide each individual nonprofit organization's name, fiscal year end, contract amount, and other information as required by the state auditor.

(c) When contracting with a nonprofit organization, a state organization shall provide the nonprofit organization with the following financial and compliance information:

(1) Identification of any state funds included as part of the contract. Such identification should include the contract number;

(2) Identification of any federal pass-through assistance included as part of the contract. Such identification should include the Catalog of Federal Domestic Assistance number; and

(3) Identification of requirements imposed by federal laws, regulations, and the provisions of contracts as well as any state or supplementary requirements imposed by state law or the contributing state organization.

(d) State organizations contracting with nonprofit organizations shall review the corrective action plans to ensure that appropriate corrective action has been taken by the nonprofit organization. If the corrective action listed is determined to be inappropriate, the state organization should formally request additional corrective action by the nonprofit organization. No state organization shall transfer to a nonprofit organization any public funds from any source if a nonprofit organization does not take appropriate corrective action for findings determined to be significant by the state organization.

History. — Code 1981, § 50-20-5, enacted by Ga. L. 1998, p. 237, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1976, p. 1414, § 5, which was subsequently repealed but was superceeded by provisions in this Code section, are included in the annotations for this Code section.

Noncompetitively bid contracts be-

tween state agencies and nonprofit contractors. — Law covers all noncompetitively bid contracts, other than individual employment contracts, that are entered into between a state agency and a nonprofit contractor when the nonprofit contractor receives public funds of any kind under the contract. 1976 Op. Att'y Gen. No. 76-64 (decided under Ga. L. 1976, p. 1414, § 5).

Contracts between state agencies and university system. — Law is not applicable to contracts between the Department of Natural Resources and universities and their units or extensions which are part of the University System of Georgia or the university system of another state since the statutory exemption removed the Board of Regents and the Board's governed institutions from the definition of "nonprofit contractor". However, these sections would, in most instances, be applicable to contracts with private colleges and universities. 1976 Op. Att'y Gen. No. 76-88 (decided under Ga. L. 1976, p. 1414, § 5).

50-20-6. Failure to comply; penalties.

(a) A nonprofit organization which receives state awards from a state organization and which, after having received the funds, does not comply with this chapter shall be required to repay the funds to the state organization and shall be prohibited from receiving funds from any state organization for a period of 12 months from the date of notification by the state organizations or the state auditor of the failure to comply.

(b) This Code section shall be cumulative to any other penalties applicable to the misuse of public funds.

History. — Code 1981, § 50-20-6, enacted by Ga. L. 1998, p. 237, § 1.

50-20-7. Reporting packages, financial statements, audit reports, and other schedules to be public records.

All reporting packages, financial statements, audit reports, and other schedules required by this chapter shall be made available for public inspection during regular office hours.

History. — Code 1981, § 50-20-7, enacted by Ga. L. 1998, p. 237, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1976, p. 1414, § 6, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Noncompetitively bid contracts between state agencies and nonprofit contractors. — Law covers all noncompetitively bid contracts, other than individual employment contracts, that are entered into between a state agency and a nonprofit contractor when the nonprofit contractor receives public funds of any kind under the contract. 1976 Op. Att'y Gen. No. 76-64 (decided under Ga. L. 1976, p. 1414, § 6).

Contracts between state agencies and university system. — Law is not

applicable to contracts between the Department of Natural Resources and universities and their units or extensions which are part of the University System of Georgia or the university system of another state since the statutory exemption removed the Board of Regents and the Board's governed institutions from the definition of "nonprofit contractor". However, these sections would, in most instances, be applicable to contracts with private colleges and universities. 1976 Op. Att'y Gen. No. 76-88 (decided under Ga. L. 1976, p. 1414, § 6).

50-20-8. Applicability.

(a) Except as provided in paragraphs (1) through (3) of subsection (b) and paragraphs (1) and (2) of subsection (c) of this Code section, all contracts between a nonprofit organization and a state organization shall be subject to this chapter.

(b) This chapter shall not apply to:

(1) Procurement contracts used to buy goods or services from vendors;

(2) Individual employment contracts; and

(3) Benefit payments or other related payments made by state organizations to a nonprofit organization on behalf of individuals for health care or other services.

(c) The provisions of subsection (b) of Code Section 50-20-3 shall not apply to the following:

(1) Nonprofit organizations affiliated with the University System of Georgia which are organized or operated primarily for the purpose of serving, soliciting, receiving, and investing gifts and donations in the name of the board of regents or individual units of the University System of Georgia or related programs and which expend less than $25,000.00 in state awards;

(2) Nonprofit organizations affiliated with the State Board of the Technical College System of Georgia or with postsecondary technical schools operated under the state level management and operational control of the State Board of the Technical College System of Georgia which organizations are operated primarily for the purpose of serving, soliciting, receiving, and investing gifts and donations for the board, such schools, or related programs and which expend less than $25,000.00 in state awards; and

(3) Nonprofit organizations which expend less than $25,000.00 in state awards.

History. — Code 1981, § 50-20-8, enacted by Ga. L. 1998, p. 237, § 1; Ga. L. 2011, p. 632, § 3/HB 49.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1976, p. 1414, § 2, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Noncompetitively bid contracts between state agencies and nonprofit contractors. — Law covers all noncompetitively bid contracts, other than individual employment contracts, that are entered into between a state agency and a nonprofit contractor when the nonprofit contractor receives public funds of any kind under the contract. 1976 Op. Att'y Gen. No. 76-64 (decided under Ga. L. 1976, p. 1414, § 2).

Contracts between state agencies and university system. — Law is not applicable to contracts between the Department of Natural Resources and universities and their units or extensions which are part of the University System of Georgia or the university system of another state since the statutory exemption removed the Board of Regents and the Board's governed institutions from the definition of "nonprofit contractor". However, these sections would, in most instances, be applicable to contracts with private colleges and universities. 1976 Op. Att'y Gen. No. 76-88 (decided under Ga. L. 1976, p. 1414, § 2).

CHAPTER 21

WAIVER OF SOVEREIGN IMMUNITY AS TO ACTIONS EX CONTRACTU; STATE TORT CLAIMS

Article 1

Waiver of Sovereign Immunity as to Actions Ex Contractu

Sec.
50-21-1. Waiver of sovereign immunity as to actions ex contractu for breach of written contract to which state is party; venue.

Article 2

State Tort Claims

50-21-20. Short title.
50-21-21. Legislative intent.
50-21-22. Definitions.
50-21-23. Limited waiver of sovereign immunity.
50-21-24. Exceptions to state liability.
50-21-24.1. Workers' compensation exclusive remedy not waived; workers' compensation fund to pay claims.
50-21-25. Immunity of state officers or employees for acts within scope of official duties or employment; officer or employee not named in action against state; settlement or judgment.
50-21-26. Notice of claim against state; time for commencement of action; examination of records to facilitate investigation of claims; confidential nature of documents and information furnished.
50-21-27. Retroactive operation; limitations of actions; applicability of other related statutes.
50-21-28. Venue of actions.
50-21-29. Trial of actions; limitations on amounts of damages; caps to limit total damages regardless of the type claimed.
50-21-30. Punitive or exemplary damages or interest prior to judgment not allowed.
50-21-31. Interest rate after judgment.
50-21-32. Signing of pleadings, motions, or other papers.
50-21-33. Liability insurance or self-insurance programs; State Tort Claims Trust Fund; premiums and deductibles; incentive programs authorized; merger of preexisting programs and funds; additional coverages.
50-21-34. Payment of claims or judgments; execution or levy against state funds or property prohibited; amount of fiscal year aggregate liability.
50-21-35. Service of process; mailing of complaint.
50-21-36. Settlement of claims.
50-21-37. Hold harmless and indemnification agreements.

Cross references. — Immunity of the Board of Regents of the University System of Georgia, § 20-3-36. Immunity of the Private Colleges and Universities Facilities Authority, § 20-3-205. Immunity of municipal corporations, § 36-33-1. Sovereign immunity generally, Ga. Const. 1983, Art. I, Sec. II, Para. IX.

Editor's notes. — Ga. L. 1982, p. 2261, § 1 also enacted a Chapter 21 of Title 50, which was thereupon unofficially designated Chapter 22 of this title and then officially redesignated as Article 8 of Chapter 12 of this title by Ga. L. 1983, p. 3, § 39.

Law reviews. — For article, "Georgia's Public Duty Doctrine: The Supreme Court Held Hostage," see 51 Mercer L. Rev. 73 (1999).

For comment, "Keeping the Arms in Touch: Taking Political Accountability Seriously in the Eleventh Amendment Arm

of the State Doctrine," see 64 Emory L.J. 819 (2015).

ARTICLE 1

WAIVER OF SOVEREIGN IMMUNITY AS TO ACTIONS EX CONTRACTU

Editor's notes. — Ga. L. 1992, p. 1883, § 1, effective July 1, 1992, designated Code Section 50-21-1 as Article 1 and added Article 2.

50-21-1. Waiver of sovereign immunity as to actions ex contractu for breach of written contract to which state is party; venue.

(a) The defense of sovereign immunity is waived as to any action ex contractu for the breach of any written contract existing on April 12, 1982, or thereafter entered into by the state, departments and agencies of the state, and state authorities.

(b) Venue with respect to any such action shall be proper in the Superior Court of Fulton County, Georgia. The provisions of this subsection shall be cumulative and supplemental to any other venue provisions permitted on April 12, 1982, or thereafter permitted by law.

History. — Ga. L. 1982, p. 495, § 1; Code 1981, § 50-21-1, enacted by Ga. L. 1982, p. 495, § 2; Ga. L. 1984, p. 22, § 50.

Law reviews. — For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005). For article, "Administrative Law," see 63 Mercer L. Rev. 47 (2011).

JUDICIAL DECISIONS

Venue. — Trial court had jurisdiction over the plaintiff's suit for breach of contract filed in the State Court of Fulton County because the plain meaning of the last sentence of O.C.G.A. § 50-21-1(b) shows that venue for such a claim is not exclusive to the Superior Court of Fulton County, but rather that venue in that court shall be cumulative and supplemental to other legal venue. Bd. of Regents of the Univ. Sys. of Ga. v. Winter, 331 Ga. App. 528, 771 S.E.2d 201 (2015), overruled on other grounds, Rivera v. Washington, 298 Ga. 770, 784 S.E.2d 775 (Ga. 2016).

Action by state retirees for breach and impairment of contract not barred. — Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., did not bar a state employees' breach and impairment of contract suit against the Employees Retirement System of the State of Georgia as the action sounded in contract and O.C.G.A. § 50-21-1, which was not part of the GTCA, which waived sovereign immunity as to an action ex contractu for the breach of a written contract. Alverson v. Employees' Ret. Sys., 272 Ga. App. 389, 613 S.E.2d 119 (2005).

No waiver of immunity for oral contracts. — Even though sovereign immunity has been waived for the breach of any written contract, O.C.G.A. § 50-21-1, there has been no such waiver for oral contracts. Soloski v. Adams, 600 F. Supp. 2d 1276 (N.D. Ga. 2009).

No waiver of immunity in federal court. — Because Georgia did not waive the states' Eleventh Amendment immunity, the federal district court lacked juris-

diction to decide the student's breach of contract claim against the Board of Regents. Barnes v. Zaccari, 669 F.3d 1295 (11th Cir. 2012).

Medical college faculty members. — In a medical malpractice suit, two physicians were entitled to official immunity under O.C.G.A. §§ 50-21-23(b) and 50-21-25(a) because the record established that the physicians were full-time faculty members at a Georgia medical college performing the physicians' regular duties of employment at the time the estate's decedent was allegedly injured. Cook v. Forrester, 323 Ga. App. 631, 746 S.E.2d 624 (2013).

Immunity waived for surety's subrogation action against state. — Surety on a public contract, after assisting the contractor in completing the project, stood in the place of the contractor and was subrogated to the contractor's right of action for breach of contract against the Georgia Department of Corrections; under Ga. Const 1983, Art. I, Sec. II, Para. IX(c), the state waived sovereign immunity for contracts. State Dep't of Corr. v. Developers Sur. & Indem. Co., 295 Ga. 741, 763 S.E.2d 868 (2014).

Immunity of city in dispute with firefighters. — In a dispute over compensation between firefighters and the city, alleged course of conduct by the parties was ineffective to waive sovereign immunity. Shelnutt v. Mayor & Aldermen of Savannah, 349 Ga. App. 499, 826 S.E.2d 379 (2019).

No waiver without written contract. — Developer failed to meet the developer's burden of showing waiver of sovereign immunity because even if the parties' conduct after the expiration of the contract could be found to demonstrate that the developer was to continue to perform under the original contract, as a matter of law, neither that conduct nor the internal documents created by a state agency after the contract expired established a written contract to do so and without a written contract, the state's sovereign immunity was not waived. Georgia Department of Labor v. RTT Associates, Inc., 299 Ga. 78, 786 S.E.2d 840 (2016).

Cited in Fedorov v. Bd. of Regents, 194 F. Supp. 2d 1378 (S.D. Ga. 2002); Bd. of Regents of the Univ. Sys. of Ga. v. One Sixty Over Ninety, LLC, 351 Ga. App. 133, 830 S.E.2d 503 (2019).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 96.

C.J.S. — 81A C.J.S., States, § 533 et seq.

ARTICLE 2

STATE TORT CLAIMS

Law reviews. — For article, "The 1992 Georgia Tort Claims Act," see 9 Ga. St. U.L. Rev. 431 (1993). For article, "Tort Claims Against the State: Georgia's Compensation System," see 32 Ga. L. Rev. 1103 (1998). For article on administrative law, see 53 Mercer L. Rev. 81 (2001). For article, "Torts," see 53 Mercer L. Rev. 441 (2001). For article, "Trial Practice and Procedure," see 53 Mercer L. Rev. 475 (2001). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

For note on 1992 enactment of this article, see 9 Ga. St. U.L. Rev. 349 (1992).

For comment, "Abrogating Sovereign Immunity Pursuant to its Bankruptcy Clause Power: Congress Went Too Far!," see 13 Bank. Dev. J. 197 (1996).

50-21-20. Short title.

This article shall be known and may be cited as "The Georgia Tort Claims Act."

History. — Code 1981, § 50-21-20, enacted by Ga. L. 1992, p. 1883, § 1.

Law reviews. — For annual survey of law of torts, see 44 Mercer L. Rev. 375 (1992). For article, "Local Government Tort Liability: the Summer of '92," see 9 Ga. St. U.L. Rev. 405 (1993). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of law of torts, see 56 Mercer L. Rev. 415 (2004). For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004). For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For annual survey of trial practice and procedure, see 57 Mercer L. Rev. 381 (2005). For annual survey of tort law, see 58 Mercer L. Rev. 385 (2006). For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008). For survey article on trial practice and procedure, see 60 Mercer L. Rev. 397 (2008). For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010). For survey article on local government law, see 67 Mercer L. Rev. 147 (2015). For annual survey on trial practice and procedure, see 67 Mercer L. Rev. 257 (2015). For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017). For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018). For annual survey on torts: a two year survey, see 71 Mercer L. Rev. 295 (2019).

For note, "Seay v. Cleveland: Resolution of the Ministerial Discretionary Dichotomy," see 51 Mercer L. Rev. 787 (2000). For note, "The Georgia Tort Claims Act: A License for Negligence in Child Deprivation Cases?," see 18 Ga. St. U.L. Rev. 795 (2002).

For note, "Finding Immunity: Manders v. Lee and the Erosion of 1983 Liability," see 55 Mercer L. Rev. 1505 (2004).

JUDICIAL DECISIONS

Constitutionality. — Statutory scheme under which plaintiffs having tort claims against the state have the benefit of the broad waiver of sovereign immunity afforded by the Georgia Tort Claims Act, O.C.G.A. T. 50, C. 21, A. 2, which does not extend to counties, whereas a county's waiver of immunity is allowed only to the extent of insurance purchased for negligence arising from the use of a motor vehicle, results in unequal treatment, however, the scheme does not violate due process or equal protection. Woodard v. Laurens County, 265 Ga. 404, 456 S.E.2d 581 (1995).

O.C.G.A. T. 50, C. 21, A. 2 does not violate Ga. Const. 1983, Art. I, Sec. II, Para. I since the statutes were enacted under the authority of an amendment approved by a majority of the voters. Dollar v. Dalton Pub. Schs., 233 Ga. App. 827, 505 S.E.2d 789 (1998).

Court had subject matter jurisdiction. — Trial court erred in granting the Department of Labor's motion to dismiss because the applicant for unemployment benefits carried the burden of showing that the trial court had subject matter jurisdiction over the applicant's claims for negligently disclosing personal information, breach of fiduciary duty, and invasion of privacy, which were tort claims that were not excepted from the waiver of sovereign immunity for tort claims pursuant to the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. McConnell v. Dep't of Labor, 345 Ga. App. 669, 814 S.E.2d 790 (2018), aff'd, 305 Ga. 812, 828 S.E.2d 352 (2019).

Medicaid status irrelevant to constitutionality. — Grant of official immunity from a malpractice suit to a state-employed doctor based on the patient's status as a Medicaid patient did not violate the constitutional rights of the patient's parents as the due process and equal protection clauses of the U.S. and Georgia Constitutions protected only rights, and a waiver of sovereign immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., was merely a privilege. Porter v. Guill, 298 Ga. App. 782, 681 S.E.2d 230 (2009).

Construction with Georgia Recreational Property Act. — Tort Claims Act, O.C.G.A. § 50-21-20 et seq., did not change the application of the Georgia Recreational Property Act, O.C.G.A. § 51-3-20 et seq.; a welcome center where a traveler was injured was recreational,

and thus the department which owned the welcome center was immune from liability. Matheson v. Ga. DOT, 280 Ga. App. 192, 633 S.E.2d 569 (2006).

Georgia Lottery Corporation. — Georgia Lottery Corporation (GLC) is entitled to assert sovereign immunity as a bar to a suit under Ga. Const. 1983, Art. I, Sec. II, Para. IX, and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because under the Georgia Lottery for Education Act, O.C.G.A. § 50-27-1 et seq., the purpose, function, and management of the GLC are indelibly intertwined with the state in a manner that qualifies the GLC for the protection of sovereign immunity as a state instrumentality; thus, the GLC must be classified as an instrumentality of the state to which sovereign immunity applies. Kyle v. Ga. Lottery Corp., 290 Ga. 87, 718 S.E.2d 801 (2011).

Tolling of claims against municipal corporations. — In a tort action brought by a passenger against a regional transportation authority, the reversal of the denial of the authority's motion for judgment on the pleadings was upheld because, by its terms, O.C.G.A. § 36-33-5(d) permitted the tolling of the period of limitation only for claims against municipal corporations and it was not a municipal corporation. Foster v. Ga. Reg'l Transp. Auth., 297 Ga. 714, 777 S.E.2d 446 (2015).

Effect of recognizing official immunity does not necessarily leave the injured plaintiff without recourse as, while official immunity relieves the state employee of personal liability, the injured plaintiff may still seek relief against the state government entity for which the state officer or employee was acting, pursuant to the Georgia Tort Claims Act, O.C.G.A. §§ 50-21-23 and 50-21-25(b). Shekhawat v. Jones, 293 Ga. 468, 746 S.E.2d 89 (2013).

Waiver for suits seeking contribution and indemnity. — Georgia Torts Claim Act, O.C.G.A. § 50-21-20 et seq., waived sovereign immunity for suits seeking contribution and indemnity from the state when the state was a joint tortfeasor if the state's tortious activity did not fall within one of the waiver exceptions listed in O.C.G.A. § 50-21-24. DOT v. Montgomery Tank Lines, Inc., 276 Ga. 105, 575 S.E.2d 487 (2003).

Article not exclusive means to waive immunity. — Considering the 1991 constitutional amendment as a whole (Ga. Const. 1983, Art. I, Sec. II, Para. IX), sovereign immunity is waived by any legislative act which specifically provides that sovereign immunity is waived and the extent of such waiver; thus, the enactment of the State Tort Claims Act, O.C.G.A. T. 50, C. 21, A. 2, was but one of the ways the legislature could constitutionally waive sovereign immunity. Gilbert v. Richardson, 264 Ga. 744, 452 S.E.2d 476 (1994).

Right of action provided in the Georgia Whistleblower Act, O.C.G.A. § 45-1-4, is a waiver of Georgia's sovereign immunity independent of the waiver in the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Pattee v. Ga. Ports Auth., 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

Nuisance exception to sovereign immunity. — The 1990 constitutional amendment eliminating the insurance waiver provision and substituting a Tort Claims Act, O.C.G.A. T. 50, C. 21, A. 2, waiver did not conflict with the nuisance exception to sovereign immunity and a municipality can be liable for creating or maintaining a nuisance which constitutes a danger to life and health or a taking of property. City of Thomasville v. Shank, 263 Ga. 624, 437 S.E.2d 306 (1993).

Intra-military immunity. — Trial court erred in denying state defense agency's motion for summary judgment on the civilian technician's personal injury action brought pursuant to the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., as the state defense agency had intra-military immunity from that claim since the claim arose out of work that was inherently military in nature and the civilian technician was acting in a military capacity repairing military equipment at the time of injury. Ga. DOD v. Johnson, 262 Ga. App. 475, 585 S.E.2d 907 (2003).

Design standards exception. — Summary judgment for the Georgia Department of Transportation (DOT) was improper as the affidavits of the plaintiffs' expert, a DOT witness, and a City's Director of Public Works created a fact issue as to whether the DOT's failure to consider excess fill soil disposal in DOT's design

plans complied with generally accepted engineering and design standards under O.C.G.A. § 50-21-24(10); the design standards exception was a limitation on the exceptions to a state's sovereign immunity established by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Reidling v. City of Gainesville, 280 Ga. App. 698, 634 S.E.2d 862 (2006).

Georgia Military College is entitled to sovereign immunity except to the extent sovereign immunity has been waived. Georgia Military College v. Santamorena, 237 Ga. App. 58, 514 S.E.2d 82 (1999).

Physicians employed by state medical college. — Two physicians were entitled to official immunity in a medical malpractice suit brought against the physicians by the parents of a newborn infant injured by the medical team's failure to ensure the child was adequately oxygenated during intubation because the physicians were acting within the scope of their state employment at the Medical College of Georgia in rendering the medical care at issue. Shekhawat v. Jones, 293 Ga. 468, 746 S.E.2d 89 (2013).

Georgia Supreme Court overruled Keenan v. Plouffe, 267 Ga. 791 (1997) and holds that the analysis of a physician's official immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., shall proceed exclusively on the basis of whether the physician was acting within the scope of the physician's state employment in performing the treatment that is the subject of the malpractice action. Shekhawat v. Jones, 293 Ga. 468, 746 S.E.2d 89 (2013).

College campus police officers. — Campus police officers employed by a private college did not qualify as state officers or employees who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts. Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857 (2014).

School superintendent not immune. — Trial court erred by dismissing the plaintiff's complaint for failure to state a claim against the school superintendent because the plaintiff sufficiently pled facts invoking the limited exception to qualified immunity based on allegations that the superintendent maliciously and intentionally injured the plaintiff by firing the plaintiff after seeing the superintendent and another engage in illegal activities. Everson v. DeKalb County Sch. Dist., 344 Ga. App. 665, 811 S.E.2d 9 (2018).

Claim time barred for display of skeletal remains. — Adult child's tort claims against a state university board of regents for the autopsy, study, and display of the parent's skeletal remains in a glass case in a medical school for decades were dismissed because the claims accrued no later than 1950, at which time sovereign immunity applied to Georgia and the state's agencies; thus, a trial court erred in denying the board's motions for summary judgment and dismissal. Bd. of Regents v. Oglesby, 264 Ga. App. 602, 591 S.E.2d 417 (2003).

Failure to comply with notice provision. — After a truck driver became involved in an altercation with a Georgia Port Authority employee during a delivery and was barred from the Savannah River terminal for 30 days, the driver's claim under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., that the driver suffered severe economic loss as a result of being barred from the terminal was procedurally barred because the driver failed to comply with the Act's notice provision, O.C.G.A. § 50-21-26. Gambell v. Ga. Ports Auth., 276 Ga. App. 115, 622 S.E.2d 464 (2005).

Trial court correctly dismissed the parents' claim for injuries incurred by their son while in juvenile detention based on their failure to demonstrate waiver of sovereign immunity under the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., because the parents failed to comply with GTCA by not stating an amount of loss; thus, the parents' ante litem notice was fatally deficient. Douglas v. Dep't of Juvenile Justice, 349 Ga. App. 10, 825 S.E.2d 395 (2019).

Notice requirements. — Because an injured motorist sent ante litem notice of a negligence action against the Georgia Department of Transportation to the Commissioner of the Department of Ad-

ministrative Services, rather than to the Risk Management Division of that department, as required by O.C.G.A. § 50-21-26, the notice did not meet the strict compliance requirements of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq.; the trial court properly granted the state's motion to dismiss the complaint for lack of subject matter jurisdiction over the action. Shelnutt v. Ga. DOT, 272 Ga. App. 109, 611 S.E.2d 762 (2005).

Georgia Supreme Court explained that the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., does not require that a claimant give notice of the entire loss, the complete loss, or the total loss; instead, the plain language requires notice of the amount of the loss claimed at that time, within the belief and knowledge of the claimant, as may be practicable under the circumstances. Douglas v. Dep't of Juvenile Justice, 349 Ga. App. 10, 825 S.E.2d 395 (2019).

Immunity applies to county sheriffs. — Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., did not apply to a wrongful death suit brought against a county, a sheriff, and a deputy; under Ga. Const. 1983, Art. IX, Sec. I, Para. III(a), sheriffs are county officers and O.C.G.A. § 50-21-22(5) excludes counties from the Act, and moreover the county paid the salaries and employee benefits of the sheriff and the sheriff's employees and funded the sheriff's department. Nichols v. Prather, 286 Ga. App. 889, 650 S.E.2d 380 (2007), cert. denied, S07C1873, 2007 Ga. LEXIS 766 (Ga. 2007).

Official immunity applied. — Summary judgment based on official immunity for a school teacher sued over a student's death was proper as certain school employees were immune from liability for supervising students on a school bus and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., was inapplicable. Aliffi v. Liberty County Sch. Dist., 259 Ga. App. 713, 578 S.E.2d 146 (2003).

In a wrongful death action, the Georgia DOT was entitled to sovereign immunity under O.C.G.A. § 50-21-24(9). Furthermore, O.C.G.A. § 50-21-24(10) granted immunity to the DOT from a claim that the fatal accident was proximately caused by a deficiently designed intersection, especially since no evidence was presented that the intersection was not initially designed in substantial compliance with existing engineering or design standards; moreover, under both O.C.G.A. §§ 32-6-50 and 32-6-51(a)(1), the decision of the county department of transportation, and the department's employees, to install the traffic signal necessarily entailed discretionary acts done to perform a specific duty or a mandatory fixed obligation for which mandamus would lie to compel performance, entitling the county and the county's employees to official or qualified immunity. Murray v. Ga. DOT, 284 Ga. App. 263, 644 S.E.2d 290 (2007).

Department of Human Resources cannot be held liable for the negligence of an independent contractor. The Georgia General Assembly has spoken by removing from the pool of state employees covered by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., independent contractors and corporations, and by failing to include in O.C.G.A. § 51-2-5 a waiver of sovereign immunity. Thus, the plaintiff's claim of negligence, based on a failure to notify of the child's sickle cell anemia, against the department was barred by sovereign immunity. In re Carter, 288 Ga. App. 276, 653 S.E.2d 860 (2007).

Trial court properly dismissed a parent's tort claims against the school district and the district's employees as the employees were immune from suit and excluded from the limited waiver provision under both O.C.G.A. §§ 50-21-22(5) and 50-21-23(a). Moreover, none of the alleged acts showed the malicious, wilful, or wanton conduct necessary to overcome that immunity. Chisolm v. Tippens, 289 Ga. App. 757, 658 S.E.2d 147 (2008), cert. denied, 129 S. Ct. 576, 172 L.Ed.2d 431 (2008).

Community service boards. — Limited sovereign immunity waiver was subject to a specific exception for assault or battery, and in determining whether this exception applied, it was not necessary that the act have been committed by a state officer or employee. A community service board was a state agency and was immune from a claim arising from the stabbing death of a resident at a commu-

nity home run by the board. Oconee Cmty. Serv. Bd. v. Holsey, 266 Ga. App. 385, 597 S.E.2d 489 (2004).

State had no liability for false imprisonment claim. — Trial court did not err in dismissing on sovereign immunity grounds an inmate's tort claim alleging false imprisonment against the Department of Corrections since the state was shielded from liability against a false imprisonment claim pursuant to O.C.G.A. § 50-21-24(7). Watson v. Ga. Dep't of Corr., 285 Ga. App. 143, 645 S.E.2d 629 (2007).

Assault and battery immunity applied in prison death case. — Parent's wrongful death suit against a prison where the parent's adult child was incarcerated was properly dismissed by the trial court as the suit was barred by the waiver of sovereign immunity set forth in the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(7), since the adult child was killed as a result of an assault and battery committed by a cell mate. Southerland v. Ga. Dep't of Corr., 293 Ga. App. 56, 666 S.E.2d 383 (2008).

Georgia Tort Claims Act did not bar suit. — Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., did not bar a state employees' breach and impairment of contract suit against the Employees Retirement System of the State of Georgia as the suit sounded in contract and O.C.G.A. § 50-21-1, which was not part of the GTCA, which waived sovereign immunity in an action ex contractu for the breach of a written contract. Alverson v. Employees' Ret. Sys., 272 Ga. App. 389, 613 S.E.2d 119 (2005).

Because the claims for negligence, breach of fiduciary duty, and invasion of privacy sounded in tort, were based on the conduct of a state employee while acting within the employee's scope of employment, and did not fall within an express exception or limitation in the Georgia Torts Claims Act, O.C.G.A. § 50-21-20 et seq., the Act waived the state's sovereign immunity from the action. Dep't of Labor v. McConnell, 305 Ga. 812, 828 S.E.2d 352 (2019).

Waiver of immunity for inmate injured while working on warden's home. — In a suit brought by an inmate wherein a successful jury verdict was obtained against the Georgia Department of Corrections after the inmate was injured while working on a painting detail at the warden's house, the trial court properly denied the Department's motion to dismiss based on sovereign immunity because under the Georgia Tort Claims Act, O.C.G.A. § 50-21-23(a), the state waived sovereign immunity for the torts of state employees while acting within the scope of the employees' official duties in the same manner as a private individual or entity would be liable under like circumstances. Ga. Dep't of Corr. v. Couch, 322 Ga. App. 234, 744 S.E.2d 432 (2013).

Slip and fall on sidewalk. — Trial court did not err by dismissing a pedestrian's slip and fall claims against the Georgia Department of Transportation (GDOT) based on the bar of sovereign immunity because GDOT's specific decision to forego routine inspections, repairs, or maintenance of sidewalks within a state right-of-way as a result of prioritizing maintenance activities based on budgetary constraints fell under the discretionary function exception. Hagan v. Ga. DOT, 321 Ga. App. 472, 739 S.E.2d 123 (2013).

Cited in Seay v. Cleveland, 270 Ga. 64, 508 S.E.2d 159 (1998); DOT v. Cox, 246 Ga. App. 221, 540 S.E.2d 218 (2000); CSX Transp., Inc. v. City of Garden City, 277 Ga. 248, 588 S.E.2d 688 (2003); Ga. Forestry Comm'n v. Canady, 280 Ga. 825, 632 S.E.2d 105 (2006); Perdue v. Athens Tech. College, 283 Ga. App. 404, 641 S.E.2d 631 (2007); State of Ga. v. Haynes, 285 Ga. App. 637, 647 S.E.2d 331 (2007); Southerland v. Ga. Dep't of Corr., 293 Ga. App. 56, 666 S.E.2d 383 (2008); Sadler v. DOT, 311 Ga. App. 601, 716 S.E.2d 639 (2011); Considine v. Murphy, 297 Ga. 164, 773 S.E.2d 176 (2015); McConnell v. Department of Labor, 337 Ga. App. 457, 787 S.E.2d 794 (2016); Grant v. Ga. Forestry Comm'n, 338 Ga. App. 146, 789 S.E.2d 343 (2016); Williams v. DeKalb County, 308 Ga. 265, 840 S.E.2d 423 (2020).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 18A Am. Jur. Pleading and Practice Forms, Municipal, School, and State Tort Liability, § 1 et seq.

ALR. — Liability of municipality or other governmental unit for failure to provide police protection from crime, 90 A.L.R.5th 273.

Propriety of and liability arising from police use of precision immobilization technique or similar act, 42 A.L.R.7th Art. 2.

When is federal agency employee independent contractor, creating exception to United States waiver of immunity under Federal Tort Claims Act (28 U.S.C.A. § 2671), 166 A.L.R. Fed. 187.

50-21-21. Legislative intent.

(a) The General Assembly recognizes the inherently unfair and inequitable results which occur in the strict application of the traditional doctrine of sovereign immunity. On the other hand, the General Assembly recognizes that, while private entrepreneurs voluntarily choose the ambit of their activity and can thereby exert some control over their exposure to liability, state government does not have the same flexibility. In acting for the public good and in responding to public need, state government must provide a broad range of services and perform a broad range of functions throughout the entire state, regardless of how much exposure to liability may be involved. The exposure of the state treasury to tort liability must therefore be limited. State government should not have the duty to do everything that might be done. Consequently, it is declared to be the public policy of this state that the state shall only be liable in tort actions within the limitations of this article and in accordance with the fair and uniform principles established in this article.

(b) The General Assembly also recognizes that the proper functioning of state government requires that state officers and employees be free to act and to make decisions, in good faith, without fear of thereby exposing themselves to lawsuits and without fear of the loss of their personal assets. Consequently, it is declared to be the public policy of this state that state officers and employees shall not be subject to lawsuit or liability arising from the performance or nonperformance of their official duties or functions.

(c) All of the provisions of this article should be construed with a view to carry out this expression of the intent of the General Assembly.

History. — Code 1981, § 50-21-21, enacted by Ga. L. 1992, p. 1883, § 1.

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Immunity granted to agencies under the Community Services Act, O.C.G.A. § 42-8-71(d), promotes a public policy that was not superseded or repealed by implication by the 1991 amendment of this paragraph providing for the waiver of the state's sovereign immunity or by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., enacted pursuant to the amendment. Department of Human Resources v. Mitchell, 238 Ga. App. 477, 518 S.E.2d 440 (1999).

Contribution and indemnity if not within exceptions. — Georgia Torts Claim Act, O.C.G.A. § 50-21-20 et seq., waived sovereign immunity for suits seeking contribution and indemnity from the state when the state was a joint tortfeasor if the state's tortious activity did not fall within one of the waiver exceptions listed in O.C.G.A. § 50-21-24. DOT v. Montgomery Tank Lines, Inc., 276 Ga. 105, 575 S.E.2d 487 (2003).

Municipalities do not come within the ambit of the 1991 amendment to Ga. Const. 1983, Art. I, Sec. II, Para. IX pursuant to which sovereign immunity was extended to the state and all of the state's departments and agencies. City of Thomaston v. Bridges, 264 Ga. 4, 439 S.E.2d 906 (1994).

No liability for approving wall construction permit. — State is only liable in tort actions within the limitations of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Since a lawsuit arose from the state's approval of a permit for the construction of a decorative wall, which was specifically excluded by O.C.G.A. § 50-21-24(9), the Department of Transportation was entitled to summary judgment as a matter of law. DOT v. Bishop, 216 Ga. App. 57, 453 S.E.2d 478 (1995).

School districts. — Neither the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., nor any other Act of the General Assembly waived the sovereign immunity of county-wide school districts. Teston v. Collins, 217 Ga. App. 829, 459 S.E.2d 452 (1995).

Immunity extends to school districts. — Sovereign immunity extends to school districts under the 1991 amendment of Ga. Const. 1983, Art. I, Sec. II, Para. IX, and the legislature has not provided for a waiver of such immunity. Bitterman v. Atkins, 217 Ga. App. 652, 458 S.E.2d 688 (1995).

Immunity for university officials. — Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., barred a state university professor's tortious interference claim against the university and the university's officials because the individual defendants were immune under O.C.G.A. § 50-21-21(b), and, under O.C.G.A. § 50-21-24(7), the state had no liability for losses resulting from interference with contractual rights. Edmonds v. Bd. of Regents, 302 Ga. App. 1, 689 S.E.2d 352 (2009), cert. denied, No. S10C0824, 2010 Ga. LEXIS 437 (Ga. 2010), overruled on other grounds by Wolfe v. Regents of the Univ. Sys. of Ga., 300 Ga. 223, 794 S.E.2d 85 (Ga. 2016).

College campus police officers did not qualify for immunity. — Campus police officers employed by a private college did not qualify as state officers or employees who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts. Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857 (2014).

Public duty doctrine inapplicable. — In an action against the DOT arising from an intersectional collision, the public duty doctrine did not require that a special relationship be shown between the victim and the department because the enactment of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., created state exposure to potential liability for losses. DOT v. Brown, 218 Ga. App. 178, 460 S.E.2d 812 (1995), aff'd, 267 Ga. 6, 471 S.E.2d 849 (1996).

Physician whose license was temporarily suspended could not file suit against officers of the Board of Medical Examiners or other state employees for their actions relating to the suspension. Howard v. Miller, 222 Ga. App. 868, 476 S.E.2d 636 (1996).

Physician treating prisoners. — Since the prisoner's doctor was an independent contractor, not an employee of the sheriff, the doctor was not an employee within the meaning of O.C.G.A. § 50-21-22 and did not have official immunity; therefore, any negligence of the doctor could not be imputed to the sheriff. Cantrell v. Thurman, 231 Ga. App. 510, 499 S.E.2d 416 (1998).

Intervening private party negligence protects department. — Georgia Department of Human Resources was protected from suit by decedent's estate and next of kin due to the residential care facility's intervening negligence in failing to follow water temperature regulations which caused second and third degree burns to the decedent resulting in death. Lewis v. Ga. Dep't of Human Res., 255 Ga. App. 805, 567 S.E.2d 65 (2002).

State official immune from tort liabilty for assumed intentional eavesdropping. — Employee's suit against a supervisor at a state agency alleging illegal eavesdropping and invasion of privacy in violation of O.C.G.A. § 16-11-62 was dismissed based on immunity under O.C.G.A. §§ 50-21-21(b) and 50-21-25(a); the supervisor was a state employee acting within the scope of the supervisor's employment when the supervisor answered the employee's accidental call and listened in on the employee's conversation with the employee's spouse, which was critical of the supervisor. Stephens v. Coan, 349 Ga. App. 147, 825 S.E.2d 525 (2019).

Independent contractor not state officer or employee. — Defendant's emergency motion to open default was improperly granted as the defendant did not plead under oath a meritorious defense because the defendant was acting as an independent contractor working for the city when it undertook the inspections at issue; under the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., sovereign immunity applied only to the state and to state officers and employees; and the GTCA specifically excluded an independent contractor doing business with the state from the definition of state officer or employee. Leeper v. Safebuilt Ga., Inc., 353 Ga. App. 121, 836 S.E.2d 625 (2019).

Immunity waived. — State Department of Transportation (DOT) waived the DOT's sovereign immunity under O.C.G.A. § 50-21-22(1), since DOT was a joint tortfeasor and thus responsible for contribution and indemnity to the responsible party; the trial court thus did not err in denying the department's motion to dismiss claims. DOT v. Montgomery Tank Lines, Inc., 253 Ga. App. 143, 558 S.E.2d 723 (2001), aff'd, 276 Ga. 105, 575 S.E.2d 487 (2003).

Construction with O.C.G.A. § 50-21-24. — In order for state policy decisions related to the provision of emergency services not to be directly or indirectly put on trial, the Supreme Court of Georgia construed O.C.G.A. § 50-21-24(6), an exception to the waiver of sovereign immunity, to provide complete protection of the policy-making decisions in providing police and fire services from judicial review as such construction accomplished a balance between the inherently unfair and inequitable results from the strict application of sovereign immunity and the need to limit the state's exposure to tort liability that the General Assembly expressed as the General Assembly's goal in O.C.G.A. § 50-21-21. Ga. Forestry Comm'n v. Canady, 280 Ga. 825, 632 S.E.2d 105 (2006).

Accident caused by preventable negligence made law enforcement exception inapplicable. — State public safety department was not immune from liability under O.C.G.A. § 50-21-24(6) for an accident which was caused when a trooper collided with a motorist's truck while the trooper was running radar using the truck as cover because the trooper's actions were not a policy decision, but rather simple, preventable negligence while implementing a non-defective policy. Ga. Dep't of Pub. Safety v. Davis, 285 Ga. 203, 676 S.E.2d 1 (2009).

More than one proximate cause of loss. — Decedent was killed when the taxi in which the decedent was riding spun out of control on a rain-slick interstate highway and hit a tree. Assuming arguendo that the Georgia Department of Transportation (DOT) was immune from a negligence suit under O.C.G.A. § 50-21-24 for a city employee's negligent inspection of

the taxi's tires, expert testimony that the tree's proximity to the highway may have violated generally accepted engineering standards rendered the DOT liable under § 50-21-24(10), the design standards exception. Ga. DOT v. Heller, 285 Ga. 262, 674 S.E.2d 914 (2009).

Cited in Canfield v. Cook County, 213 Ga. App. 625, 445 S.E.2d 375 (1994); Mattox v. Bailey, 221 Ga. App. 546, 472 S.E.2d 130 (1996); Williams v. Department of Human Resources, 234 Ga. App. 638, 507 S.E.2d 230 (1998); Ga. Dep't of Human Res. v. Coley, 247 Ga. App. 392, 544 S.E.2d 165 (2000); Perdue v. Athens Tech. College, 283 Ga. App. 404, 641 S.E.2d 631 (2007); Douglas Asphalt Co. v. Linnenkohl, 320 Ga. App. 427, 741 S.E.2d 169 (2013); Shekhawat v. Jones, 293 Ga. 468, 746 S.E.2d 89 (2013); Burroughs v. Georgia Ports Authority, 339 Ga. App. 294, 793 S.E.2d 538 (2016).

50-21-22. Definitions.

As used in this article, the term:

(1) "Claim" means any demand against the State of Georgia for money only on account of loss caused by the tort of any state officer or employee committed while acting within the scope of his or her official duties or employment.

(2) "Discretionary function or duty" means a function or duty requiring a state officer or employee to exercise his or her policy judgment in choosing among alternate courses of action based upon a consideration of social, political, or economic factors.

(3) "Loss" means personal injury; disease; death; damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death; pain and suffering; mental anguish; and any other element of actual damages recoverable in actions for negligence.

(3.1) "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

(4) "Person" means a natural person, corporation, firm, partnership, association, or other such entity.

(5) "State" means the State of Georgia and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, and institutions, but does not include counties, municipalities, school districts, other units of local government, hospital authorities, or housing and other local authorities.

(6) "State government entity" means a state office, agency, authority, department, commission, board, division, instrumentality, or institution.

(7) "State officer or employee" means an officer or employee of the state, elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of the state in any official

capacity, whether with or without compensation, but the term does not include an independent contractor doing business with the state. The term state officer or employee also includes any natural person who is a member of a board, commission, committee, task force, or similar body established to perform specific tasks or advisory functions, with or without compensation, for the state or a state government entity, and any natural person who is a volunteer participating as a volunteer, with or without compensation, in a structured volunteer program organized, controlled, and directed by a state government entity for the purposes of carrying out the functions of the state entity. This shall include any health care provider and any volunteer when providing services pursuant to Article 8 of Chapter 8 of Title 31. An employee shall also include foster parents and foster children. Except as otherwise provided for in this paragraph, the term shall not include a corporation whether for profit or not for profit, or any private firm, business proprietorship, company, trust, partnership, association, or other such private entity.

History. — Code 1981, § 50-21-22, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 1994, p. 1717, §§ 9, 10; Ga. L. 1998, p. 128, § 50; Ga. L. 2005, p. 1493, § 5/HB 166.

Law reviews. — For survey article on trial practice and procedure for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 439 (2003). For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005).

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Applicability of constitutional immunity. — See Bitterman v. Atkins, 217 Ga. App. 652, 458 S.E.2d 688 (1995).

Unified government of county. — Because the General Assembly has not waived immunity of counties, the trial court did not err in ruling that a claim against a county unified government was barred by sovereign immunity. Swan v. Johnson, 219 Ga. App. 450, 465 S.E.2d 684 (1995).

Discretionary functions. — State had a duty to provide youth in the state's custody with medical care and treatment, but the details of that care were discretionary and therefore subject to immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Edwards v. Department of Children & Youth Servs., 236 Ga. App. 696, 512 S.E.2d 339 (1999).

Scope of the discretionary function exception of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., must be determined by the definition in O.C.G.A. § 50-21-22 which is more narrowly drawn than the definition created by preexisting case law. Brantley v. Department of Human Resources, 271 Ga. 679, 523 S.E.2d 571 (1999).

State board's acts in procedures used in terminating a state employee were discretionary acts. Bd. of Pub. Safety v. Jordan, 252 Ga. App. 577, 556 S.E.2d 837 (2001).

When the ward, who was diagnosed with paranoid schizophrenia, walked into traffic on an interstate and was struck by a tractor trailer, the Georgia Department of Human Services' motion to dismiss was properly granted as the plaintiffs' claims were barred by sovereign immunity because, under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., the ultimate determination of whether to take the ward into custody was a discretionary one, involving issues of policy. Garrett v. Dep't of Human Servs., 355 Ga. App. 714, 845 S.E.2d 742 (2020).

Inspection for road hazards was not discretionary function. — Georgia Department of Transportation's decision

of when and where to inspect for road hazards during and following a rain event was not a policy decision requiring the exercise of discretion within the scope of O.C.G.A. § 50-21-24(2), although it involved a "judgment call" by DOT employees, and therefore the DOT did not have immunity from a suit stemming from a driver's hydroplaning in water on the road and drowning in a pond caused by a backed up storm drain. Ga. DOT v. Miller, 300 Ga. App. 857, 686 S.E.2d 455 (2009).

No discretionary function exception found. — Decision of state employees on the type of emergency medical care to provide incarcerated juveniles does not fall within the discretionary function exception to the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Edwards v. Georgia Dep't of Children & Youth Servs., 271 Ga. 890, 525 S.E.2d 83 (2000).

County employees fall outside the scope of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and the employees' actions are not subject to the Act's definition of discretionary function that is found in O.C.G.A. § 50-21-22(2). Cooper v. Paulding County Sch. Dist., 265 Ga. App. 844, 595 S.E.2d 671 (2004); Brown v. Taylor, 266 Ga. App. 176, 596 S.E.2d 403 (2004).

In an action under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., against a state hospital for negligent acts occurring in Richmond County, venue was proper in DeKalb County, where the patients underwent multiple corrective surgeries allegedly arising out of the alleged negligence because under O.C.G.A. §§ 50-21-22(3) and 50-21-28, a tort action could be brought against the state in the county where economic loss, pain and suffering, mental anguish, and other elements of actual damages occurred. Bd. of Regents of the Univ. Sys. of Ga. v. Jordan, 335 Ga. App. 703, 782 S.E.2d 809 (2016).

Probation officer, employed by the county sheriff's office, who signed an arrest warrant for the nonpayment of a traffic fine after the arrestee had actually paid the fine, was not entitled to immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the Act specifically excluded counties, and the officer was acting on the county's behalf and not on behalf or in the service of the state. Washington v. Rivera, 939 F.3d 1239 (11th Cir. 2019).

"State officer or employee." — In a tort action by a state prisoner held in a county jail under contract with the Department of Corrections for injuries sustained while working on a highway under the supervision of a county employee, summary judgment in favor of the department was precluded by fact issues as to whether the employee was an agent of the department or an independent contractor. Williams v. Georgia Dep't of Cors., 224 Ga. App. 571, 481 S.E.2d 272 (1997).

Full-time Army officer being paid by the United States Army and assigned to instruct ROTC courses at the defendant college was not a state officer or employee as the college had no right to control the time, manner, and method of the Army's performance of the contract pursuant to which the officer taught. Armstrong State College v. McGlynn, 234 Ga. App. 181, 505 S.E.2d 853 (1998).

Corporate child care institution and the institution's employee were not an employee of the state for purposes of the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq.; therefore, there was no waiver of sovereign immunity by the state in regard to the GTCA when a juvenile that the Georgia Department of Human Resources and the Georgia Department of Juvenile Justice placed in the child care institution was accidentally killed. Ga. Dep't of Human Res. v. Johnson, 264 Ga. App. 730, 592 S.E.2d 124 (2003).

In a state employee's suit asserting defamation against a state director, the trial court properly granted the director summary judgment and dismissed the complaint as the records established that the director was a state employee at the time the alleged statements were made and, therefore, any libelous or slanderous statements were made by the director within the scope of the director's official duties and, thus, the director was immune from liability. Ford v. Caffrey, 293 Ga. App. 269, 666 S.E.2d 623 (2008).

College and a department were entitled to sovereign immunity in a claim seeking damages arising from the purchase of a

nail primer product at the college because there was no showing of a waiver of a sovereign immunity under O.C.G.A. § 50-21-23(a); among other things, the vendor of the product was an independent contractor, and thus was not a state officer or employee under O.C.G.A. § 50-21-22(7). The instructors of the college, who neither sold nor manufactured the nail kit containing the nail primer, assumed no duty to provide warnings, the complaint included no allegations of negligent supervision, claims that the college instructors were negligent in the instructor's own right were barred by contrary binding admissions in judicio, and without evidence that the college instructors retained control over the vendor's work, there was no claim that the instructors had or breached a duty to supervise. Coosa Valley Tech. College v. West, 299 Ga. App. 171, 682 S.E.2d 187 (2009), cert. denied, No. S09C1954, 2010 Ga. LEXIS 9 (Ga. 2010).

Court of appeals erred by reversing the trial court's denial of a community service board's motion to dismiss a parent's wrongful death action, which alleged that the board was liable for a health care workers' negligent acts, because borrowed servants were included within the definition of an "employee" for purposes of the Georgia Tort Claims Act, O.C.G.A. § 50-21-22(7); encompassed within the waiver of immunity under the Act, O.C.G.A. § 50-21-23(a), for all state employees acting within the scope of their official duties is a concomitant specific waiver of immunity for torts committed by borrowed servants acting within the scope of their official duties on behalf of the state because by electing not to include a separate definition of the term "employee" within the Act, the General Assembly intended courts to apply the legal definition of that term as developed under common law and existing jurisprudence. Summerlin v. Ga. Pines Cmty. Serv. Bd., 286 Ga. 593, 690 S.E.2d 401 (2010).

Court of appeals erred by reversing the trial court's denial of a community service board's motion to dismiss a mother's wrongful death action, which alleged that it was liable for health care workers' negligent acts, because the court of appeals erred in failing to give any weight to the legal principles regarding borrowed servants and the definition attributed to the term "employee" for purposes of the workers' compensation statute; the fact that borrowed servants have been included within the definition of an "employee" in other legal areas is proof of how ingrained the borrowed servant doctrine is in our jurisprudence. Summerlin v. Ga. Pines Cmty. Serv. Bd., 286 Ga. 593, 690 S.E.2d 401 (2010).

Denial of motion to dismiss was reversed because in fulfilling their "law enforcement powers" granted by O.C.G.A. § 20-8-2, the campus police officers were acting on behalf or in service of the state in an official capacity and, thus, the officers were "state officers" under O.C.G.A. § 50-21-22(7). Agnes Scott College v. Hartley, 321 Ga. App. 74, 741 S.E.2d 199 (2013).

Defendant's emergency motion to open default was improperly granted as the defendant did not plead under oath a meritorious defense because the defendant was acting as an independent contractor working for the city when it undertook the inspections at issue; under the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., sovereign immunity applied only to the state and to state officers and employees; and the GTCA specifically excluded an independent contractor doing business with the state from the definition of state officer or employee. Leeper v. Safebuilt Ga., Inc., 353 Ga. App. 121, 836 S.E.2d 625 (2019).

School districts excluded from definition of "state". — School district was not an arm of the state for purposes of federal immunity in part because the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., explicitly excludes school districts from the Act's definition of "state." Lightfoot v. Henry County Sch. Dist., 771 F.3d 764 (11th Cir. 2014).

School superintendent liability. — Trial court erred by dismissing the plaintiff's complaint for failure to state a claim against the school superintendent because the plaintiff sufficiently pled facts invoking the limited exception to qualified immunity based on allegations that the superintendent maliciously and intention-

ally injured the plaintiff by firing the plaintiff after seeing the superintendent and another engage in illegal activities. Everson v. DeKalb County Sch. Dist., 344 Ga. App. 665, 811 S.E.2d 9 (2018).

Provision of emergency services. — In order for state policy decisions related to the provision of emergency services not to be directly or indirectly put on trial, the Supreme Court of Georgia construed O.C.G.A. § 50-21-24(6), an exception to the waiver of sovereign immunity, to provide complete protection of the policy-making decisions in providing police and fire services from judicial review as such construction accomplished a balance between the inherently unfair and inequitable results from the strict application of sovereign immunity and the need to limit the state's exposure to tort liability that the General Assembly expressed as the General Assembly's goal in O.C.G.A. § 50-21-21. Ga. Forestry Comm'n v. Canady, 280 Ga. 825, 632 S.E.2d 105 (2006).

Campus police entitled to immunity. — Denial of motion to dismiss was reversed because in fulfilling their "law enforcement powers" granted by O.C.G.A. § 20-8-2, the campus police officers were acting on behalf or in service of the state in an official capacity and, thus, the officers were "state officers" under O.C.G.A. § 50-21-22(7). Agnes Scott College v. Hartley, 321 Ga. App. 74, 741 S.E.2d 199 (2013).

College campus police officers. — Campus police officers employed by a private college did not qualify as state officers or employees who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts. Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857 (2014).

Georgia Ports Authority covered. — Torts Claims Act, O.C.G.A. § 50-21-20 et seq., applies to the Georgia Ports Authority as sovereign immunity applies thereto. Miller v. Georgia Ports Auth., 217 Ga. App. 876, 460 S.E.2d 100 (1995), aff'd, 266 Ga. 586, 470 S.E.2d 426 (1996).

Act not applicable to Georgia Ports Authority employee seeking reinstatement. — Tort Claims Act, O.C.G.A. § 50-21-20 et seq., did not apply to an action by a former employee of the Georgia Ports Authority (GPA) seeking an injunction prohibiting the GPA from barring the former employee from the GPA's premises and an order reinstating the former employee to the former position. Premo v. Georgia Ports Auth., 227 Ga. App. 27, 488 S.E.2d 106 (1997).

Georgia Lottery Corporation. — Georgia Lottery Corporation (GLC) is entitled to assert sovereign immunity as a bar to a suit under Ga. Const. 1983, Art. I, Sec. II, Para. IX, and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because under the Georgia Lottery for Education Act, O.C.G.A. § 50-27-1 et seq., the purpose, function, and management of GLC are indelibly intertwined with the state in a manner that qualifies the GLC for the protection of sovereign immunity as a state instrumentality; thus, the GLC must be classified as an instrumentality of the state to which sovereign immunity applies. Kyle v. Ga. Lottery Corp., 290 Ga. 87, 718 S.E.2d 801 (2011).

Health department acting solely as a county agency was governed by the same sovereign immunity as the county and a waiver by specific legislative act was necessary in order for the department to be subject to a suit in tort. Fielder v. Rice Constr. Co., 239 Ga. App. 362, 522 S.E.2d 13 (1999).

Discretionary decision not to interfere with arrest. — Decision of police officers not to interfere with the arrests of the plaintiffs called for a consideration of discretion and liability therefor was barred by sovereign immunity. Rhoden v. Department of Pub. Safety, 221 Ga. App. 844, 473 S.E.2d 537 (1996).

Sovereign immunity applied to teacher and school system. — In a negligence action by a student against a school system and physical education teacher, the system and teacher were entitled to the defense of sovereign immunity, and there was no waiver of immunity by the mere existence of the system's liability insurance policy. Crisp County Sch. Sys. v. Brown, 226 Ga. App. 800, 487 S.E.2d 512 (1997).

As the Georgia Tort Claims Act,

O.C.G.A. § 50-21-20 et seq., does not divest a public school district of the district's sovereign immunity, plaintiff's various state claims against a physical education teacher and the school system were dismissed. Davis v. DeKalb County Sch. Dist., 996 F. Supp. 1478 (N.D. Ga. 1998), aff'd sub nom. Davis ex rel. Doe v. DeKalb County Sch. Dist., 233 F.3d 1367 (11th Cir. 2000).

Immunity applies to county sheriffs. — Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et. seq., did not apply to a wrongful death suit brought against a county, a sheriff, and a deputy; under Ga. Const. 1983, Art. IX, Sec. I, Para. III(a), sheriffs are county officers and O.C.G.A. § 50-21-22(5) excludes counties from the Act, and moreover the county paid the salaries and employee benefits of the sheriff and the sheriff's employees and funded the sheriff's department. Nichols v. Prather, 286 Ga. App. 889, 650 S.E.2d 380 (2007), cert. denied, S07C1873, 2007 Ga. LEXIS 766 (Ga. 2007).

Sovereign immunity applied to county or school district. — Ga. Const. 1983, Art. I, Sec. II, Para. IX provided that counties and other political subdivisions of the State of Georgia were absolutely immune from suit for tort liability, unless that immunity was specifically waived pursuant to an Act of the General Assembly which specifically provided that sovereign immunity was waived and the extent of such waiver, and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., provided for a limited waiver of the state's sovereign immunity for the torts of the state's officials and employees. However, the Act expressly excluded counties and school districts from the waiver, O.C.G.A. § 50-21-22(5); because the plaintiff failed to identify any legislative act that waived the immunity of defendant county or school district, county defendants were immune from suit on plaintiff's state law claims. McDaniel v. Fulton County Sch. Dist., 233 F. Supp. 2d 1364 (N.D. Ga. 2002).

Teacher's action, alleging fraud by a school district in inducing the teacher to resign and to enter an agreement with the district, was barred by sovereign immunity pursuant to O.C.G.A. § 50-21-22(5) as the limited waiver of the state's sovereign immunity for the torts of the state's officers and employees excluded school districts. Kaylor v. Rome City Sch. Dist., 267 Ga. App. 647, 600 S.E.2d 723 (2004).

State transportation department's motion to dismiss was properly granted on the ground that sovereign immunity barred the claimant's personal injury claim against the state because the claimant did not timely file a notice of claim as required by O.C.G.A. § 50-21-26(a), and substantial compliance was not sufficient to meet that statute's requirement of proper notice; since the claimant did not timely file the notice of claim, the trial court was not permitted to consider the claim because the state only waived the state's sovereign immunity to the extent of providing a limited time to file a claim against the state, and since the claimant did not meet that requirement the trial court lacked subject matter jurisdiction to entertain the claim. Williams v. Ga. DOT, 275 Ga. App. 88, 619 S.E.2d 763 (2005).

Trial court properly dismissed a parent's tort claims against the school district and the district's employees as the district were immune from suit and excluded from the limited waiver provision under both O.C.G.A. §§ 50-21-22(5) and 50-21-23(a). Moreover, none of the alleged acts showed the malicious, wilful, or wanton conduct necessary to overcome that immunity. Chisolm v. Tippens, 289 Ga. App. 757, 658 S.E.2d 147 (2008), cert. denied, 129 S. Ct. 576, 172 L.Ed.2d 431 (2008).

Accidental electrocution of child. — Georgia Department of Human Resources and the Department of Juvenile Justice were entitled to sovereign immunity on a claim asserted by the parent for an accidental electrocution of the parent's child because the child had been placed in the care and custody of the state agencies, but was living in a facility operated by an independent contractor through an agreement with the state, and was fatally injured through the negligence of the contractor's employee. Johnson v. Ga. Dep't of Human Res., 278 Ga. 714, 606 S.E.2d 270 (2004).

No immunity in action by foster child's parents. — Georgia Department of Human Resources and the DeKalb

Community Service Board were not entitled to summary judgment based on immunity in a foster child's parents' action against them arising out of the child's being hit by a car while in foster care. The foster parents' decision to leave the child was not a discretionary function under O.C.G.A. §§ 50-21-22(2) and 50-21-24(2); decisions about the child's care did not involve policy judgments based on social, political, or even economic factors. Ga. Dep't of Human Res. v. Bulbalia, 303 Ga. App. 659, 694 S.E.2d 115 (2010).

Investigation of child abuse. — Appellate court erred by reversing the dismissal of a negligence suit against a state agency regarding a report of abuse from a pediatrician of two boys because the case manager's decisions about how to investigate the report required a balancing of policy considerations, thus, the discretionary function exception under the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(2), applied and the case was properly dismissed by the trial court. Ga. Dep't of Human Servs. v. Spruill, 294 Ga. 100, 751 S.E.2d 315 (2013).

In a suit against the state arising out of the death of an infant at the hands of the infant's drug-addicted parents, dismissal of claims for battery on the child was proper under the assault and battery exception to the state's waiver of sovereign immunity, O.C.G.A. § 50-21-24(7); however, more information was needed to determine if the discretionary function exception, § 50-21-24(2), applied. Cowart v. Ga. Dep't of Human Servs., 340 Ga. App. 183, 796 S.E.2d 903 (2017).

Loss. — Court of appeals was correct in the court's determination that venue in defendant's wrongful death action was proper in the county where the death occurred since the term "loss" was not a matter of speculation, was defined in O.C.G.A. § 50-21-22, and which definition included "death". Georgia DOT v. Evans, 269 Ga. 400, 499 S.E.2d 321 (1998).

Cited in Gilbert v. Richardson, 264 Ga. 744, 452 S.E.2d 476 (1994); Northwest Ga. Regional Hosp. v. Wilkins, 220 Ga. App. 534, 469 S.E.2d 786 (1996); Evans v. DOT, 226 Ga. App. 74, 485 S.E.2d 243 (1997); Bontwell v. Department of Cors., 226 Ga. App. 524, 486 S.E.2d 917 (1997); Jackson v. Department of Human Resources, 230 Ga. App. 595, 497 S.E.2d 58 (1998); Williams v. Georgia Dep't of Human Resources, 272 Ga. 624, 532 S.E.2d 401 (2000); Ga. Dep't of Human Res. v. Coley, 247 Ga. App. 392, 544 S.E.2d 165 (2000); Rayburn v. Hogue, 241 F.3d 1341 (11th Cir. 2001); DOT v. Montgomery Tank Lines, Inc., 253 Ga. App. 143, 558 S.E.2d 723 (2001); Aliffi v. Liberty County Sch. Dist., 259 Ga. App. 713, 578 S.E.2d 146 (2003); Currid v. DeKalb State Court Prob. Dep't, 285 Ga. 184, 674 S.E.2d 894 (2009); Kyle v. Ga. Lottery Corp., 304 Ga. App. 635, 698 S.E.2d 12 (2010); Hagan v. Ga. DOT, 321 Ga. App. 472, 739 S.E.2d 123 (2013); Considine v. Murphy, 297 Ga. 164, 773 S.E.2d 176 (2015); Stephens v. Coan, 349 Ga. App. 147, 825 S.E.2d 525 (2019); Bush v. Eichholz, 352 Ga. App. 465, 833 S.E.2d 280 (2019).

50-21-23. Limited waiver of sovereign immunity.

(a) The state waives its sovereign immunity for the torts of state officers and employees while acting within the scope of their official duties or employment and shall be liable for such torts in the same manner as a private individual or entity would be liable under like circumstances; provided, however, that the state's sovereign immunity is waived subject to all exceptions and limitations set forth in this article. The state shall have no liability for losses resulting from conduct on the part of state officers or employees which was not within the scope of their official duties or employment.

(b) The state waives its sovereign immunity only to the extent and in the manner provided in this article and only with respect to actions

brought in the courts of the State of Georgia. The state does not waive any immunity with respect to actions brought in the courts of the United States.

History. — Code 1981, § 50-21-23, enacted by Ga. L. 1992, p. 1883, § 1.

Law reviews. — For annual survey of law of torts, see 56 Mercer L. Rev. 415 (2004). For article, "Construction Law," see 70 Mercer L. Rev. 51 (2018).

JUDICIAL DECISIONS

"State officer or employee." — In a tort action by a state prisoner held in a county jail under contract with the Department of Corrections for injuries sustained while working on a highway under the supervision of a county employee, summary judgment in favor of the department was precluded by fact issues as to whether the employee was an agent of the department or an independent contractor. Williams v. Georgia Dep't of Cors., 224 Ga. App. 571, 481 S.E.2d 272 (1997).

Court of appeals erred by reversing the trial court's denial of a community service board's motion to dismiss a parent's wrongful death action, which alleged that the board was liable for health care workers' negligent acts, because borrowed servants were included within the definition of an "employee" for purposes of the Georgia Tort Claims Act, O.C.G.A. § 50-21-22(7); encompassed within the waiver of immunity under the Act, O.C.G.A. § 50-21-23(a), for all state employees acting within the scope of the employees' official duties is a concomitant specific waiver of immunity for torts committed by borrowed servants acting within the scope of the servant's official duties on behalf of the state because by electing not to include a separate definition of the term "employee" within the Act, the General Assembly intended courts to apply the legal definition of that term as developed under common law and existing jurisprudence. Summerlin v. Ga. Pines Cmty. Serv. Bd., 286 Ga. 593, 690 S.E.2d 401 (2010).

Judgment was reversed with regard to dismissal of patient's negligence claim because it was undisputed that the university dentist was a state employee acting within the scope of the dentist's employment. As such, the patient could proceed on the patient's claim for the dentist's failure to timely remove the temporary crowns and replace the temporary crowns with permanent crowns. Lockhart v. Bd. of Regents of the Univ. Sys. of Ga., 316 Ga. App. 759, 730 S.E.2d 475 (2012).

State employed physicians entitled to official immunity. — In a medical malpractice suit, two physicians were entitled to official immunity under O.C.G.A. §§ 50-21-23(b) and 50-21-25(a) because the record established that the physicians were full-time faculty members at a Georgia medical college performing the physicians regular duties of employment at the time the estate's decedent was allegedly injured. Cook v. Forrester, 323 Ga. App. 631, 746 S.E.2d 624 (2013).

Construction with Georgia Recreational Property Act. — Tort Claims Act, O.C.G.A. § 50-21-20 et seq., did not change the application of the Georgia Recreational Property Act, O.C.G.A. § 51-3-20 et seq.; a welcome center where a traveler was injured was recreational, and thus the department which owned the welcome center was immune from liability. The immunity claimed by the department was not "sovereign" immunity, but rather was an immunity granted by statute to an owner who invited the public onto land for recreational purposes without charging a fee. Matheson v. Ga. DOT, 280 Ga. App. 192, 633 S.E.2d 569 (2006).

Construction of O.C.G.A. § 50-21-24. — In order for state policy decisions related to the provision of emergency services not to be directly or indirectly put on trial, the Supreme Court of Georgia construed O.C.G.A. § 50-21-24(6), an exception to the waiver of sovereign immunity, to provide complete protection of the policy-making decisions in providing police and fire services from judicial review

as such construction accomplished a balance between the inherently unfair and inequitable results from the strict application of sovereign immunity and the need to limit the state's exposure to tort liability that the General Assembly expressed as the General Assembly's goal in O.C.G.A. § 50-21-21. Ga. Forestry Comm'n v. Canady, 280 Ga. 825, 632 S.E.2d 105 (2006).

Actions outside scope of employment. — Waiver of the state's sovereign immunity for the torts of the state's officers and employees did not extend to losses resulting from conduct that was not within the scope of their official duties or employment. Cary v. Department of Children & Youth Servs., 235 Ga. App. 103, 508 S.E.2d 469 (1998).

Claims not within scope of employment not covered. — Trial court erred in denying summary judgment to the administrator of the State Employee Liability Trust Fund (administrator) because the General Liability Agreement (GLA) at issue did not cover any of the former employee's surviving claims in the underlying suit since those claims did not arise out of the employment with the state; thus, it followed that the administrator did not breach any obligation in the GLA to defend or to indemnify the employee for those claims. Ga. Dep't of Admin. Servs. v. McCoy, 340 Ga. App. 877, 798 S.E.2d 687 (2017).

Community service boards. — Limited sovereign immunity waiver was subject to a specific exception for assault or battery, and in determining whether this exception applied, it was not necessary that the act have been committed by a state officer or employee. A community service board was a state agency and was immune from a claim arising from the stabbing death of a resident at a community home run by the board. Oconee Cmty. Serv. Bd. v. Holsey, 266 Ga. App. 385, 597 S.E.2d 489 (2004).

Trial court did not err by dismissing a pedestrian's slip and fall claims against the Georgia Department of Transportation (GDOT) based on the bar of sovereign immunity because GDOT's specific decision to forego routine inspections, repairs, or maintenance of sidewalks within a state right-of-way as a result of prioritizing maintenance activities based on budgetary constraints fell under the discretionary function exception. Hagan v. Ga. DOT, 321 Ga. App. 472, 739 S.E.2d 123 (2013).

Dismissal of an injured couple's claims against the DOT to the extent they were based on a theory of negligent inspection of the county-owned area in which the accident occurred was proper under O.C.G.A. § 50-21-24(8); the waiver of immunity with respect to design claims under § 50-21-24(10) did not extend to waive immunity for inspection claims. Diamond v. DOT, 326 Ga. App. 189, 756 S.E.2d 277 (2014).

In a construction site collision, the Georgia Department of Transportation was entitled to immunity for the department's alleged negligence in approving the site plan for traffic control and in furnishing the basic traffic control plan, pursuant to O.C.G.A. § 50-21-24(9). Ga. DOT v. Owens, 330 Ga. App. 123, 766 S.E.2d 569 (2014).

Georgia Ports Authority immune. — Georgia Ports Authority is a state "department or agency" that is entitled to the defense of sovereign immunity but may be liable for the torts of state officers and employees because of the state's waiver of immunity through the enactment of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Miller v. Georgia Ports Auth., 266 Ga. 586, 470 S.E.2d 426 (1996).

Department of Corrections immunity waived when inmate injured working on warden's home. — In a suit brought by an inmate wherein a successful jury verdict was obtained against the Georgia Department of Corrections after the inmate was injured while working on a painting detail at the warden's house, the trial court properly denied the Department's motion to dismiss based on sovereign immunity because under the Georgia Tort Claims Act, O.C.G.A. § 50-21-23(a), the state waived sovereign immunity for the torts of state employees while acting within the scope of the employees' official duties in the same manner as a private individual or entity would be liable under like circumstances. Ga. Dep't of Corr. v. Couch, 322 Ga. App. 234, 744 S.E.2d 432 (2013).

State may be liable as joint tortfeasor. — Nothing in the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., contradicts the holding that the state can be liable as a joint tortfeasor and such holding does not violate the provisions of Ga. Const. 1983, Art. VI, Sec. VI, Para. VI. DOT v. Brown, 218 Ga. App. 178, 460 S.E.2d 812 (1995), aff'd, 267 Ga. 6, 471 S.E.2d 849 (1996).

Trial court did not err in refusing to dismiss an action against the Georgia Department of Transportation seeking joint tortfeasor contribution when the state's sovereign immunity was waived under O.C.G.A. § 50-21-23(a) based on the state's negligent maintenance and design of an intersection. Ga. DOT v. Fed. Express Corp., 254 Ga. App. 149, 561 S.E.2d 470 (2002), aff'd, DOT v. Montgomery Tank Lines, Inc., 276 Ga. 105, 575 S.E.2d 487 (2003).

Regulation of private party does not make party a state actor. — While the state does regulate foster parenting to an extent, and thus, arguably has a symbiotic relationship with the foster parents, this relationship does not encourage or sanction child abuse, and the mere fact that a state regulates a private party is not sufficient to make that party a state actor. Rayburn v. Hogue, 241 F.3d 1341 (11th Cir. 2001).

Georgia Department of Human Resources and the Department of Juvenile Justice were entitled to sovereign immunity on a claim asserted by the parent for an accidental electrocution of the parent's child because the child had been placed in the care and custody of the state agencies, but was living in a facility operated by an independent contractor through an agreement with the state, and was fatally injured through the negligence of the contractor's employee. Johnson v. Ga. Dep't of Human Res., 278 Ga. 714, 606 S.E.2d 270 (2004).

Immunity extended to another state as a matter of comity. — Because the provisions of the Iowa and Georgia tort claims acts are conceptually identical, application of Iowa's Tort Claims Act would not violate Georgia's public policy and, as such, Georgia should recognize and give effect to the legislatively declared policy of Iowa as a matter of comity. University of Iowa Press v. Urrea, 211 Ga. App. 564, 440 S.E.2d 203 (1993).

Limited waiver of sovereign immunity. — General Assembly granted a limited waiver of sovereign immunity with certain conditions precedent to the waiver; thus, since the plaintiff failed to serve the director of the risk management division, a condition precedent to waiver of sovereign immunity, the state had no duty to respond to the first timely filed suit. Sylvester v. DOT, 252 Ga. App. 31, 555 S.E.2d 740 (2001).

Trial court did not err in granting the state transportation department's motion to dismiss on the ground that sovereign immunity barred the claimant's personal injury claim against the state because the claimant did not timely file a notice of claim as required by O.C.G.A. § 50-21-26(a) and substantial compliance was not sufficient to meet that statute's requirement of proper notice; since the claimant did not timely file the notice of claim, the trial court was not permitted to consider the claim because the state only waived the state's sovereign immunity to the extent of providing a limited time to file a claim against the state, and since the claimant did not meet that requirement the trial court lacked subject matter jurisdiction to entertain the claim. Williams v. Ga. DOT, 275 Ga. App. 88, 619 S.E.2d 763 (2005).

Plaintiff's federal civil rights claims and state tort claims related to incarceration for violating a consent order enjoining the plaintiff from the unauthorized practice of law were barred by the Eleventh Amendment and the specific preservation of sovereign immunity from tort claims under O.C.G.A. § 50-21-23(b) of the Georgia Tort Claims Act. Alyshah v. Georgia, No. 1:06-CV-0928-TWT, 2006 U.S. Dist. LEXIS 66546 (N.D. Ga. Sept. 1, 2006), aff'd, 230 Fed. Appx. 949 (11th Cir. Ga. 2007).

Based on O.C.G.A. § 9-2-61, an arrestee's excessive force claim against a sheriff's major in the major's individual capacity was revived after a voluntary dismissal but assuming that the complaint alleged actual malice under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d), as

to the major's conduct, the tort claim had to brought against the state under O.C.G.A. § 50-21-25(b); however, the state did not waive the state's sovereign immunity under O.C.G.A. § 50-21-23(b) for such claim to be brought in federal court. Jude v. Morrison, 534 F. Supp. 2d 1365 (N.D. Ga. 2008).

Georgia law waives sovereign immunity for tort suits against state officers and employees committed in the scope of employment under O.C.G.A. § 50-21-23, while a later statute, O.C.G.A. § 50-21-25, states that the procedure established under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., provides the exclusive remedy for any tort committed by a state officer or employee, O.C.G.A. § 50-21-25(a). Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents, 633 F.3d 1297 (11th Cir. 2011).

Tort Claims Act, O.C.G.A. § 50-21-20 et seq., waives sovereign immunity for suits to recover monetary damages for the torts of state officers and employees while acting within the scope of their official duties or employment, O.C.G.A. § 50-21-23(a), subject to exceptions, O.C.G.A. § 50-21-24, and limitations, such as O.C.G.A. § 50-21-29(b). Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017).

No waiver of immunity. — In a wrongful death suit, the trial court erred by denying the motions of the Georgia Department of Human Resources and the Georgia Department of Juvenile Justice to dismiss and for a directed verdict, following the death of a juvenile the agencies placed in a corporate child care institution, as the two agencies were immune from suit under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and there was no waiver of sovereign immunity by the state. Ga. Dep't of Human Res. v. Johnson, 264 Ga. App. 730, 592 S.E.2d 124 (2003).

In a case brought pursuant to 42 U.S.C. §§ 1981, 1983, 1986, and 1988, dismissal under Fed. R. Civ. P. 12(b)(6) of an individual's federal claims as barred by Eleventh Amendment immunity and the state tort claims as barred by both sovereign immunity and the Eleventh Amendment was affirmed. O.C.G.A. § 50-21-23(b) specifically preserved the State of Georgia's sovereign immunity from suits in federal courts, and Congress had not abrogated the states' Eleventh Amendment immunity with the passage of 42 U.S.C. § 1983. Alyshah v. Georgia, 239 Fed. Appx. 473 (11th Cir. 2007) (Unpublished).

Trial court properly dismissed a parent's tort claims against the school district and the district's employees as they were immune from suit and excluded from the limited waiver provision under both O.C.G.A. §§ 50-21-22(5) and 50-21-23(a). Moreover, none of the alleged acts showed the malicious, wilful, or wanton conduct necessary to overcome that immunity. Chisolm v. Tippens, 289 Ga. App. 757, 658 S.E.2d 147 (2008), cert. denied, 129 S. Ct. 576, 172 L.Ed.2d 431 (2008).

College and a department were entitled to sovereign immunity in a claim seeking damages arising from the purchase of a nail primer product at the college because there was no showing of a waiver of a sovereign immunity under O.C.G.A. § 50-21-23(a); among other things, the vendor of the product was an independent contractor, and thus was not a state officer or employee under O.C.G.A. § 50-21-22(7). The instructors of the college, who neither sold nor manufactured the nail kit containing the nail primer, assumed no duty to provide warnings, the complaint included no allegations of negligent supervision, claims that the college instructors were negligent in the instructor's own right were barred by contrary binding admissions in judicio, and without evidence that the college instructors retained control over the vendor's work, there was no claim that the instructors had or breached a duty to supervise. Coosa Valley Tech. College v. West, 299 Ga. App. 171, 682 S.E.2d 187 (2009), cert. denied, No. S09C1954, 2010 Ga. LEXIS 9 (Ga. 2010).

Trial court did not err in disallowing a prison inmate to file a conversion claim against a warden and corrections officers under the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., because their actions were clothed with official immunity under the GTCA, O.C.G.A. § 50-21-25(b), since they were acting within the scope of their official duties when they confiscated the inmate's per-

sonal property; the inmate acknowledged that the Georgia Department of Corrections had to be named as a defendant, which necessarily amounted to a concession that Department employees were not proper defendants, and their alleged tortious conduct occurred while they were acting within the scope of their official duties. Romano v. Ga. Dep't of Corr., 303 Ga. App. 347, 693 S.E.2d 521 (2010).

Trial court properly dismissed a wrongful death suit against a State of Georgia mental health agency for lack of subject matter jurisdiction because the act causing the underlying loss in the case, namely a discharged psychiatric patient setting the patient's mother on fire, constituted an assault or battery; thus, the exception in O.C.G.A. § 50-21-24(7) to the waiver of sovereign immunity applied. Pak v. Ga. Dep't of Behavioral Health & Developmental Disabilities, 317 Ga. App. 486, 731 S.E.2d 384 (2012).

In a case brought by employees of a contractor against the Board of Regents of the University System of Georgia, O.C.G.A. § 50-21-23(a) of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., did not waive the Board's sovereign immunity for torts committed by a third party, in this case the contractor, in providing a forged payment bond to the Board and failing to pay the employees. Bd. of Regents of the Univ. Sys. of Ga. v. Brooks, 324 Ga. App. 15, 749 S.E.2d 23 (2013).

Plaintiff's failure to serve the director of the Risk Management Division of the Department of Administrative Services as required by the Georgia Tort Claims Act precluded compliance with the condition precedent to waiver of sovereign immunity and rendered void the plaintiff's action such that the statute of limitations was not tolled. Despite the "procedural, not jurisdictional" language in the Georgia Supreme Court's Georgia Pines opinion, it did not apply when no service of process had occurred on one of the necessary parties, especially since the defendants contested this failure at the first opportunity and consistently thereafter. Gibbons v. McBride, 124 F. Supp. 3d 1342 (S.D. Ga. 2015).

Both the county and the county's sheriff were entitled to sovereign immunity against the state-law tort of conversion because the plaintiffs could not show that sovereign immunity had been waived. The sovereign immunity waiver of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., does not extend to a county. Carter v. Butts Cnty., 821 F.3d 1310 (11th Cir. 2016).

Law enforcement exception inapplicable. — In a personal injury suit brought by a driver who was rear-ended by a state trooper conducting radar detecting to catch speeders and using the driver's mail truck as a block, the trial court properly denied summary judgment to the Department of Public Safety because the record established evidence that the accident was preventable, and that, therefore, the exception set forth in O.C.G.A. § 50-21-24(6) to sovereign immunity may be overcome by the driver at trial. By following too closely and not paying attention, the situation presented preventable negligence as opposed to a policy decision on the part of the trooper. Dep't of Pub. Safety v. Davis, 289 Ga. App. 21, 656 S.E.2d 178 (2007), aff'd, 285 Ga. 203, 676 S.E.2d 1 (2009).

College campus police officers did not qualify for immunity. — Campus police officers employed by a private college did not qualify as state officers or employees who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts. Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857 (2014).

Immunity when probation officer assisting local law enforcement in pursuit. — In a suit by a passenger against a Department of Corrections (DOC) probation officer whose vehicle collided with the passenger's vehicle during a police chase because the officer's actions were consistent with DOC's non-defective policy, which allowed the officer to assist law enforcement, DOC had sovereign immunity under O.C.G.A. § 50-21-24(6). Britt v. Jackson, 348 Ga. App. 159, 819 S.E.2d 677 (2018), cert. denied, No. S19C0483, 2019 Ga. LEXIS 539 (Ga. 2019).

Consent of Governor not necessary to sue state. — Trial court was correct in denying an appellant's request to bring a mandamus action against a Governor, seeking to compel the Governor to consent to a suit against the state, to-wit, filing suit against the state without the Governor's consent, a remedy the appellant had in fact employed. Garnett v. Hamrick, 280 Ga. 523, 630 S.E.2d 384 (2006).

Suit alleging defamation. — In a state employee's suit asserting defamation against a state director, the trial court properly granted the director summary judgment and dismissed the complaint as the records established that the director was a state employee at the time the alleged statements were made and, therefore, any libelous or slanderous statements were made by the director within the scope of the director's official duties and, thus, the director was immune from liability. Ford v. Caffrey, 293 Ga. App. 269, 666 S.E.2d 623 (2008).

Physicians employed by state medical college. — Georgia Supreme Court overruled Keenan v. Plouffe, 267 Ga. 791, (1997) and holds that the analysis of a physician's official immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., shall proceed exclusively on the basis of whether the physician was acting within the scope of the physician's state employment in performing the treatment that is the subject of the malpractice action. Shekhawat v. Jones, 293 Ga. 468, 746 S.E.2d 89 (2013).

Two physicians were entitled to official immunity in a medical malpractice suit brought against the physicians by the parents of a newborn infant injured by the medical team's failure to ensure the child was adequately oxygenated during intubation because the physicians were acting within the scope of the physicians' state employment at the Medical College of Georgia in rendering the medical care at issue. Shekhawat v. Jones, 293 Ga. 468, 746 S.E.2d 89 (2013).

Effect of recognizing official immunity does not necessarily leave the injured plaintiff without recourse as, while official immunity relieves the state employee of personal liability, the injured plaintiff may still seek relief against the state government entity for which the state officer or employee was acting, pursuant to the Georgia Tort Claims Act, O.C.G.A. §§ 50-21-23 and 50-21-25(b). Shekhawat v. Jones, 293 Ga. 468, 746 S.E.2d 89 (2013).

Trade secrets claim against state university board. — Public relations firm's claim against a state university board for misappropriation under the Trade Secrets Act, O.C.G.A. § 10-1-760 et seq., was barred by sovereign immunity; however, because a violation of the Act constituted a tort and the state waived sovereign immunity for torts, the firm could bring suit pursuant to the Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Bd. of Regents of the Univ. Sys. of Ga. v. One Sixty Over Ninety, LLC, 351 Ga. App. 133, 830 S.E.2d 503 (2019), cert. denied, No. S19C1521, 2020 Ga. LEXIS 118 (Ga. 2020).

Investigation of child abuse. — Appellate court erred by reversing the dismissal of a negligence suit against a state agency regarding a report of abuse from a pediatrician of two children because the case manager's decisions about how to investigate the report required a balancing of policy considerations, thus, the discretionary function exception under the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(2), applied and the case was properly dismissed by the trial court. Ga. Dep't of Human Servs. v. Spruill, 294 Ga. 100, 751 S.E.2d 315 (2013).

In a suit against the state arising out of the death of an infant at the hands of the infant's drug-addicted parents, dismissal of claims for battery on the child was proper under the assault and battery exception to the state's waiver of sovereign immunity, O.C.G.A. § 50-21-24(7); however, more information was needed to determine if the discretionary function exception, § 50-21-24(2), applied. Cowart v. Ga. Dep't of Human Servs., 340 Ga. App. 183, 796 S.E.2d 903 (2017).

Cited in Northwest Ga. Regional Hosp. v. Wilkins, 220 Ga. App. 534, 469 S.E.2d 786 (1996); Mattox v. Bailey, 221 Ga. App. 546, 472 S.E.2d 130 (1996); Department of Human Resources v. Money, 222 Ga. App. 149, 473 S.E.2d 200 (1996); Ga. Dep't of Human Res. v. Coley, 247 Ga. App. 392,

544 S.E.2d 165 (2000); DOT v. Carr, 254 Ga. App. 781, 564 S.E.2d 14 (2002); Smith v. Dep't of Human Res., 257 Ga. App. 33, 570 S.E.2d 337 (2002); Feist v. Dirr, 271 Ga. App. 169, 609 S.E.2d 111 (2004); Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents of the Univ. Sys. of Ga., No. 3:07-CV-084 (CDL), 2008 U.S. Dist. LEXIS 32116 (M.D. Ga. Apr. 18, 2008); Southerland v. Ga. Dep't of Corr., 293 Ga. App. 56, 666 S.E.2d 383 (2008); Savage v. E. R. Snell Contr., Inc., 295 Ga. App. 319, 672 S.E.2d 1 (2008); Grant v. Ga. Forestry Comm'n, 338 Ga. App. 146, 789 S.E.2d 343 (2016); Burroughs v. Georgia Ports Authority, 339 Ga. App. 294, 793 S.E.2d 538 (2016).

RESEARCH REFERENCES

ALR. — When is federal agency employee independent contractor, creating exception to United States waiver of immunity under Federal Tort Claims Act (28 U.S.C.A. § 2671), 166 A.L.R. Fed. 187.

50-21-24. Exceptions to state liability.

The state shall have no liability for losses resulting from:

(1) An act or omission by a state officer or employee exercising due care in the execution of a statute, regulation, rule, or ordinance, whether or not such statute, regulation, rule, or ordinance is valid;

(2) The exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved is abused;

(3) The assessment or collection of any tax or the detention of any goods or merchandise by any law enforcement officer;

(4) Legislative, judicial, quasi-judicial, or prosecutorial action or inaction;

(5) Administrative action or inaction of a legislative, quasi-legislative, judicial, or quasi-judicial nature;

(6) Civil disturbance, riot, insurrection, or rebellion or the failure to provide, or the method of providing, law enforcement, police, or fire protection;

(7) Assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, or interference with contractual rights;

(8) Inspection powers or functions, including failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by the state to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

(9) Licensing powers or functions, including, but not limited to, the issuance, denial, suspension, or revocation of or the failure or refusal

to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;

(10) The plan or design for construction of or improvement to highways, roads, streets, bridges, or other public works where such plan or design is prepared in substantial compliance with generally accepted engineering or design standards in effect at the time of preparation of the plan or design;

(11) Financing regulatory activities, including, but not limited to, examinations, inspections, audits, or other financial oversight activities;

(12) Activities of the Georgia National Guard or organized militia as defined in Code Section 38-2-2 when engaged in state or federal training or duty, but this exception does not apply to vehicular accidents; or

(13) Any failure or malfunction occurring before December 31, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but the plan or design or both for identifying and preventing the failure or malfunction was prepared in substantial compliance with generally accepted computer and information system design standards in effect at the time of the preparation of the plan or design.

History. — Code 1981, § 50-21-24, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 1998, p. 850, § 2; Ga. L. 2018, p. 161, § 1/HB 309.

Law reviews. — For review of 1998 legislation relating to state government, see 15 Ga. St. U.L. Rev. 245 (1998). For article, "Torts," see 53 Mercer L. Rev. 441 (2001). For survey article on trial practice and procedure for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 439 (2003). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of law of torts, see 56 Mercer L. Rev. 415 (2004). For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For survey article on trial practice and procedure, see 59 Mercer L. Rev. 423 (2007).

JUDICIAL DECISIONS

Analysis

General Consideration
Discretionary Functions
Application
1. Department of Transportation
2. Criminal Acts
3. Law Enforcement
4. Others
Georgia Forestry Commission

General Consideration

Contribution and indemnity. — Georgia Torts Claim Act, O.C.G.A. § 50-21-20 et seq., waived sovereign immunity for suits seeking contribution and indemnity from the state when the state was a joint tortfeasor if the state's tortious activity did not fall within one of the waiver exceptions listed in O.C.G.A. § 50-21-24. DOT v. Montgomery Tank Lines, Inc., 276 Ga. 105, 575 S.E.2d 487 (2003).

Construction of O.C.G.A. § 50-21-24(7). — O.C.G.A. § 50-21-24(7) is not limited in application to acts taken by a state officer or employee, but covers all losses resulting from the torts enumerated therein. The focus, therefore, is not on the duty allegedly breached by the state but on the act causing the underlying loss, regardless of who committed the act. Youngblood v. Gwinnett Rockdale Newton Cmty. Serv. Bd., 273 Ga. 715, 545 S.E.2d 875 (2001).

Construction of O.C.G.A. § 50-21-24(6). — In order for state policy decisions related to the provision of emergency services not to be directly or indirectly put on trial, the Supreme Court of Georgia construed O.C.G.A. § 50-21-24(6), an exception to the waiver of sovereign immunity, to provide complete protection of the policy-making decisions in providing police and fire services from judicial review as such construction accomplished a balance between the inherently unfair and inequitable results from the strict application of sovereign immunity and the need to limit the state's exposure to tort liability that the General Assembly expressed as the General Assembly's goal in O.C.G.A. § 50-21-21. Ga. Forestry Comm'n v. Canady, 280 Ga. 825, 632 S.E.2d 105 (2006).

Court's focus is on underlying conduct. — In determining whether the exception to state liability in O.C.G.A. § 50-21-24(7) applies, a court's focus is not on which particular state law causes of action a plaintiff has set forth in a complaint, but rather on the underlying conduct that allegedly caused the plaintiff's loss. Davis v. Standifer, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

Exceptions apply regardless of who commits tort. — Focus of the exceptions to liability in O.C.G.A. § 50-21-24(7) is not on the government action taken, but upon the act that produces the loss; thus, in an action against the Department of Human Resources by the operator of a contract home who was shot by a juvenile placed in the home, it was not the act of placing the juvenile that produced the operator's loss, it was the juvenile's independent tort, and the exception to the waiver of immunity covers any and all losses resulting from the torts enumerated in the paragraph, regardless of who committed the torts. Department of Human Resources v. Hutchinson, 217 Ga. App. 70, 456 S.E.2d 642 (1995); Christensen v. State, 219 Ga. App. 10, 464 S.E.2d 14 (1995); Board of Regents v. Riddle, 229 Ga. App. 15, 493 S.E.2d 208 (1997); Ga. Dep't of Human Res. v. Coley, 247 Ga. App. 392, 544 S.E.2d 165 (2000).

In determining whether an exception to the waiver of sovereign immunity applied, the proper focus was on the act causing the underlying loss and it was not necessary that such act have been committed by a state officer or employee; thus, since the loss was caused by the son's shooting of the decedent, the son's father, the state governmental entities could not be held liable because the loss was caused by an assault or battery for which the exception to the waiver of immunity applied. Ardizonne v. Ga. Dep't of Human Res., 258 Ga. App. 858, 575 S.E.2d 738 (2002).

Limited sovereign immunity waiver was subject to a specific exception for assault or battery, and in determining whether this exception applied, it was not necessary that the act have been committed by a state officer or employee. A community service board was a state agency and was immune from a claim arising from the stabbing death of a resident at a community home run by the board. Oconee Cmty. Serv. Bd. v. Holsey, 266 Ga. App. 385, 597 S.E.2d 489 (2004).

Trial court did not err in dismissing on sovereign immunity grounds an inmate's tort claim alleging false imprisonment and a claim under 42 U.S.C. § 1983 against the Department of Corrections since: (1) the state was shielded from

General Consideration (Cont'd)

liability against a false imprisonment claim, pursuant to O.C.G.A. § 50-21-24(7); and (2) neither the state nor the Department of Corrections was a "person" as that term was defined under 42 U.S.C. § 1983. Watson v. Ga. Dep't of Corr., 285 Ga. App. 143, 645 S.E.2d 629 (2007).

Waiver of sovereign immunity limited. — Tort Claims Act, O.C.G.A. § 50-21-20 et seq., waives sovereign immunity for suits to recover monetary damages for the torts of state officers and employees while acting within the scope of their official duties or employment, O.C.G.A. § 50-21-23(a), subject to exceptions, O.C.G.A. § 50-21-24, and limitations, such as O.C.G.A. § 50-21-29(b). Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017).

Claims not within scope of employment not covered. — Trial court erred in denying summary judgment to the administrator of the State Employee Liability Trust Fund (administrator) because the General Liability Agreement (GLA) at issue did not cover any of the former employee's surviving claims in the underlying suit since those claims did not arise out of the employment with the state; thus, it followed that the administrator did not breach any obligation in the GLA to defend or to indemnify the employee for those claims. Ga. Dep't of Admin. Servs. v. McCoy, 340 Ga. App. 877, 798 S.E.2d 687 (2017).

Incorrect standard used. — Trial court erred by denying the Georgia Department of Transportation's (DOT) motion to dismiss, based on sovereign immunity, the negligence action filed by the plaintiffs, the injured mother and children, as a result of an automobile accident because the trial court improperly shifted the burden of proof to the DOT when the court ruled that the DOT had failed to put forth any testimonial evidence in rebuttal as the burden was on the plaintiffs to establish that the DOT's conduct was excepted from sovereign immunity. DOT v. Thompson, 354 Ga. App. 200, 840 S.E.2d 679 (2020).

Trade secrets claim against state university board. — Public relations firm's claim against a state university board for misappropriation under the Trade Secrets Act, O.C.G.A. § 10-1-760 et seq., was barred by sovereign immunity; however, because a violation of the Act constituted a tort and the state waived sovereign immunity for torts, the firm could bring suit pursuant to the Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Bd. of Regents of the Univ. Sys. of Ga. v. One Sixty Over Ninety, LLC, 351 Ga. App. 133, 830 S.E.2d 503 (2019), cert. denied, No. S19C1521, 2020 Ga. LEXIS 118 (Ga. 2020).

Cited in Miller v. Department of Pub. Safety, 221 Ga. App. 280, 470 S.E.2d 773 (1996); Feist v. Dirr, 271 Ga. App. 169, 609 S.E.2d 111 (2004); Romano v. Ga. Dep't of Corr., 303 Ga. App. 347, 693 S.E.2d 521 (2010); Considine v. Murphy, 297 Ga. 164, 773 S.E.2d 176 (2015); Bailey v. Ga. World Congress Ctr., 351 Ga. App. 629, 832 S.E.2d 446 (2019).

Discretionary Functions

Exception applied. — Decision of the Department of Human Resources to review records, discuss with staff residents' care needs in a personal care home, and obtain a physician's statement regarding a resident's condition in order to determine if the resident was a suitable resident at the home, rather than taking other action, including reassessing the patient or ordering emergency relocation, entailed policy judgments in which alternate courses of action were weighed in light of competing economic and social factors, and was the performance of a discretionary function or duty within the exception stated in O.C.G.A. § 50-21-24(2). Bruton v. State Dep't of Human Resources, 235 Ga. App. 291, 509 S.E.2d 363 (1998).

When a high school student sued the board of trustees of the college and individual members of the board and staff, seeking damages arising from the injuries the student sustained after performing physical exercises as punishment for a violation of the honor code, the student's suit was barred by the doctrine of sovereign immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the instructor's decisions on how

to carry out the exercises were discretionary as the standard operating procedures afforded the instructor the ability to choose from a number of exercises and to determine the exercise's duration; furthermore, the implementation of physical exercises was an extension of the college's public policy considerations as a military school. Bd. of Trustees of Ga. Military College v. O'Donnell, 352 Ga. App. 651, 835 S.E.2d 688 (2019).

When the ward, who was diagnosed with paranoid schizophrenia, walked into traffic on an interstate and was struck by a tractor trailer, the Georgia Department of Human Services' motion to dismiss was properly granted as the plaintiffs' claims were barred by sovereign immunity because, under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., the ultimate determination of whether to take the ward into custody was a discretionary one, involving issues of policy. Garrett v. Dep't of Human Servs., 355 Ga. App. 714, 845 S.E.2d 742 (2020).

Exception inapplicable. — Based upon the evidence, the homeowners' allegations that the building inspector failed to conduct adequate and proper inspections were merely allegations that the inspector failed to use proper judgment in conducting those inspections; the inspector was entitled to official immunity from the homeowners' claims under O.C.G.A. § 50-21-24(2). Howell v. Willis, 317 Ga. App. 199, 729 S.E.2d 643 (2012).

Acts of foster parents. — Decision by foster parents employed by the Department of Human Resources to leave a two-year-old child unattended in a swimming pool was an insufficient basis on which to invoke the discretionary function exception. Brantley v. Department of Human Resources, 271 Ga. 679, 523 S.E.2d 571 (1999), reversing Brantley v. Department of Human Resources, 235 Ga. App. 863, 509 S.E.2d 645 (1998).

Georgia Department of Human Resources and the DeKalb Community Service Board were not entitled to summary judgment based on immunity in a foster child's parents' action against them arising out of the child's being hit by a car while in foster care. The foster parents' decision to leave the child was not a discretionary function under O.C.G.A. §§ 50-21-22(2) and 50-21-24(2); decisions about the child's care did not involve policy judgments based on social, political, or even economic factors. Ga. Dep't of Human Res. v. Bulbalia, 303 Ga. App. 659, 694 S.E.2d 115 (2010).

Medical care. — State had a duty to provide youth in the state's custody with medical care and treatment, but the details of that care were discretionary and therefore subject to immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Edwards v. Department of Children & Youth Servs., 236 Ga. App. 696, 512 S.E.2d 339 (1999).

Georgia Department of Community Health. — State employee's claims for negligent misrepresentation regarding information on in-network providers of a PPO under a state health benefit plan failed because the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., precluded any action for employees exercising due care in the execution of a regulation and the regulations of the Community Health Board § 478-6.10(6) specifically stated that sovereign immunity was not waived as to actions in law or equity against the Board or the state to recover money under a plan. Mitchell v. Ga. Dept. of Cmty. Health, 281 Ga. App. 174, 635 S.E.2d 798 (2006).

Termination of employees. — Hiring, firing, and disciplining a police officer requires the exercise of professional deliberation and judgment and, therefore, constitutes a discretionary function within the meaning of O.C.G.A. § 50-21-24. Harper v. City of E. Point, 237 Ga. App. 375, 515 S.E.2d 623 (1999).

State board's acts in terminating a state employee were discretionary acts; thus, an employee's claim of intentional infliction of emotional distress against the board was precluded by the doctrine of sovereign immunity. Bd. of Pub. Safety v. Jordan, 252 Ga. App. 577, 556 S.E.2d 837 (2001).

No discretionary function exception for procuring emergency medical care. — Decision of state employees on the type of emergency medical care to provide incarcerated juveniles does not fall within the discretionary function ex-

Discretionary Functions (Cont'd)

ception to the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Edwards v. Georgia Dep't of Children & Youth Servs., 271 Ga. 890, 525 S.E.2d 83 (2000).

Placement of children by state. — Decision of a caseworker for the Department of Human Resources to place children in a particular home setting was a "discretionary function" and was protected by immunity. Jackson v. Department of Human Resources, 230 Ga. App. 595, 497 S.E.2d 58 (1998).

Investigation of child abuse. — Appellate court erred by reversing the dismissal of a negligence suit against a state agency regarding a report of abuse from a pediatrician of two children because the case manager's decisions about how to investigate the report required a balancing of policy considerations, thus, the discretionary function exception under the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(2), applied and the case was properly dismissed by the trial court. Ga. Dep't of Human Servs. v. Spruill, 294 Ga. 100, 751 S.E.2d 315 (2013).

Application

1. Department of Transportation

Public duty doctrine inapplicable. — In an action against the DOT arising from an intersectional collision, the public duty doctrine did not require that a special relationship be shown between the victim and the department because the enactment of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., created state exposure to potential liability for losses. DOT v. Brown, 218 Ga. App. 178, 460 S.E.2d 812 (1995), aff'd, 267 Ga. 6, 471 S.E.2d 849 (1996).

Duty to monitor roadways for hazardous conditions. — In a wrongful death action, the trial court properly granted the motion to dismiss based on sovereign immunity filed by the Georgia Department of Transportation (GDOT) because it was clear from a review of the agency agreement and the GDOT policy that the plaintiff's claims for failing to monitor I-16 for hazardous conditions were barred since neither policy imposed any duty on the GDOT to monitor roadways for hazardous conditions. Grant v. Ga. Forestry Comm'n, 338 Ga. App. 146, 789 S.E.2d 343 (2016), cert. denied, No. S17C0003, 2017 Ga. LEXIS 127 (Ga. 2017), cert. denied, No. S17C0037, 2017 Ga. LEXIS 153 (Ga. 2017).

Waiver of immunity for design claims did not waive immunity for inspection claims. — Dismissal of an injured couple's claims against the DOT to the extent those claims were based on a theory of negligent inspection of the county-owned area in which the accident occurred was proper under O.C.G.A. § 50-21-24(8); the waiver of immunity with respect to design claims under § 50-21-24(10) did not extend to waive immunity for inspection claims. Diamond v. DOT, 326 Ga. App. 189, 756 S.E.2d 277 (2014).

No authority to maintain overgrown area bordering intersection. — In a wrongful death action, the trial court did not err in finding the Georgia Department of Transportation immune from suit from liability to the decedent's estate and survivors for failing to maintain an overgrown area of shrubbery that bordered an intersection as neither O.C.G.A. § 32-2-2, when read in concert with O.C.G.A. § 32-4-93, nor O.C.G.A. § 50-21-24(8) imposed liability on the department; hence, maintenance of the area did not constitute a "substantial" or "other major" maintenance activity. Welch v. Ga. DOT, 283 Ga. App. 903, 642 S.E.2d 913 (2007).

Changing from all way to two way stop. — Decision of the DOT to open a road with a change from an all-way to two-way stop configuration was not a policy determination entitling the department to immunity under the discretionary functions exception. DOT v. Brown, 218 Ga. App. 178, 460 S.E.2d 812 (1995), aff'd, 267 Ga. 6, 471 S.E.2d 849 (1996).

Highway design exception. — In an action arising from an intersectional collision, when there was sufficient evidence as to whether the DOT complied with generally accepted engineering or design standards in opening a road with a change from an all-way to two-way stop configuration, the trial court did not err in denying a motion for a directed verdict regard-

ing the highway design exception to the waiver of sovereign immunity. DOT v. Brown, 218 Ga. App. 178, 460 S.E.2d 812 (1995), aff'd, 267 Ga. 6, 471 S.E.2d 849 (1996).

Exemption of the DOT from liability for highway design deficiencies when the design was in substantial compliance with generally accepted engineering or design standards in effect at the time of construction includes protection for the department's failure to upgrade a highway to meet current design standards. Daniels v. DOT, 222 Ga. App. 237, 474 S.E.2d 26 (1996).

In an action for injuries sustained in a collision at a highway intersection, since there were no published design guidelines in effect when the highway was designed and the plaintiff failed to present competent evidence that the design was not in substantial compliance with generally accepted engineering or design standards in effect at the time the DOT was exempt from liability. Daniels v. DOT, 222 Ga. App. 237, 474 S.E.2d 26 (1996); DOT v. Cox, 246 Ga. App. 221, 540 S.E.2d 218 (2000).

Trial court erred in dismissing the plaintiff's complaint on the ground that the plaintiff's expert's affidavit was insufficient to meet the requirements of O.C.G.A. § 50-21-24 when the expert supplemented the affidavit with testimony adequate to aver that DOT failed to comply substantially with engineering standards applicable at the time an intersection was planned and designed as required by O.C.G.A. § 50-21-24(10). Lennen v. DOT, 239 Ga. App. 729, 521 S.E.2d 885 (1999).

When an injured party sued the Georgia Department of Transportation (DOT) for injuries received in a single-car accident on a county road, the party did not show DOT was liable under any of the exceptions to sovereign immunity because the party did not show, as required by O.C.G.A. § 50-21-24(10), that DOT's plans for the road on which the accident occurred did not comply with generally accepted engineering or design standards and, in fact, the party's expert testified that the plans complied with such standards. Ogles v. E.A. Mann & Co., 277 Ga. App. 22, 625 S.E.2d 425 (2005).

In a wrongful death action, the Georgia DOT was entitled to sovereign immunity under O.C.G.A. § 50-21-24(9). Furthermore, O.C.G.A. § 50-21-24(10) granted immunity to the DOT from a claim that the fatal accident was proximately caused by a deficiently designed intersection, especially when no evidence was presented that the intersection was not initially designed in substantial compliance with existing engineering or design standards; moreover, under both O.C.G.A. §§ 32-6-50 and 32-6-51(a)(1), the decision of the county department of transportation and the department's employees to install the traffic signal necessarily entailed discretionary acts done to perform a specific duty or a mandatory fixed obligation for which mandamus would lie to compel performance, entitling the county and the county's employees to official or qualified immunity. Murray v. Ga. DOT, 284 Ga. App. 263, 644 S.E.2d 290 (2007).

In a wrongful death and nuisance suit wherein the victim was killed while traveling in a taxi cab on a state highway, the trial court erred in granting the Georgia Department of Transportation's (DOT's) motion to dismiss on the basis of the inspection and permitting exceptions set forth in O.C.G.A. § 50-21-24(8) and (9), upon concluding that the trial court lacked subject matter jurisdiction over the DOT on the basis of sovereign immunity; there was expert testimony in the record that the DOT failed to follow generally accepted design, construction, and maintenance practices with regard to the roadway and adjacent areas, and that the deviation from the standard of care contributed to the victim's death. Further, the DOT may be held liable as a joint tortfeasor, and it would be a matter for a jury to decide whether the DOT was liable under § 50-21-24(10) for negligent design and negligent maintenance. Heller v. City of Atlanta, 290 Ga. App. 345, 659 S.E.2d 617 (2008), aff'd, Ga. DOT v. Heller, 285 Ga. 262, 674 S.E.2d 914 (2009).

Shoulder slope. — Although the Georgia Department of Transportation was entitled to sovereign immunity under O.C.G.A. § 50-21-24(10) based on the placement of signs warning of a limited sight distance and advising speed reduc-

Application (Cont'd)
1. Department of Transportation (Cont'd)

tion at an intersection, the slope of a shoulder did not comply with the standards in effect at the time of the alteration. Steele v. Ga. DOT, 271 Ga. App. 374, 609 S.E.2d 715 (2005).

Highway's cross slopes met industry standards. — Injured driver's suit against the GDOT alleging negligent road design and operation was subject to dismissal because the GDOT was immune from negligent design suits if the road substantially complied with industry design standards, O.C.G.A. § 50-21-24(10); the driver's expert testified that the road's cross slopes met industry standards. DOT v. Balamo, 343 Ga. App. 169, 806 S.E.2d 622 (2017), cert. denied, 2018 Ga. LEXIS 329 (Ga. 2018).

Failure to consider excess fill soil disposal. — Summary judgment for the Georgia Department of Transportation (DOT) was improper as the affidavits of the plaintiffs' expert, a DOT witness, and a City's Director of Public Works created a fact issue as to whether the DOT's failure to consider excess fill soil disposal in the DOT's design plans complied with generally accepted engineering and design standards under O.C.G.A. § 50-21-24(10); the design standards exception was a limitation on the exceptions to a state's sovereign immunity established by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Reidling v. City of Gainesville, 280 Ga. App. 698, 634 S.E.2d 862 (2006).

Proximity of tree to highway. — Decedent was killed when the taxi in which the decedent was riding spun out of control on a rain-slick interstate highway and hit a tree. Assuming arguendo that the Georgia Department of Transportation (DOT) was immune from a negligence suit under O.C.G.A. § 50-21-24 for a city employee's negligent inspection of the taxi's tires, expert testimony that the tree's proximity to the highway may have violated generally accepted engineering standards rendered the DOT liable under § 50-21-24(10), the design standards exception. Ga. DOT v. Heller, 285 Ga. 262, 674 S.E.2d 914 (2009).

Trial court did not err when the court dismissed the claims against the Department of Transportation (DOT) because the tree which fell on the decedent was about 8.1 feet beyond the easement identified in the initial deed and, thus, the trial court properly concluded that the tree was not on the DOT's right-of-way and, therefore, the DOT could not be liable for any negligent inspection or refusal to remove the tree from the owner's property. White v. DOT, 337 Ga. App. 572, 788 S.E.2d 500 (2016), cert. denied, No. S16C1819, 2017 Ga. LEXIS 111 (Ga. 2017).

Contractor's design of stockpile location for project materials. — In an accident case arising out of the DOT's actions in reviewing and approving a materials stockpile location in a highway construction project and a traffic plan proposed by the contractor, under O.C.G.A. § 50-21-24(9), the DOT was immune from liability resulting from the DOT's approval of the stockpile plan. DOT v. Jarvie, 329 Ga. App. 681, 766 S.E.2d 94 (2014), overruled on other grounds, Rivera v. Washington, 298 Ga. 770, 784 S.E.2d 775 (Ga. 2016).

DOT not required to post sign. — Trial court did not err in granting the Georgia Department of Transportation (DOT) summary judgment in a driver's action alleging that the DOT's failure to properly design an intersection and to replace a sign was the proximate cause of the driver's injuries because the DOT was entitled to summary judgment on the basis that the driver's claims were barred by the doctrine of sovereign immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(10); because the generally accepted standards did not require the DOT to post the sign, the DOT's failure to replace the sign later could not constitute a deviation from the same standards, and the affidavit of the driver's expert did not state that the design of the intersection failed to substantially comply with generally accepted engineering or design standards in any other manner that caused or contributed to the driver's injuries. O'Hara v. Ga. DOT, No. A07A0996, 2007 Ga. App. LEXIS 1338 (Nov. 20, 2007).

Permitting exception. — Sovereign immunity barred a negligence action

against the Georgia Department of Transportation (GDOT), pursuant to the permitting exception in O.C.G.A. § 50-21-24(9), because there was no evidence that the intersection at which an automobile accident occurred warranted a signal and the GDOT had no duty to upgrade the intersection. Sadler v. DOT, 311 Ga. App. 601, 716 S.E.2d 639 (2011).

Setting speed limits was quasi-legislative activity. — In a case in which a parent filed a wrongful death action against the Georgia Department of Transportation, alleging that the department's negligence in choosing to set the speed limit along a certain stretch of highway at 50 miles per hour led to the death of the parent's child, the trial court erred in denying the department's motion to dismiss the complaint on the basis of sovereign immunity under O.C.G.A. § 50-21-24(5) given that: (1) O.C.G.A. § 40-6-182 provided that the Georgia Commissioner of Public Safety and the Commissioner of the Georgia Transportation Department could set the speed limit on any part of the state highway system based on the conditions in that area; (2) the department's participation in setting the speed limit pursuant to § 40-6-182 was quasi-legislative action as the decision entailed adopting rules and was analogous to the legislative activity of making laws; and (3) pursuant to O.C.G.A. § 50-21-24(5), the department could not be held liable for losses resulting from such quasi-legislative action. DOT v. Watts, 260 Ga. App. 905, 581 S.E.2d 410 (2003).

Inspection for road hazards was not discretionary function. — Georgia Department of Transportation's decision of when and where to inspect for road hazards during and following a rain event was not a policy decision requiring the exercise of discretion within the scope of O.C.G.A. § 50-21-24(2), although it involved a "judgment call" by DOT employees, and therefore the DOT did not have immunity from a suit stemming from a driver's hydroplaning in water on the road and drowning in a pond caused by a backed up storm drain. Ga. DOT v. Miller, 300 Ga. App. 857, 686 S.E.2d 455 (2009).

Slip and fall on sidewalk. — Trial court did not err by dismissing a pedestrian's slip and fall claims against the Georgia Department of Transportation (GDOT) based on the bar of sovereign immunity because GDOT's specific decision to forego routine inspections, repairs, or maintenance of sidewalks within a state right-of-way as a result of prioritizing maintenance activities based on budgetary constraints fell under the discretionary function exception. Hagan v. Ga. DOT, 321 Ga. App. 472, 739 S.E.2d 123 (2013).

Licensing exception did not apply. — Trial court did not err by denying the Georgia Department of Transportation's (GDOT) motion to dismiss a wrongful death action filed by the decedents' parents based on sovereign immunity because the licensing exception under O.C.G.A. § 50-21-24(9) did not provide immunity for liability for the claims regarding the GDOT's decision on whether and how to reopen the railroad crossing after the paving work was completed. DOT v. Delor, 351 Ga. App. 414, 830 S.E.2d 519 (2019), cert. denied, No. S20C0086, 2020 Ga. LEXIS 260 (Ga. 2020).

2. Criminal Acts

False imprisonment. — Commissioner of Georgia Department of Corrections was entitled to official immunity in case of claim by former prisoner of false imprisonment. Collier v. Whitworth, 205 Ga. App. 758, 423 S.E.2d 440 (1992).

Libel and slander. — Action by inmate against a correctional officer alleging that the officer was liable for libel and slander for writing false disciplinary reports was barred by provisions of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., that the state will have no liability for losses resulting from libel and slander. Howard v. Burch, 210 Ga. App. 515, 436 S.E.2d 573 (1993).

Inmate's state law battery claim against the Department of Corrections was barred by the exception in O.C.G.A. § 50-21-24 for losses caused by battery. Mattox v. Bailey, 221 Ga. App. 546, 472 S.E.2d 130 (1996).

Assault claim. — Claims of foster parents against the Department of Human Resources and a caseworker based on an

Application (Cont'd)
2. Criminal Acts (Cont'd)

assault committed by a teenage boy who was placed in the parents' home were precluded by the exception for losses caused by assault and battery. Sherin v. Department of Human Resources, 229 Ga. App. 621, 494 S.E.2d 518 (1998).

Any alleged losses arising out of conduct that would constitute the common law tort of assault or battery upon a plaintiff's person fall within the exception to state liability found in O.C.G.A. § 50-21-24(7), irrespective of what particular state law causes of action the plaintiff brings in order to recover for those losses, including state constitutional claims. Davis v. Standifer, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

When a citizen alleged that a state trooper sexually assaulted the citizen during a traffic stop, and the trooper was found to be immune from liability under O.C.G.A. § 50-21-25(a) because any alleged assault would have occurred while the trooper was performing official duties, the Georgia State Patrol and the Department of Public Safety could not be held liable under the state's waiver of sovereign immunity because O.C.G.A. § 50-21-24(7) provided that the state had no liability for losses resulting from assault and battery, such as alleged by the citizen, and this exception to immunity applied to all of the citizen's state law allegations arising from these facts, including claims of mental and emotional anguish and harm, assault under color of state law, violating state constitutional rights, negligence, or deliberate indifference in hiring, instruction, supervision, control, and discipline of the trooper, or acquiescence to the trooper's conduct. Davis v. Standifer, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

Trial court properly dismissed a wrongful death suit against a State of Georgia mental health agency for lack of subject matter jurisdiction because the act causing the underlying loss in the case, namely a discharged psychiatric patient setting the patient's mother on fire, constituted an assault or battery; thus, the exception in O.C.G.A. § 50-21-24(7) to the waiver of sovereign immunity applied. Pak v. Ga. Dep't of Behavioral Health & Developmental Disabilities, 317 Ga. App. 486, 731 S.E.2d 384 (2012).

Duty of school to protect from criminal activities. — Court rejected the plaintiff's contention that O.C.G.A. § 50-21-24(7) did not bar plaintiff's claim against the defendant college because the claim was based not upon the rape by a fellow student, which the plaintiff described as "incidental," but upon the breach of the affirmative duty the defendant undertook to protect the plaintiff while in the care of the school. Georgia Military College v. Santamorena, 237 Ga. App. 58, 514 S.E.2d 82 (1999).

Battery. — In an action against a community service board arising from the beating of a resident in a residential home sponsored by the defendant, because the act causing the underlying loss constituted a battery, the exception in O.C.G.A. § 50-21-24(7) to the waiver of sovereign immunity applied. Youngblood v. Gwinnett Rockdale Newton Cmty. Serv. Bd., 273 Ga. 715, 545 S.E.2d 875 (2001).

Assault and battery exception to the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., barred the student's claims for negligence, negligence per se, and negligent training and supervision against the Board of Regents because the loss suffered by the student was a severe injury to the leg resulting from a fight with another football player after the football coach instructed the players to fight to prove the players were worthy of membership on the team. Pelham v. Bd. of Regents of the Univ. Sys. of Ga., 321 Ga. App. 791, 743 S.E.2d 469 (2013).

3. Law Enforcement

No liability for not interfering with arrests. — Decision of police officers not to interfere with the arrests of the plaintiffs called for a consideration of discretion and liability therefor was barred by sovereign immunity. Rhoden v. Department of Pub. Safety, 221 Ga. App. 844, 473 S.E.2d 537 (1996).

Decision to arrest not "negligence." — It would have defied logic to classify the decision of police officers to arrest the plaintiffs, or the alleged use of excessive

force therein, as "negligence". Any losses arising from such actions were caused by intentional acts and the state has no liability for such losses. Rhoden v. Department of Pub. Safety, 221 Ga. App. 844, 473 S.E.2d 537 (1996).

Failure to provide law enforcement exception. — In an action arising from injuries to plaintiffs in a collision with a truck stolen by an escaped prison inmate, an allegation that the correction officer negligently supervised the work detail from which the inmate escaped amounted to a failure to provide law enforcement services within the meaning of O.C.G.A. § 50-21-24. Long v. Hall County Bd. of Comm'rs, 219 Ga. App. 853, 467 S.E.2d 186 (1996).

Police pursuing suspect did not waive sovereign immunity. — In a case arising from a police chase, the trial court properly granted the police department's motion to dismiss on sovereign immunity grounds because the trial court correctly found that the police department did not waive sovereign immunity since the pursuing officers faithfully implemented the police department's policies and procedures and did not waive sovereign immunity pursuant to O.C.G.A. § 50-21-24(6). Loehle v. Ga. Dep't of Pub. Safety, 334 Ga. App. 836, 780 S.E.2d 469 (2015).

In a wrongful death action against the Georgia Department of Public Safety in which the decedent died from injuries sustained in a high-speed chase with the Georgia State Patrol officers, the Department's motion to dismiss for want of subject matter jurisdiction was properly granted based on sovereign immunity because the officer's actions during the pursuit were objectively reasonable and in compliance with the Department's pursuit policy, and the execution of the Precision Immobilization Technique was done in compliance with the policy; the officer considered the factors set forth in the policy in deciding to continue the pursuit; and none of the circumstances that would have prohibited a pursuit under the policy existed. James v. Ga. Dep't of Pub. Safety, 337 Ga. App. 864, 789 S.E.2d 236 (2016).

Trooper's pursuit of a speeding vehicle falls within the parameters of O.C.G.A. § 50-21-24(6) as a "method of providing law enforcement." Hilson v. State, Dep't of Pub. Safety, 236 Ga. App. 638, 512 S.E.2d 910 (1999).

Because police officers followed procedures in pursuing an individual in a high-speed chase, the officers did not violate O.C.G.A. § 40-6-6; consequently, because O.C.G.A. § 50-21-24(6) provided the Georgia Department of Public Safety (DPS) with immunity from liability for injuries resulting from the pursuit, the trial court properly granted summary judgment to the DPS. Blackston v. Ga. Dep't of Pub. Safety, 274 Ga. App. 373, 618 S.E.2d 78 (2005).

Trial court correctly found that the Georgia Department of Public Safety did not waive sovereign immunity as one of the troopers involved testified that the decision to initiate a traffic stop on the stolen vehicle was the result of the trooper's training in pursuit policy and experience in apprehending fleeing motorists, that the trooper believed there was a threat to the public based on a report a firearm was used during the carjacking, and that the trooper considered traffic conditions. Loehle v. Ga. Dep't of Pub. Safety, 334 Ga. App. 836, 780 S.E.2d 469 (2015), cert. denied, No. S16C0500, 2016 Ga. LEXIS 213 (Ga. 2016).

State immunity when probation officer assisting local law enforcement in pursuit. — In a suit by a passenger against a Department of Corrections (DOC) probation officer whose vehicle collided with the passenger's vehicle during a police chase, because the officer's actions were consistent with DOC's non-defective policy, which allowed the officer to assist law enforcement, DOC had sovereign immunity under O.C.G.A. § 50-21-24(6). Britt v. Jackson, 348 Ga. App. 159, 819 S.E.2d 677 (2018), cert. denied, No. S19C0483, 2019 Ga. LEXIS 539 (Ga. 2019).

Accident caused by preventable negligence made law enforcement exception inapplicable. — In a personal injury suit brought by a driver who was rear-ended by a state trooper conducting radar detecting to catch speeders and using the driver's mail truck as a block, the trial court properly denied summary judgment to the Department of Public Safety

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3. Law Enforcement (Cont'd)

because the record established evidence that the accident was preventable, and that, therefore, the exception set forth in O.C.G.A. § 50-21-24(6) to sovereign immunity may be overcome by the driver at trial. By following too closely and not paying attention, the situation presented preventable negligence as opposed to a policy decision on the part of the trooper. Dep't of Pub. Safety v. Davis, 289 Ga. App. 21, 656 S.E.2d 178 (2007), aff'd, 285 Ga. 203, 676 S.E.2d 1 (2009).

State public safety department was not immune from liability under O.C.G.A. § 50-21-24(6) for an accident which was caused when a trooper collided with a motorist's truck while the trooper was running radar using the truck as cover because the trooper's actions were not a policy decision, but rather simple, preventable negligence while implementing a non-defective policy. Ga. Dep't of Pub. Safety v. Davis, 285 Ga. 203, 676 S.E.2d 1 (2009).

Accident following use of PIT maneuver. — When the plaintiff alleged that an officer negligently implemented a Georgia Department of Public Safety (DPS) policy, and performed an unjustified PIT maneuver by using a patrol vehicle to intentionally strike the plaintiff's vehicle, causing the plaintiff to lose control, strike a tree, and suffer injuries, the trial court abused the court's discretion by deferring until a trial on the merits the determination of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., exception to the waiver of sovereign immunity for losses resulting from an assault or battery as the factors controlling the court's exercise of discretion were clearly balanced in favor of a prompt pre-trial determination of the DPS's motion to dismiss for lack of subject matter jurisdiction. Dep't of Public Safety v. Johnson, 343 Ga. App. 22, 806 S.E.2d 195 (2017).

Operation of a state or county correctional institute and the related supervision of convicts on outside work details, including the degree of training and supervision provided to officers, was a discretionary function of the Georgia Department of Corrections and, through it, the county warden. Bontwell v. Department of Cors., 226 Ga. App. 524, 486 S.E.2d 917 (1997).

Death of inmate by cell mate. — Parent's wrongful death suit against a prison where the parent's adult child was incarcerated was properly dismissed by the trial court as the suit was barred by the waiver of sovereign immunity set forth in the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(7), since the adult child was killed as a result of an assault and battery committed by a cell mate. Southerland v. Ga. Dep't of Corr., 293 Ga. App. 56, 666 S.E.2d 383 (2008).

Parole board immune. — Defense of sovereign immunity applies to a complaint against the parole board and the board's former chairperson acting in an official capacity. Mosier v. State Bd. of Pardons & Paroles, 213 Ga. App. 545, 445 S.E.2d 535 (1994), cert. denied, 5 U.S. 1040, 115 S. Ct. 1409, 131 L. Ed. 2d 295 (1995).

Parole officer's duties not subject to liability. — Parole officer's duties under O.C.G.A. § 42-9-48(d) are discretionary within the meaning of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and therefore not subject to liability. Rowe v. State Bd. of Pardons & Parole, 240 Ga. App. 163, 523 S.E.2d 40 (1999).

4. Others

Physician whose license was temporarily suspended could not file suit against the state for actions of officers of the Board of Medical Examiners relating to the suspension. Howard v. Miller, 222 Ga. App. 868, 476 S.E.2d 636 (1996).

Inspections exception. — To the extent that plaintiff's claims stated the Department of Human Resources was negligent in conducting or failing to conduct adequate inspections of a personal care home, the department was entitled to summary judgment on the basis of sovereign immunity under the inspection exception. Bruton v. State Dep't of Human Resources, 235 Ga. App. 291, 509 S.E.2d 363 (1998).

O.C.G.A. § 50-21-24(8) applies not only to inspection powers and functions imposed by the legislature but also to inspec-

tion duties voluntarily assumed by the state pursuant to a contractual relationship; thus, since the plaintiff alleged that the Department of Transportation violated a duty to notify a county that a road as designed and as constructed by the county contained safety hazards, the duty involved an inspection power or function for which the department was immune under the statute. Magueur v. DOT, 248 Ga. App. 575, 547 S.E.2d 304 (2001).

Georgia Department of Transportation (DOT) had sovereign immunity under the inspection powers exception of O.C.G.A. § 50-21-24(8); the injured party claimed that injuries sustained due to a detour sign blocking a stop sign were the result of DOT approval of a contractor's traffic control plan and inspection of the detour route; DOT delegated responsibility to place the traffic control devices on a county road to the contractor. Comanche Constr., Inc. v. DOT, 272 Ga. App. 766, 613 S.E.2d 158 (2005).

When an injured party sued the Georgia Department of Transportation for injuries received in a single-car accident on a county road, under a theory of negligent inspection, the claim was barred by O.C.G.A. § 50-21-24(8), which provided an exception to state liability with respect to inspection powers or functions. Ogles v. E.A. Mann & Co., 277 Ga. App. 22, 625 S.E.2d 425 (2005).

Department of Natural Resources. — O.C.G.A. § 50-21-24(6) allowed the DNR director or an authorized agent the authority to ensure that the owner brought the owner's property into compliance with the environmental regulations. Price v. State, 250 Ga. App. 872, 553 S.E.2d 194 (2001).

State was not liable for losses incurred from the Department of Natural Resources' inspection of the party's property; DNR was immune from liability pursuant to the inspection powers or functions exception to the state's limited waiver of sovereign immunity. Price v. State, 250 Ga. App. 872, 553 S.E.2d 194 (2001).

College officials. — Because in meetings and at all other relevant times college officials were engaged in the performance of their official duties, under O.C.G.A. § 50-21-25(a), the officials had state tort immunity for statements the officials may have made at those meetings concerning the reasons for a teacher's dismissal, and for actions taken to effect the teacher's dismissal. Tootle v. Cartee, 280 Ga. App. 428, 634 S.E.2d 90 (2006).

College and a department were entitled to sovereign immunity in a claim seeking damages arising from the purchase of a nail primer product at the college because there was no showing of a waiver of sovereign immunity under O.C.G.A. § 50-21-23(a); among other things, the record, including the allegations of the complaint, established that the nail kit purchased was owned and sold by a vendor who was an independent contractor. Accordingly, the college and the department had no liability based on a failure to inspect the vendor's nail kits, which included the primer. Coosa Valley Tech. College v. West, 299 Ga. App. 171, 682 S.E.2d 187 (2009), cert. denied, No. S09C1954, 2010 Ga. LEXIS 9 (Ga. 2010).

Because a university president failed to show an enforceable employment contract, there was no waiver of sovereign immunity on the basis of a written contract. The president's tort claims against the state and Board of Regents were exclusively governed and barred by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and the president could not invoke the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., as an alternative remedy. Tricoli v. Watts, 336 Ga. App. 837, 783 S.E.2d 475 (2016).

Interference with contractual rights. — Georgia Tort Claims Act barred a state university professor's tortious interference claim against the university and the university's officials because the individual defendants were immune under O.C.G.A. § 50-21-21(b), and, under O.C.G.A. § 50-21-24(7), the state had no liability for losses resulting from interference with contractual rights. Edmonds v. Bd. of Regents, 302 Ga. App. 1, 689 S.E.2d 352 (2009), cert. denied, No. S10C0824, 2010 Ga. LEXIS 437 (Ga. 2010), overruled on other grounds by Wolfe v. Regents of the Univ. Sys. of Ga., 300 Ga. 223, 794 S.E.2d 85 (Ga. 2016).

Licensing powers or functions exception. — Administrative and judicial

Application (Cont'd)
4. Others (Cont'd)

action taken by the Department of Human Resources to enforce mandates set out in the Child Support Recovery Act, O.C.G.A. § 19-11-1 et seq., clearly fell within the exceptions to waiver of sovereign immunity. Department of Human Resources v. Money, 222 Ga. App. 149, 473 S.E.2d 200 (1996).

DOT was exempt from liability for any losses attributed to either the DOT's issuing a permit to a shopping center owner to build a commercial driveway across from the median opening where an accident occurred or attributable to the alleged delay in issuing a city permit to install a traffic signal at that driveway. DOT v. Cox, 246 Ga. App. 221, 540 S.E.2d 218 (2000).

When the assisted living facility owner claimed that the Georgia Department of Human Resources and the Georgia Department of Medical Assistance were liable under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., for relocating the owner's residents to other facilities and for terminating the owner's Medicaid provider status, and the departments later rescinded these actions, the departments were immune under O.C.G.A. § 50-21-24(9), because removal of the residents constituted an action by one department in response to the other department's revocation of the owner's Medicaid authorization, which was a licensing power or function. Smith v. Dep't of Human Res., 257 Ga. App. 33, 570 S.E.2d 337 (2002).

Department of Education. — In the parents' action alleging that the Georgia Department of Education (DOE) was liable for their child's death by failing to fulfill a duty under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., to regulate a school's disciplinary procedures, the trial court did not err in granting the DOE's motion to dismiss because the DOE had not waived DOE's sovereign immunity, and, given that the DOE had not waived DOE's sovereign immunity with regard to any quasi-legislative action DOE undertook, it similarly could not be held to have waived DOE's immunity when DOE chose to impose no administrative regulations whatsoever; although the DOE did inspect the school's time-out room logs during the course of DOE's IDEA compliance review, that inspection did not render the DOE liable for injuries related to use of such rooms, and because the school was not a state-owned property, the DOE did not waive DOE's sovereign immunity when DOE inspected the logs. King v. Pioneer Reg'l Educ. Serv. Agency, 301 Ga. App. 547, 688 S.E.2d 7 (2009), cert. denied, No. S10C0634, 2010 Ga. LEXIS 340 (Ga.); cert. denied, U.S. , 131 S. Ct. 504, 178 L. Ed. 2d 370 (2010).

Immunity of school teacher. — Summary judgment based on official immunity for a school teacher sued over a student's death was proper as certain school employees were immune from liability for supervising students on a school bus and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., was inapplicable. Aliffi v. Liberty County Sch. Dist., 259 Ga. App. 713, 578 S.E.2d 146 (2003).

Battery claim on behalf of neglected child. — In a suit against the state arising out of the death of an infant at the hands of the infant's drug-addicted parents, dismissal of claims for battery on the child was proper under the assault and battery exception to the state's waiver of sovereign immunity, O.C.G.A. § 50-21-24(7); however, more information was needed to determine if the discretionary function exception, § 50-21-24(2), applied. Cowart v. Ga. Dep't of Human Servs., 340 Ga. App. 183, 796 S.E.2d 903 (2017).

Georgia Forestry Commission

Georgia Forestry Commission's duty to advise. — In a wrongful death action, the trial court erred in finding that the Georgia Forestry Commission (GFC) was not negligent in carrying out the Commission's duty to advise Georgia State Patrol (GSP) of a fire and that the Commission was entitled to sovereign immunity on that ground because the record showed that an agency agreement imposed a separate and independent duty on GFC, regardless of visibility conditions, to advise GSP of the existence of any large

controlled burns or wildfires in the vicinity of state roadways. Grant v. Ga. Forestry Comm'n, 338 Ga. App. 146, 789 S.E.2d 343 (2016), cert. denied, No. S17C0003, 2017 Ga. LEXIS 127 (Ga. 2017), cert. denied, No. S17C0037, 2017 Ga. LEXIS 153 (Ga. 2017).

Controlled burn by Georgia Forestry Commission. — Upon certiorari review by the Supreme Court of Georgia, the court held that the exception to the sovereign immunity waiver authorized the application of immunity to the making of policy decisions by state employees and officers including those relating to the amount, disbursement, and use of equipment and personnel to provide law enforcement, police or fire protection services, and to the acts and omissions of state employees and officers executing and implementing those policies; thus, inasmuch as this rationale was at odds with that of the Court of Appeals of Georgia in its prior decision that the employee's claim as to the Commission's allegedly deficient notice to other governmental entities of a visibility hazard did not fall within the fire protection exception to the general waiver of sovereign immunity, remand to the trial court was ordered for the court to proceed in a manner consistent with the Supreme Court's opinion. Ga. Forestry Comm'n v. Canady, 281 Ga. App. 505, 637 S.E.2d 212 (2006).

State director. — In a state employee's suit asserting defamation against a state director, the trial court properly granted the director summary judgment and dismissed the complaint as the records established that the director was a state employee at the time the alleged statements were made and, therefore, any libelous or slanderous statements were made by the director within the scope of the director's official duties and, thus, the director was immune from liability. Ford v. Caffrey, 293 Ga. App. 269, 666 S.E.2d 623 (2008).

RESEARCH REFERENCES

ALR. — Liability of state or municipality for unsafe roadway condition arising from rain, snow, fog, or other atmospheric condition, naturally occurring or created by another, 57 A.L.R.6th 355.

Liability of public or private schools or institutions of higher learning, or personnel thereof, in connection with suicide of student, 100 A.L.R.6th 563.

Propriety of and liability arising from police use of precision immobilization technique or similar act, 42 A.L.R.7th Art. 2.

Claims arising from governmental conduct causing damage to plaintiff's real property as within discretionary function exception of federal Tort Claims Act (28 U.S.C.A. § 2680(a)), 167 A.L.R. Fed. 1.

Liability of United States for failure to warn of danger or hazard not directly created by act or omission of federal government and not in national parks as affected by "discretionary function or duty" exception to Federal Tort Claims Act, 169 A.L.R. Fed. 421.

Liability of United States for failure to warn of danger or hazard resulting from governmental act or omission as affected by "discretionary function or duty" exception to Federal Tort Claims Act (28 U.S.C.A. § 2680(a)), 170 A.L.R. Fed. 365.

Liability of United States for failure to warn local police or individuals of discharge, release, or escape of person who is deemed dangerous to public as affected by "discretionary act or duty" exception to Federal Tort Claims Act, 171 A.L.R. Fed. 655.

Claims arising from conduct of governmental employer in administering or failing to administer medical care as within discretionary function exception of Federal Tort Claims Act (28 U.S.C.A. § 2680(a)), 172 A.L.R. Fed. 407.

Liability of United States, under Federal Tort Claims Act (28 U.S.C.A. §§ 1346, 2680), for damages caused by ingestion or administration of government-approved drugs, vaccines, and medications, 173 A.L.R. Fed. 431.

Construction and application of Federal Tort Claims Act (FTCA) exception in 28 U.S.C.A. § 2680(c), concerning claims arising in respect of assessment or collection of any tax or customs duty, or detention of goods or merchandise by any officer

of customs or excise or any other law-enforcement officer, 173 A.L.R. Fed. 465.

50-21-24.1. Workers' compensation exclusive remedy not waived; workers' compensation fund to pay claims.

This article does not waive the workers' compensation exclusive remedy when state employees are injured on the job. The workers' compensation fund shall pay claims for job related injuries and not the State Tort Claims Trust Fund.

History. — Code 1981, § 50-21-24.1, enacted by Ga. L. 1994, p. 1717, § 11; Ga. L. 1998, p. 128, § 50.

50-21-25. Immunity of state officers or employees for acts within scope of official duties or employment; officer or employee not named in action against state; settlement or judgment.

(a) This article constitutes the exclusive remedy for any tort committed by a state officer or employee. A state officer or employee who commits a tort while acting within the scope of his or her official duties or employment is not subject to lawsuit or liability therefor. However, nothing in this article shall be construed to give a state officer or employee immunity from suit and liability if it is proved that the officer's or employee's conduct was not within the scope of his or her official duties or employment.

(b) A person bringing an action against the state under the provisions of this article must name as a party defendant only the state government entity for which the state officer or employee was acting and shall not name the state officer or employee individually. In the event that the state officer or employee is individually named for an act or omission for which the state is liable under this article, the state government entity for which the state officer or employee was acting must be substituted as the party defendant.

(c) A settlement or judgment in an action or a settlement of a claim under this article constitutes a complete bar to any further action by the claimant against a state officer or employee or the state by reason of the same occurrence.

History. — Code 1981, § 50-21-25, enacted by Ga. L. 1992, p. 1883, § 1.

Law reviews. — For note, "Finding Immunity: Manders v. Lee and the Erosion of 1983 Liability," see 55 Mercer L. Rev. 1505 (2004).

JUDICIAL DECISIONS

O.C.G.A. § 50-21-25(a) is not unconstitutional on the grounds that the statute exceeds the scope of the voter approved constitutional ballot amendment which authorized the Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Riddle v. Ashe, 269 Ga. 65, 495 S.E.2d 287 (1998).

O.C.G.A. § 50-21-25(a) does not violate equal protection by creating a class of citizens who are denied the right to seek recovery from persons who injure them. Riddle v. Ashe, 269 Ga. 65, 495 S.E.2d 287 (1998).

Construction with O.C.G.A. § 36-92-3. — Due to the nearly identical language between O.C.G.A. §§ 36-92-3 and 50-21-25, the General Assembly intended to provide immunity for municipal employees in the context of torts involving a covered motor vehicle, which is comparable to the immunity granted to state employees in the context of all torts, as long as the pertinent conditions have been satisfied; thus, by the passage of O.C.G.A. § 36-92-3, the legislature intended to foreclose all recovery against municipal employees for torts committed within the scope of employment and involving the use of a covered motor vehicle. DeLoach v. Elliott, 289 Ga. 319, 710 S.E.2d 763 (2011).

Medicaid status irrelevant to constitutionality. — Grant of official immunity from a malpractice suit to a state-employed doctor based on the patient's status as a Medicaid patient did not violate the constitutional rights of the patient's parents as the due process and equal protection clauses of the U.S. and Georgia Constitutions protected only rights, and a waiver of sovereign immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., was merely a privilege. Porter v. Guill, 298 Ga. App. 782, 681 S.E.2d 230 (2009).

Only government entities protected by Act. — In an action on a note brought by the Georgia Higher Education Assistance Corporation, the defendant's tort counterclaim was not barred by the Tort Claims Act, O.C.G.A. § 50-21-20 et seq., since a corporation cannot be a "state officer or employee," and the plaintiff was not one of the state government entities referred to in O.C.G.A. § 50-21-25. Garrett v. Georgia Higher Educ. Assistance Corp., 217 Ga. App. 415, 457 S.E.2d 677 (1995).

Abusive foster parents not state actors under 42 U.S.C. § 1983. — District court erred in holding the defendants were state actors for purposes of 42 U.S.C. § 1983 under the lexus/joint access test because as private parties plaintiffs' conduct as allegedly abusive foster parents was not "symbiotic" with that of the state and the state's role did not amount to that of a "joint participant" with the plaintiffs in the context of child abuse. Rayburn v. Hogue, 241 F.3d 1341 (11th Cir. 2001).

Foster parents immune from liability. — In a wrongful death action by the child's biological parents, the foster parents were entitled to sovereign immunity because they were state officers or employees under the Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and the Georgia Department of Human Services was the proper party defendant in the biological parents' action under the Tort Claims Act. Dep't of Human Servs. v. Duncan, 351 Ga. App. 332, 831 S.E.2d 4 (2019), cert. denied, No. S19C1564, 2020 Ga. LEXIS 194 (Ga. 2020).

Limited immunity. — Tort Claims Act, O.C.G.A. § 50-21-20 et seq., provides limited, rather than blanket, immunity from suit. Riddle v. Ashe, 269 Ga. 65, 495 S.E.2d 287 (1998).

Employees entitled to official immunity. — Merely styling a suit against a public officer as one brought against the officer personally does not deprive the officer of any immunity to which the officer might otherwise be entitled under the Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Coultas v. Dunbar, 220 Ga. App. 54, 467 S.E.2d 373 (1996); Brooks v. Barry, 223 Ga. App. 648, 478 S.E.2d 616 (1996), cert. denied, 522 U.S. 899, 118 S. Ct. 246, 139 L. Ed. 2d 176 (1997).

Plaintiff could not sidestep the notice requirements of the Georgia Tort Claims Act (GTCA) by alleging that the plaintiff was suing the defendants as individuals acting outside of the scope of the defen-

dants' official duties and employment as the GTCA was the exclusive remedy for any tort committed by a state officer or employee, and the defendants' immunity was only lost if it was proved that the defendants' conduct was not within the scope of the defendants' official duties or employment. Gibbons v. McBride, 124 F. Supp. 3d 1342 (S.D. Ga. 2015).

Probation officer, employed by the county sheriff's office, who signed an arrest warrant for the nonpayment of a traffic fine after the arrestee had actually paid the fine, was not entitled to immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the Act specifically excluded counties, and the officer was acting on the county's behalf and not on behalf or in the service of the state. Washington v. Rivera, 939 F.3d 1239 (11th Cir. 2019).

State official immune from tort liability for assumed intentional eavesdropping. — Employee's suit against a supervisor at a state agency alleging illegal eavesdropping and invasion of privacy in violation of O.C.G.A. § 16-11-62 was dismissed based on immunity under O.C.G.A. §§ 50-21-21(b) and 50-21-25(a); the supervisor was a state employee acting within the scope of the supervisor's employment when the supervisor answered the employee's accidental call and listened in on the employee's conversation with the employee's spouse, which was critical of the supervisor. Stephens v. Coan, 349 Ga. App. 147, 825 S.E.2d 525 (2019).

Discretionary function in deterinming discharge. — Determination by a state hospital whether a mental patient was a candidate for discharge to a personal care home was a discretionary function. Northwest Ga. Regional Hosp. v. Wilkins, 220 Ga. App. 534, 469 S.E.2d 786 (1996).

Placement of children in foster home. — Caseworker and supervisor in the Department of Family and Children Services acted within the scope of their official duties in the placement and supervision of children in a foster home and, thus, were entitled to official immunity. Miracle by Miracle v. Spooner, 978 F. Supp. 1161 (N.D. Ga. 1997).

Psychiatrist working for a state agency was entitled to immunity since the psychiatrist was sued only in an official capacity since the plaintiff never claimed that the psychiatrist treated the decedent as a private-pay patient. Board of Regents v. Frost, 233 Ga. App. 692, 505 S.E.2d 236 (1998).

Defendants were immune from liability in an action for wrongful termination from employment because the cause of action arose after the statute's effective date, the defendants were state employees, and the deferdants were both acting within the scope of the defendants' employment duties when they fired the plaintiff. Wang v. Moore, 247 Ga. App. 666, 544 S.E.2d 486 (2001).

Correctional officers entitled to immunity. — Correctional officers' actions in requiring a student on a prison tour, who had disobeyed prison instructions, to do push-ups was within the scope of the officers' official duties as the officers were responsible to control the tour participants and to restrain and discipline any uncooperative participants by requiring push-ups and by using verbal means or physical force. Herndon v. Mosley, 257 Ga. App. 495, 571 S.E.2d 491 (2002).

Trial court properly denied the port authority employee's motion to dismiss the ship owner's claims for contribution or indemnity as a state law tort claim was prohibited against the employee for tortious acts committed while acting within the scope of employment and whether the employee was so acting was a question of fact which could not be resolved on a motion to dismiss the cross-claim for contribution or indemnity filed against the employee. Ga. Ports Auth. v. Andre Rickmers Schiffsbeteiligungsges mbH & Co. K.G., 262 Ga. App. 591, 585 S.E.2d 883 (2003).

Trial court incorrectly denied a prison official's motion for summary judgment on the estate administrators' state causes of action, following the death of an inmate who overdosed on Tylenol, because the administrators failed to prove that the official was acting outside the scope of the person's official duties or employment; consequently, even if the official acted with malice or intent to injure the dece-

dent, the official was immune from liability on the administrators' state law claims against the official. Minor v. Barwick, 264 Ga. App. 327, 590 S.E.2d 754 (2003).

Allegations by the nursery owners that a state university professor acted intentionally or willfully did not remove the professor from the scope of the professor's state employment for purposes of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. (GTCA), and, thus, the state university professor was protected by sovereign immunity and the GTCA from liability arising out of claims about what would happen to certain royalties related to plant cuttings the nursery owners gave to the professor and which the professor concluded had vast commercial potential. Feist v. Dirr, 271 Ga. App. 169, 609 S.E.2d 111 (2004).

Merely styling a suit against a public officer as one brought against the officer personally does not deprive the officer of any immunity to which the officer might otherwise be entitled for the officer's official acts under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Davis v. Standifer, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

If a state employee acts in the prosecution of and within the scope of the employee's official duties, intentional wrongful conduct comes within and remains within the scope of employment, and even when a plaintiff alleges a state constitutional violation, if the underlying conduct complained of is tortious and occurred within the scope of the state employee's official duties, the employee is protected by official immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Davis v. Standifer, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

Actions of state trooper. — When a citizen alleged that a state trooper sexually assaulted the citizen during a traffic stop, the trooper was immune from liability under O.C.G.A. § 50-21-25(a) because the only alleged contact between the citizen and the trooper occurred during the traffic stop so any alleged assault would have occurred while the trooper was performing official duties, making the trooper immune from alleged state constitutional violations arising from the same facts. Davis v. Standifer, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

Officer immune in suit. — Trial court erred by entering a default judgment against a police officer for failing to timely answer because the officer was immune from suit on the claim brought under state law, thus, the default judgment entered on that claim was a nullity and the trial court lacked subject matter jurisdiction and should have dismissed the state law cause of action for lack of subject matter jurisdiction. Ferrell v. Young, 323 Ga. App. 338, 746 S.E.2d 167 (2013).

College campus police officers did not qualify for immunity. — Campus police officers employed by a private college did not qualify as state officers or employees who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts. Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857 (2014).

Dismissal of teachers. — Because in meetings and at all other relevant times college officials were engaged in the performance of their official duties, under O.C.G.A. § 50-21-25(a), the officials had state tort immunity for statements the officials may have made at those meetings concerning the reasons for a teacher's dismissal, and for actions taken to effect the teacher's dismissal. Tootle v. Cartee, 280 Ga. App. 428, 634 S.E.2d 90 (2006).

Action based on determation. — In a state employee's suit asserting defamation against a state director, the trial court properly granted the director summary judgment and dismissed the complaint as the records established that the director was a state employee at the time the alleged statements were made and, therefore, any libelous or slanderous statements were made by the director within the scope of the director's official duties and, thus, the director was immune from liability. Ford v. Caffrey, 293 Ga. App. 269, 666 S.E.2d 623 (2008).

Claims of excessive force. — Based on O.C.G.A. § 9-2-61, an arrestee's excessive force claim against a sheriff's major in the major's individual capacity was

revived after a voluntary dismissal but assuming that the complaint alleged actual malice under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d), as to the major's conduct, the tort claim had to brought against the state under O.C.G.A. § 50-21-25(b); however, the state did not waive the state's sovereign immunity under O.C.G.A. § 50-21-23(b) for such claim to be brought in federal court. Jude v. Morrison, 534 F. Supp. 2d 1365 (N.D. Ga. 2008).

Plaintiff employee did not show that defendant school system waived the system's immunity, Ga. Const. 1983, Art. I, Sec. II, Para. IX(e), because the plaintiff pointed to no legislative act providing for a waiver. In addition, because the defendant superintendent was a state employee whose alleged tort was committed while acting within the scope of the superintendent's employment, the superintendent also was entitled to immunity, O.C.G.A. § 50-21-25(a). Polite v. Dougherty County Sch. Sys., No. 07-14108, 2008 U.S. App. LEXIS 17128 (11th Cir. Aug. 11, 2008) (Unpublished).

Plaintiffs' tort claims against a SWAT member who shot and killed a barricaded gunman were barred by the Georgia Tort Claims Act because nothing in the complaint suggested that the member's conduct was outside the scope of the member's official duties or employment. Dixon v. Ga. Dep't of Pub. Safety, 135 F. Supp. 3d 1362 (S.D. Ga. 2015).

Actions by prison inmates. — Trial court did not err in disallowing a prison inmate to file a conversion claim against a warden and corrections officers under the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 tet seq., because their actions were clothed with official immunity under the GTCA, O.C.G.A. § 50-21-25(b), since they were acting within the scope of their official duties when they confiscated the inmate's personal property; the inmate acknowledged that the Georgia Department of Corrections had to be named as a defendant, which necessarily amounted to a concession that Department employees were not proper defendants, and their alleged tortious conduct occurred while they were acting within the scope of their official duties. Romano v. Ga. Dep't of Corr., 303 Ga. App. 347, 693 S.E.2d 521 (2010).

Employee as commissioner and immunity. — Grant of summary judgment on the ground that O.C.G.A. § 50-21-25(a) granted immunity was affirmed because the employee's testimony at trial was based upon actions taken while the employee was commissioner. Accordingly, the trial court properly granted summary judgment to the employee based upon the employee's immunity for acts taken within the scope of the employee's official duties. Douglas Asphalt Co. v. Linnenkohl, 320 Ga. App. 427, 741 S.E.2d 169 (2013).

Exclusive remedy. — Georgia law waives sovereign immunity for tort suits against state officers and employees committed in the scope of employment under O.C.G.A. § 50-21-23, while a later statute, O.C.G.A. § 50-21-25, states that the procedure established under the Georgia Tort Claims Act provides the exclusive remedy for any tort committed by a state officer or employee under O.C.G.A. § 50-21-25(a). Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents, 633 F.3d 1297 (11th Cir. 2011).

Special master entitled to immunity. — In a renter's suit asserting that the renter's due process rights were violated in connection with the renter's eviction after a bank's foreclosure on the property the renter was leasing, a special master who ruled in the renter's state court suit was immune from the renter's federal claims because the master was considered a judge for purposes of O.C.G.A. § 50-21-25. Vereen v. Everett, No. 1:08-CV-1969-RWS, 2009 U.S. Dist. LEXIS 27302 (N.D. Ga. Mar. 31, 2009).

University employees entitled to immunity. — Because two university workers acted within the scope of the workers' employment by following university policy in reporting an alleged inappropriate relationship between the workers' former boss and a university official, an invasion of privacy claim asserted against the workers by that former boss should have been dismissed since such was barred by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and sovereign immunity. Massey v. Roth, 290 Ga. App. 496, 659 S.E.2d 872 (2008).

State employed physician entitled to official immunity. — Trial court properly granted summary judgment to a prison doctor in a medical malpractice action on behalf of a deceased patient/inmate as the doctor worked for the Board of Regents of the University System of Georgia, rather than for the Georgia Department of Corrections, and the doctor was not a proper party defendant under O.C.G.A. § 50-21-25 as the Board should have been served and named as the proper party. Green v. Cent. State Hosp., 275 Ga. App. 569, 621 S.E.2d 491 (2005).

Under O.C.G.A. § 50-21-25(a), a state-employed physician was entitled to official immunity from medical malpractice actions brought by patients whose treatment was paid for by public funds when the doctor's treatment fell within the scope of the doctor's duties as a state employee. Porter v. Guill, 298 Ga. App. 782, 681 S.E.2d 230 (2009).

Physician, who was a second-year fellow at the Medical College of Georgia Children's Medical Center's Graduate Medical Education Program, was entitled to official immunity in a medical malpractice action under Ga. Const.1983, Art. I, Sec. II, Para. IX(d) and O.C.G.A. § 50-21-25(b) because the physician, who provided followup medical treatment to a child, was operating under the general supervision of an attending physician who was a faculty member and an employee of the Medical College of Georgia. Jones v. Allen, 312 Ga. App. 762, 720 S.E.2d 1 (2011).

In a medical malpractice suit, two physicians were entitled to official immunity under O.C.G.A. §§ 50-21-23(b) and 50-21-25(a) because the record established that the physicians were full-time faculty members at a Georgia medical college performing the physicians' regular duties of employment at the time the estate's decedent was allegedly injured. Cook v. Forrester, 323 Ga. App. 631, 746 S.E.2d 624 (2013).

State employed resident physicians entitled to official immunity. — In a medical malpractice action against a hospital and four residents, the residents were entitled to qualified immunity under O.C.G.A. § 50-21-25(a) because state-employed resident physicians were entitled to immunity from liability arising from the residents' treatment of patients during the course of the medical residency. Nelson v. Bd. of Regents of the Univ. Sys. of Ga., 307 Ga. App. 220, 704 S.E.2d 868 (2010).

Physician whose license was temporarily suspended could not file suit against officers of the Board of Medical Examiners or other state employees for their actions relating to the suspension. Howard v. Miller, 222 Ga. App. 868, 476 S.E.2d 636 (1996).

Two physicians, who were faculty members at the Medical College of Georgia Children's Medical Center, did not establish in a medical malpractice action that the physicians were entitled to qualified immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and O.C.G.A. § 50-21-25(b), because the child whom the physicians treated at the center was a private pay patient. Notwithstanding the physicians' official duties as faculty members, when they acted as physicians, the physicians' primary duty was to the child, rather than to the State of Georgia. Jones v. Allen, 312 Ga. App. 762, 720 S.E.2d 1 (2011).

Physicians employed by state medical college. — Georgia Supreme Court overruled Keenan v. Plouffe, 267 Ga. 791, (1997) and holds that the analysis of a physician's official immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., shall proceed exclusively on the basis of whether the physician was acting within the scope of the physician's state employment in performing the treatment that is the subject of the malpractice action. Shekhawat v. Jones, 293 Ga. 468, 746 S.E.2d 89 (2013).

Two physicians were entitled to official immunity in a medical malpractice suit brought against the physicians by the parents of a newborn infant injured by the medical team's failure to ensure the child was adequately oxygenated during intubation because the physicians were acting within the scope of the physicians state employment at the Medical College of Georgia in rendering the medical care at issue. However, the effect of recognizing official immunity does not necessarily leave the injured plaintiff without re-

course as, while official immunity relieves the state employee of personal liability, the injured plaintiff may still seek relief against the state government entity for which the state officer or employee was acting, pursuant to the Georgia Tort Claims Act, O.C.G.A. §§ 50-21-23 and 50-21-25(b). Shekhawat v. Jones, 293 Ga. 468, 746 S.E.2d 89 (2013).

Cause of action under statute precluded federal due process claim. — If a county sheriff's investigator and another county official actively participated in the theft of an arrestee's property, then the arrestee was free to pursue a tort cause of action against those officials under Georgia law; consequently, the arrestee's allegations did not state a claim for relief under the due process clause of U.S. Const., amend. 14, given that state law provided an adequate remedy for the alleged theft of the arrestee's property. Shouse v. Ursitti, No. 5:05-CV-314 (DF), 2006 U.S. Dist. LEXIS 32409 (M.D. Ga. May 23, 2006).

Commissioner of Department of Human Resources was entitled to immunity under the Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Dollar v. Olmstead, 232 Ga. App. 520, 502 S.E.2d 472 (1998).

University administrators entitled to immunity. — Despite allegations that the university's actions in denying tenure to the plaintiff were motivated by malice and ill-intent, the defendants' actions were squarely within the confines of the defendants' official duties as university administrators, and the defendants were entitled to immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Hardin v. Phillips, 249 Ga. App. 541, 547 S.E.2d 565 (2001).

Because a university president failed to show an enforceable employment contract, there was no waiver of sovereign immunity on the basis of a written contract. The president's tort claims against the State and Board of Regents were exclusively governed and barred by the Georgia Tort Claims Act, and the president could not invoke the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq., as an alternative remedy. Tricoli v. Watts, 336 Ga. App. 837, 783 S.E.2d 475 (2016).

Supervisor for state was immune from personal liability for an alleged intentional or malicious tort committed in the performance of the supervisor's official duties; there was no exemption from O.C.G.A. § 50-21-25(a) for acts motivated by malice or an intent to injure. Ridley v. Johns, 274 Ga. 241, 552 S.E.2d 853 (2001).

Community service boards not part of DHR. — Legislature did not intend for community service boards to be part of the Department of Human Resources (DHR) or its employees to be department employees, under ordinary circumstances; a suit claiming that DHR was liable for the alleged negligence of a board employee should have been dismissed. Dep't of Human Res. v. Crews, 278 Ga. App. 56, 628 S.E.2d 191 (2006).

Inmate's state law battery claim against a correctional officer was barred because it was clear from the complaint that the alleged battery arose from the officer's official duties. Mattox v. Bailey, 221 Ga. App. 546, 472 S.E.2d 130 (1996).

Notice held adequate despite being provided to incorrect agency. — Trial court erred by dismissing a plaintiff's negligence complaint since the plaintiff complied with the plain language of the ante litem notice provision of the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-26, even though, due to error on the plaintiff's part, the actual responsible agency was not provided with ante litem notice within the 12-month period; there was no evidence that the State of Georgia suffered any prejudice therefrom. Cummings v. Ga. Dep't of Juvenile Justice, 282 Ga. 822, 653 S.E.2d 729 (2007).

Self-contradictory testimony rule. — In a wrongful death action against the Georgia Department of Public Safety in which the decedent died from injuries sustained in a high-speed chase with the Georgia State Patrol officers, the decedent's daughter offered no argument or authority for the proposition that the self-contradictory testimony rule should apply to the testimony of non-party witnesses, including the primary and secondary pursuing officers, because the Department was the party being sued, not the officers. James v. Ga. Dep't of Pub. Safety, 337 Ga. App. 864, 789 S.E.2d 236 (2016).

Cited in McGee v. State, 227 Ga. App. 107, 487 S.E.2d 671 (1997); Ga. Dep't of Human Res. v. Coley, 247 Ga. App. 392, 544 S.E.2d 165 (2000); McCall v. Dep't of Human Res., 176 F. Supp. 2d 1355 (M.D. Ga. 2001); Fedorov v. Bd. of Regents, 194 F. Supp. 2d 1378 (S.D. Ga. 2002); Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents of the Univ. Sys. of Ga., No. 3:07-CV-084 (CDL), 2008 U.S. Dist. LEXIS 32116 (M.D. Ga. Apr. 18, 2008); Considine v. Murphy, 297 Ga. 164, 773 S.E.2d 176 (2015).

RESEARCH REFERENCES

ALR. — Liability of municipality or other governmental unit for failure to provide police protection from crime, 90 A.L.R.5th 273.

50-21-26. Notice of claim against state; time for commencement of action; examination of records to facilitate investigation of claims; confidential nature of documents and information furnished.

(a) No person, firm, or corporation having a tort claim against the state under this article shall bring any action against the state upon such claim without first giving notice of the claim as follows:

(1) Notice of a claim shall be given in writing within 12 months of the date the loss was discovered or should have been discovered; provided, however, that for tort claims and causes of action which accrued between January 1, 1991, and July 1, 1992, notice of claim shall be given in writing within 12 months after July 1, 1992;

(2) Notice of a claim shall be given in writing and shall be mailed by certified mail or statutory overnight delivery, return receipt requested, or delivered personally to and a receipt obtained from the Risk Management Division of the Department of Administrative Services. In addition, a copy shall be delivered personally to or mailed by first-class mail to the state government entity, the act or omissions of which are asserted as the basis of the claim. Each state government entity may designate an office or officer within that state government entity to whom a notice of claim is to be delivered or mailed;

(3) No action against the state under this article shall be commenced and the courts shall have no jurisdiction thereof unless and until a written notice of claim has been timely presented to the state as provided in this subsection;

(4) Any complaint filed pursuant to this article must have a copy of the notice of claim presented to the Department of Administrative Services together with the certified mail or statutory overnight delivery receipt or receipt for other delivery attached as exhibits. If failure to attach such exhibits to the complaint is not cured within 30 days after the state raises such issue by motion, then the complaint shall be dismissed without prejudice; and

(5) A notice of claim under this Code section shall state, to the extent of the claimant's knowledge and belief and as may be practicable under the circumstances, the following:

(A) The name of the state government entity, the acts or omissions of which are asserted as the basis of the claim;

(B) The time of the transaction or occurrence out of which the loss arose;

(C) The place of the transaction or occurrence;

(D) The nature of the loss suffered;

(E) The amount of the loss claimed; and

(F) The acts or omissions which caused the loss.

(b) No action may be commenced under this article following presentation of a notice of claim until either the Department of Administrative Services has denied the claim or more than 90 days have elapsed after the presentation of the notice of claim without action by the Department of Administrative Services, whichever occurs first.

(c) The Department of Administrative Services shall have the authority to examine and copy any records of any state government entity to facilitate the investigation of a claim. Each state government entity shall make available to the Department of Administrative Services, incidental to any investigation of a claim, all such records notwithstanding any other provision of law which designates such records as confidential or which prohibits disclosure of such records; provided, however, that the Department of Administrative Services shall be bound by such provision of law and shall not make further disclosure of such records except as permitted by such provision of law. The Department of Administrative Services may enforce the authority granted under this subsection by subpoena which may be enforced, upon application by the department, by the Superior Court of Fulton County, Georgia, in the same manner as subpoenas issued under Chapter 13 of this title, the "Georgia Administrative Procedure Act," may be enforced.

(d) Any document or information gathered or prepared by the Department of Administrative Services in connection with the investigation undertaken as a result of the notice of claim shall be considered privileged and confidential and shall not be subject to discovery by any claimant in any proceeding under this article except as otherwise provided by law.

History. — Code 1981, § 50-21-26, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 1994, p. 1717, § 12; Ga. L. 1998, p. 128, § 50; Ga. L. 2000, p. 1589, § 3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "July 1, 1992" was substituted for "the effective date of this article" in two places in paragraph (a)(1).

Pursuant to Code Section 28-9-5, in 1993, a comma was substituted for the period following the first occurrence of "July 1" in paragraph (a)(1).

Pursuant to Code Section 28-9-5, in 2009, "that" was inserted following "however," in paragraph (a)(1).

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For annual survey article discussing trial practice and procedure, see 52 Mercer L. Rev. 447 (2000). For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For annual survey of tort law, see 58 Mercer L. Rev. 385 (2006). For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007). For survey article on trial practice and procedure, see 59 Mercer L. Rev. 423 (2007). For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008). For survey article on trial practice and procedure, see 60 Mercer L. Rev. 397 (2008). For annual survey on trial practice and procedure, see 66 Mercer L. Rev. 211 (2014). For annual survey on trial practice and procedure, see 67 Mercer L. Rev. 257 (2015).

JUDICIAL DECISIONS

Retroactivity. — Notice and service provisions of O.C.G.A. § 50-21-26 are procedural laws that could be applied retroactively to authorize dismissal of a claim against the Department of Transportation when the plaintiff did not serve the Director of the Risk Management Division of the Department of Administrative Services or mail a copy of the complaint to the Attorney General. Henderson v. DOT, 267 Ga. 90, 475 S.E.2d 614 (1996).

Local authorities. — Chatham Area Transit Authority is a local authority and, therefore, the Tort Claims Act, O.C.G.A. § 50-21-20 et seq., does not apply to the authority. Holmes v. Chatham Area Transit Auth., 233 Ga. App. 42, 505 S.E.2d 225 (1998).

In a tort action brought by a passenger against a regional transportation authority, the reversal of the denial of the authority's motion for judgment on the pleadings was upheld because, by its terms, O.C.G.A. § 36-33-5(d) permitted the tolling of the period of limitation only for claims against municipal corporations and it was not a municipal corporation. Foster v. Ga. Reg'l Transp. Auth., 297 Ga. 714, 777 S.E.2d 446 (2015).

Condition precedent was necessary. — If a condition precedent to waiver of sovereign immunity was not satisfied, then the trial court lacked subject matter jurisdiction and no valid action was pending to toll the running of the statute of limitations. Sylvester v. DOT, 252 Ga. App. 31, 555 S.E.2d 740 (2001).

Failure to state dollar amount. — Pro se parent's ante litem notice to the state in a wrongful death case that stated that the amount of the loss suffered was the "monetary value of the decedent's life" was insufficient because the plain language of the ante litem statute required that a dollar amount be stated, O.C.G.A. § 50-21-26(a)(5)(E), and the parent could have assigned a loss based on the parent's knowledge and belief. Dorn v. Ga. Dep't of Behavioral Health & Developmental Disabilities, 329 Ga. App. 384, 765 S.E.2d 385 (2014).

In the plaintiff's personal injury action under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., against the Georgia Department of Transportation (DOT), alleging that a DOT employee negligently caused a vehicle collision in which the plaintiff was injured, the DOT's motion to dismiss was improperly denied because the plaintiff's ante litem notice failed to state the amount of loss the plaintiff knew at the time of the notice; the plaintiff's statement that the plaintiff intended to claim the full amount of damages allowed by law failed to satisfy the definition of the amount of loss claimed as it referred to a cap on the amount the plaintiff might be allowed to recover with-

out providing any information about the amount the plaintiff could claim to the jury. Georgia Department of Transportation v. King, 341 Ga. App. 102, 798 S.E.2d 492 (2017).

Prisoner who was injured when the prisoner slipped and fell during a work-release program failed to strictly comply with O.C.G.A. § 50-21-26(a)(5)(E)'s requirement that the prisoner's ante litem notice to the Georgia Department of Corrections specify the amount of the loss claimed because the notice did not provide a specific dollar amount or a range of losses. Farmer v. Dep't of Corr., 346 Ga. App. 387, 816 S.E.2d 376 (2018).

Trial court correctly dismissed the parents' claim for injuries incurred by their son while in juvenile detention based on their failure to demonstrate waiver of sovereign immunity under the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., because the parents failed to comply with GTCA by not stating an amount of loss; thus, the parents' ante litem notice was fatally deficient. Douglas v. Dep't of Juvenile Justice, 349 Ga. App. 10, 825 S.E.2d 395 (2019).

Georgia Supreme Court explained that the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., does not require that a claimant give notice of the entire loss, the complete loss, or the total loss; instead, the plain language requires notice of the amount of the loss claimed at that time, within the belief and knowledge of the claimant, as may be practicable under the circumstances. Douglas v. Dep't of Juvenile Justice, 349 Ga. App. 10, 825 S.E.2d 395 (2019).

Failure to strictly comply with delivery requirement. — Trial court erred in denying the Department of Transportation's motion to dismiss because the driver did not establish that the driver delivered the ante litem notice in strict compliance with O.C.G.A. § 50-21-26, by making sure that notice was delivered to the Risk Management Division of the Department of Administrative Services and, thus, the trial court lacked subject matter jurisdiction over the suit. Department of Transportation v. Jones, 303 Ga. 604, 346 Ga. App. 886, 816 S.E.2d 679 (2018), cert. denied, No. S18C1645, 2019 Ga. LEXIS 618 (Ga. 2019).

Substantial compliance inadequate. — Substantial compliance with the ante litem notice requirement is inadequate under the Tort Claims Act, O.C.G.A. § 50-21-20 et seq. McGee v. State, 227 Ga. App. 107, 487 S.E.2d 671 (1997).

Since the plaintiff did not give notice of a claim to the Risk Management Division of the state Department of Administrative Services, as specifically set forth in O.C.G.A. § 50-21-26, the plaintiff did not conform to the strict compliance requirements of that section, and the plaintiff's claim was properly dismissed under O.C.G.A. § 9-11-12(b)(1). Kim v. DOT, 235 Ga. App. 480, 510 S.E.2d 50 (1998).

Because an injured motorist sent ante litem notice of a negligence action against the Georgia Department of Transportation to the Commissioner of the Department of Administrative Services, rather than to the Risk Management Division of that department, as required by O.C.G.A. § 50-21-26, the notice did not meet the strict compliance requirements of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq.; the trial court properly granted the state's motion to dismiss the complaint for lack of subject matter jurisdiction over the action. Shelnutt v. Ga. DOT, 272 Ga. App. 109, 611 S.E.2d 762 (2005).

Trial court erred in denying the motion to dismiss by the Georgia Department of Transportation as the ante litem notice sent by a guardian did not name the governmental entity whose acts or omissions were the basis for the injured party's claims; substantial compliance with the Georgia Tort Claims Act, specifically O.C.G.A. § 50-21-26(a), did not waive sovereign immunity and the trial court lacked subject matter jurisdiction over the case. Johnson v. E.A. Mann & Co., 273 Ga. App. 716, 616 S.E.2d 98 (2005).

Trial court did not err in granting the state transportation department's motion to dismiss on the ground that sovereign immunity barred the claimant's personal injury claim against the state because the claimant did not timely file a notice of claim as required by O.C.G.A.

§ 50-21-26(a) and substantial compliance was not sufficient to meet that statute's requirement of proper notice; since the claimant did not timely file the notice of claim, the trial court was not permitted to consider the claim because the state only waived the state's sovereign immunity to the extent of providing a limited time to file a claim against the state, and since the claimant did not meet that requirement the trial court lacked subject matter jurisdiction to entertain the claim. Williams v. Ga. DOT, 275 Ga. App. 88, 619 S.E.2d 763 (2005).

Although a plaintiff injured on Ports Authority property properly sent the plaintiff's notice of claim to the Risk Management Division of the Department of Administrative Services, the plaintiff did not personally deliver or mail a copy of the notice to the Authority as required by O.C.G.A. § 50-21-26(a)(5); actual notice by way of a letter to the Authority's claims adjuster was insufficient. Callaham v. Georgia Ports Authority, 337 Ga. App. 120, 786 S.E.2d 505 (2016).

Actual receipt within period not required. — An ante litem notice of claim mailed within 12 months from the date of loss satisfied the requirements of O.C.G.A. § 50-21-26; actual receipt of the notice by the state agency before the end of the 12-month period was not required. Norris v. DOT, 268 Ga. 192, 486 S.E.2d 826 (1997), rev'g DOT v. Norris, 222 Ga. App. 361, 474 S.E.2d 216 (1996), overruling Hardy v. Candler County, 214 Ga. App. 627, 448 S.E.2d 487 (1994).

Ante litem notice is essential condition precedent. — Before suit can be filed against the state, ante litem notice is an essential condition precedent. Horton v. Whitaker, 238 Ga. App. 312, 518 S.E.2d 712 (1999).

Ante litem notice untimely. — In an action against the Georgia Department of Human Services, the Georgia Department of Family and Children Services and others, the trial court erred in calculating the 30-day cure period for filing an ante litem notice under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and, thus, the amended complaint was untimely when the complaint was filed at least five days after the deadline. Department of Human Services v. Muff, 351 Ga. App. 713, 832 S.E.2d 866 (2019).

Inadequate compliance with ante litem notice requirement. — Visitor's ante litem notice failed to strictly comply with the requirements that it identify the acts or omissions which caused the visitor's alleged loss and the nature of the loss, as the notice alleged that the visitor was injured when the visitor encountered water on the floor of the visitor's bathroom at the prison, while the complaint alleged that the visitor fell on uneven flooring, and the notice failed to specify the nature of the loss the visitor suffered, providing no information on the injuries the visitor sustained. Williams v. Wilcox State Prison, 341 Ga. App. 290, 799 S.E.2d 811 (2017).

Trial court did not err by dismissing the patient's medical malpractice claim against the Board of Regents of the University System of Georgia because the patient did not meet the procedural requirements of O.C.G.A. § 50-21-26 as the medical records attached to the ante litem notice failed to indicate the place where the transaction occurred. By attaching a copy of the October 2016 x-ray report to the patient's first ante litem notice, the patient clearly knew of the x-ray report's existence, and as a practical matter, nothing in the record indicated, nor did the patient assert, that the patient was unaware of the location or the place where the patient underwent the October 2016 x-ray exam. Brown v. Bd. of Regents of the Univ. Sys. of Ga., 355 Ga. App. 478, 844 S.E.2d 544 (2020).

Ante litem provision in Georgia Tort Claims Act not tolled. — In a driver's tort action against the Department of Public Safety, the trial court erred in finding that the time for filing the ante litem notice under the Georgia Tort Claims Act pursuant to O.C.G.A. § 50-21-26(a)(1) was subject to tolling under O.C.G.A. § 9-3-99, although the tort at issue arose from a crime because the ante litem notice requirement was not a statute of limitations and it contained no provision for tolling. Dep't of Pub. Safety v. Ragsdale, 308 Ga. 210, 839 S.E.2d 541 (2020).

Failure to comply with notice requirement in escalator malfunction

case. — Trial court correctly found that the court lacked subject-matter jurisdiction over the plaintiff's negligence complaint because the plaintiff failed to strictly comply with the notice requirements of O.C.G.A. § 50-21-26(a)(5) by failing to detail the type of injury or injuries allegedly suffered when the escalator malfunctioned while the plaintiff was attending a football game at a state-owned stadium. Bailey v. Ga. World Congress Ctr., 351 Ga. App. 629, 832 S.E.2d 446 (2019), cert. denied, No. S20C0162, 2020 Ga. LEXIS 262 (Ga. 2020).

Receipt not attached. — Injured party's suit against Georgia Department of Corrections was properly dismissed for lack of subject matter jurisdiction because the injured party failed to comply with the Georgia Tort Claims Act, O.C.G.A. § 50-21-26(a)(2); no certified mail receipt to the Georgia Department of Administrative Services was attached to the amended complaint and the receipt that was attached was an almost illegible customer copy of a United States Postal Service Express Mail label, which bore no signature and no information in the block designated for "delivery" and "signature of addressee or agent." Baskin v. Ga. Dep't of Corr., 272 Ga. App. 355, 612 S.E.2d 565 (2005).

Failure to send an ante litem notice to the state within 12 months of the date plaintiff's loss was discovered or should have been discovered barred the plaintiff's action against the state. Howard v. Miller, 222 Ga. App. 868, 476 S.E.2d 636 (1996).

Personal injury plaintiff's notice of suit 20 months after the date of loss was held untimely under O.C.G.A. § 50-21-26; thus, summary judgment in favor of the university school board of regents was proper. Plaintiff could not rely on concealment per se absent evidence of fraud. Clark v. Bd. of Regents of the Univ. Sys., 250 Ga. App. 448, 552 S.E.2d 445 (2001).

Stone Mountain Memorial Association is a state department or agency for purposes of Ga. Const. 1983, Art. I, Sec. II, Para. IX and, accordingly, a former inmate was required to file an ante litem notice in accordance with the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., for asserting the inmate's negligence claim; as the inmate failed to file such required notice, the trial court's grant of summary judgment to the Association pursuant to O.C.G.A. § 9-11-56(c) was proper. Gay v. Ga. Dep't of Corr., 270 Ga. App. 17, 606 S.E.2d 53 (2004).

After a truck driver became involved in an altercation with a Georgia Port Authority employee during a delivery and was barred from the Savannah River terminal for 30 days, the driver's claim under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., that the driver suffered severe economic loss as a result of being barred from the terminal was procedurally barred because the driver failed to comply with the Act's notice provision, O.C.G.A. § 50-21-26. Gambell v. Ga. Ports Auth., 276 Ga. App. 115, 622 S.E.2d 464 (2005).

Motorcycle driver failed to comply with ante-litem-notice requirements of O.C.G.A. § 50-21-26(a) as it was undisputed that the letter to the Department of Administrative Services was not mailed by certified mail or statutory overnight delivery, return receipt requested, or delivered personally obtaining a receipt from the Risk Management Division of the Department of Administrative Services. DeFloria v. Walker, 317 Ga. App. 578, 732 S.E.2d 121 (2012).

Employee's tort claim for invasion of privacy and eavesdropping against the former supervisor at a state agency failed to comply with O.C.G.A. § 50-21-26(a) or O.C.G.A. § 50-21-35 by serving the employee's notice of claim with the proper state officials within 12 months and serving the complaint on an officer at the agency; dismissal was proper. Stephens v. Coan, 349 Ga. App. 147, 825 S.E.2d 525 (2019).

Statutory notice. — O.C.G.A. § 50-21-26(a)(2) placed no limitations on the persons allowed to make delivery of a notice of claim against the state, and thus delivery of appellee injured party's notice by an overnight air express company meant that valid notice of claim was served on the state. Ga. Ports Auth. v. Harris, 274 Ga. 146, 549 S.E.2d 95 (2001).

Trial court properly dismissed a former inmate's action against the Georgia De-

partment of Corrections because the inmate failed to strictly comply with O.C.G.A. § 50-21-26(a) because the inmate did not send a letter to that department, nor did the inmate provide the specifics as to the time, place, or nature of the inmate's injuries. Camp v. Coweta County, 271 Ga. App. 349, 609 S.E.2d 695 (2005), vacated in part, 280 Ga. App. 852, 635 S.E.2d 234 (2006).

Because: (1) a patron's personal injury claim filed with the claims advisory board (CAB) in no way complied with the ante litem requirements of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq.; (2) the patron's claim to the CAB was made under a separate statutory scheme set up under Article 4 of Title 28 dealing with the financial affairs of the General Assembly, covered under O.C.G.A. § 28-5-60 et seq.; and (3) prior to filing suit, no notice was given to the risk management division of the Department of Administrative Services or the Department of Motor Vehicle Safety, and so to the extent that the trial court denied the motion of the state to dismiss the patron's claim of $5,000 or less, the court erred, but the order denying the patron's claim of $5,000 or more was upheld. State of Ga. v. Haynes, 285 Ga. App. 637, 647 S.E.2d 331 (2007).

State could not waive or be estopped from invoking statutory notice requirements. — Plaintiff's ante litem notice warning that the notice would be presumed to comply with the requirements of O.C.G.A. § 50-21-26 of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., unless the state notified the plaintiff's attorney of any defect within 10 days of receipt was improper because the plaintiff pointed to no authority that permitted the plaintiff to unilaterally impose a duty on the state to respond to the plaintiff's letter or face a waiver of sovereign immunity; and the state could not waive or be estopped from invoking the statutory notice requirements. Silva v. Georgia Department of Transportation, 337 Ga. App. 116, 787 S.E.2d 247 (2016), cert. denied, No. S16C1640, 2016 Ga. LEXIS 818 (Ga. 2016).

Requirement of ante litem notice of claim under O.C.G.A. § 50-21-26 was satisfied by the mailing of notices to the Department of Corrections and to the Department of Administrative Services, by certified mail, return receipt requested, within the time required for providing notice. Doe #102 v. Department of Cors., 268 Ga. 582, 492 S.E.2d 516 (1997), cert. denied, 523 U.S. 1047, 118 S. Ct. 1363, 140 L. Ed. 2d 512 (1998).

Ante litem notice signed by plaintiff's attorney and physically delivered to the Department of Administrative Services by Federal Express on the anniversary of the date of the injury, with a copy sent by regular mail to the defendant, satisfied the requirements of O.C.G.A. § 50-21-26. Georgia Ports Auth. v. Harris, 243 Ga. App. 508, 533 S.E.2d 404 (2000).

Ante litem notice requirement was not void for vagueness. — Ante litem notice requirement contained in O.C.G.A. § 50-21-26(a) was not void for vagueness since there was no dispute about when the time period began to run on the limitations period for filing against the state; thus, the trial court properly dismissed the claimant's personal injury claim against the state filed 14 months after the claimant was allegedly injured in a car accident because the date of the accident was the date the "loss was discovered or should have been discovered." Williams v. Ga. DOT, 275 Ga. App. 88, 619 S.E.2d 763 (2005).

Failure to set forth amount of claim in ante litem notice. — Plaintiff's negligence suit against a college was properly dismissed for lack of subject matter jurisdiction because the plaintiff's ante litem notice failed to set forth the amount of loss claimed, as required by O.C.G.A. § 50-21-26(a)(5)(E), and prior correspondence sent to the college by the plaintiff with a demand amount could not be considered part of the ante litem notice because, although nothing in the plain language of § 50-21-26 required the ante litem notice to be provided in one document, the prior correspondence was not sent by certified mail as required by § 50-21-26(a)(2). Perdue v. Athens Tech. College, 283 Ga. App. 404, 641 S.E.2d 631 (2007).

State university student's ante litem notice regarding the student's injuries suf-

fered in a university parking lot failed to strictly comply with O.C.G.A. § 50-21-26(a)(5)(E) because the notice did not state any amount of loss whatsoever; the statute required notice of the amount of the loss claimed at that time, within the belief and knowledge of the student. The student had actually incurred medical expenses of $4,180 at the time the student gave notice. Bd. of Regents of the Univ. Sys. of Ga. v. Myers, 295 Ga. 843, 764 S.E.2d 543 (2014).

In a motor vehicle collision between the plaintiff and a driver employed by the Georgia Department of Transportation, the trial court did not err in dismissing the plaintiff's complaint for failure to comply with the ante litem notice provisions of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the plaintiff did not specify the amount of loss the plaintiff claimed as required by O.C.G.A. § 50-21-26(a)(5)(E); and the case law requiring the plaintiff to give some notice of the amount of the loss claimed, even if it did involve future damages, applied retroactively. Silva v. Georgia Department of Transportation, 337 Ga. App. 116, 787 S.E.2d 247 (2016), cert. denied, No. S16C1640, 2016 Ga. LEXIS 818 (Ga. 2016).

Notice. — Since the student's letter was inadequate notice and was not sent via approved means, the trial court correctly dismissed the suit for a claim for injuries received on a university campus. Dempsey v. Bd. of Regents of the Univ. Sys., 256 Ga. App. 291, 568 S.E.2d 154 (2002).

Notice of a wrongful death action. — Ante litem notice sent by the husband of a breast cancer victim was not sufficient to give the designated state agencies adequate notice of his wrongful death claim because the notice was sent before his wife's death, and while it identified her claim for pain and suffering allegedly caused by the failure of a nurse employed by the state to identify or treat the wife's condition or to refer her to a physician for treatment, as well as the husband's claim for loss of consortium, it did not provide notice of a wrongful death claim. Williams v. Department of Human Resources, 234 Ga. App. 638, 507 S.E.2d 230 (1998). See Williams v. Georgia Dep't of Human Resources, 272 Ga. 624, 532 S.E.2d 401 (2000).

Ante litem notice stating that the estates of deceased persons intended "to file a lawsuit against the State of Georgia and the Department of Transportation whose conduct is believed to have proximately caused the deaths of [deceased persons]" was not insufficient on the grounds that the notice did not specify that the surviving children would be bringing a claim. Delson v. Georgia DOT, 245 Ga. App. 100, 537 S.E.2d 381 (2000).

In a spouse's wrongful death suit against the Georgia Department of Transportation, the trial court did not err by dismissing the spouse's wrongful death claim based on the loss of an unborn child on the basis that the spouse's ante litem notice was deficient as the spouse failed to provide any mention of the wrongful death claim arising from the loss of the unborn child in the notice. DOT v. Baldwin, 292 Ga. App. 816, 665 S.E.2d 898 (2008).

Amendment of complaint inadequate. — Injured party's attempt to amend a renewed complaint to attach copies of the letters and purported receipts required by the Georgia Tort Claims Act, O.C.G.A. § 50-21-26(a), was untimely as the amendment was filed one day beyond the 30-day requirement. Baskin v. Ga. Dep't of Corr., 272 Ga. App. 355, 612 S.E.2d 565 (2005).

Amendment of ante litem notice untimely. — For purposes of a claim under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., the plaintiff's amendment of the plaintiff's ante litem notice was untimely because the amendment was not filed within 12 months of the injury. Silva v. Georgia Department of Transportation, 337 Ga. App. 116, 787 S.E.2d 247 (2016), cert. denied, No. S16C1640, 2016 Ga. LEXIS 818 (Ga. 2016).

Dismissal proper. — Trial court's dismissal of an injured party's renewed complaint was proper because, even though dismissal under O.C.G.A. § 50-21-26(a)(4) was without prejudice, the injured party had renewed the action once and could not, under O.C.G.A.

§ 9-2-61(a), do so again. Baskin v. Ga. Dep't of Corr., 272 Ga. App. 355, 612 S.E.2d 565 (2005).

Because the injured parties sent their ante litem notice to the commissioner of the Department of Administrative Services (DOAS) instead of the Risk Management Division of DOAS, as required by O.C.G.A. § 50-21-26(a), the trial court properly dismissed the suit for lack of subject matter jurisdiction. Welch v. Ga. DOT, 276 Ga. App. 664, 624 S.E.2d 177 (2005).

Plaintiff's tort action against the Georgia Ports Authority complied with the statute of limitations and ante litem notice statute, O.C.G.A. §§ 50-21-26(a)(4) and 50-21-27(c), and the plaintiff's second action was proper under the renewal statute, O.C.G.A. § 9-2-61, but was dismissed for failure to timely attach the ante litem notice. The plaintiff's third action was improper because dismissal of the first action occurred outside the statute of limitations, so only one renewal was authorized. Burroughs v. Georgia Ports Authority, 339 Ga. App. 294, 793 S.E.2d 538 (2016).

Notice held adequate despite being provided to incorrect agency. — Trial court erred by dismissing a plaintiff's negligence complaint since the plaintiff complied with the plain language of the ante litem notice provision of the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-26, even though, due to error on the plaintiff's part, the actual responsible agency was not provided with ante litem notice within the 12-month period; there was no evidence that the State of Georgia suffered any prejudice therefrom. Cummings v. Ga. Dep't of Juvenile Justice, 282 Ga. 822, 653 S.E.2d 729 (2007).

Adequate compliance with ante litem notice. — With regard to a trial court partially granting the Georgia Department of Transportation's motion to dismiss the complaint asserting damages from flooding brought by certain property owners, since the property owners did not know the precise times of the reportedly nearly constant flooding events at the property and given the contents of the notice, the continuing nature of the claims, and the inability to recall the specific times of the flooding incidents, the property owners complied with the plain language of the ante litem notice provisions. Under such circumstances, the trial court properly ruled that the property owners' claims were limited to damages for flooding occurring after a certain date since O.C.G.A. § 50-21-26(a)(1) required notice within 12 months of the date of the loss, or recovery was barred. Savage v. E. R. Snell Contr., Inc., 295 Ga. App. 319, 672 S.E.2d 1 (2008).

Trial court did not err in denying the Department of Transportation's motion to dismiss the driver's action because the driver identified the portion of the highway on which the accident occurred to the extent that the driver knew it, the Department acknowledged that the Department could identify the locations of the storm drains and manholes along that part of the interstate, and the state investigated the claim after the ante litem notice was filed and made the driver an offer of settlement. Ga. DOT v. Griggs, 322 Ga. App. 519, 745 S.E.2d 749 (2013).

Student's ante litem notice stating that the amount of the student's full loss was unknown because the student was still incurring medical bills and did not know the full extent of the student's injury met the requirement in O.C.G.A. § 50-21-26(a)(5)(E) that the student state the amount of the loss to the extent known. Myers v. Bd. of Regents of the Univ. Sys. of Ga., 324 Ga. App. 685, 751 S.E.2d 490 (2013).

Trial court properly granted summary judgment to the law firm in a legal malpractice action because the former client's termination of the law firm severed any potential liability for legal malpractice and the ante litem notice sent by the law firm on the former client's behalf satisfied the requirements of O.C.G.A. § 50-21-26(a)(5) since the notice described the nature of the former client's losses and clearly stated the act which caused the losses. Bush v. Eichholz, 352 Ga. App. 465, 833 S.E.2d 280 (2019).

Cited in Mattox v. Bailey, 221 Ga. App. 546, 472 S.E.2d 130 (1996); Brooks v. Barry, 223 Ga. App. 648, 478 S.E.2d 616 (1996); Premo v. Georgia Ports Auth., 227 Ga. App. 27, 488 S.E.2d 106 (1997); Board

of Regents v. Frost, 233 Ga. App. 692, 505 S.E.2d 236 (1998); Fedorov v. Bd. of Regents, 194 F. Supp. 2d 1378 (S.D. Ga. 2002); Young v. Ga. Agric. Exposition Auth., 318 Ga. App. 244, 733 S.E.2d 529 (2012); Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857 (2014); Ga. Dep't of Admin. Servs. v. McCoy, 340 Ga. App. 877, 798 S.E.2d 687 (2017).

RESEARCH REFERENCES

ALR. — Waiver of, or estoppel to assert, failure to give or defects in notice of claim against state or local political subdivision — modern status, 64 A.L.R.5th 519.

50-21-27. Retroactive operation; limitations of actions; applicability of other related statutes.

(a) It is the specific intent of the General Assembly that this article shall operate retroactively so as to apply to tort claims or causes of action which accrued on or after January 1, 1991. A tort claim or cause of action shall be deemed to have accrued on the date the loss was or should have been discovered. This article shall not apply to tort claims or causes of action which accrued prior to January 1, 1991.

(b) For tort claims and causes of action which accrued between January 1, 1991, and July 1, 1992, any tort action brought pursuant to this article is forever barred unless it is commenced within two years after July 1, 1992.

(c) For tort claims and causes of action which accrue on or after July 1, 1992, any tort action brought pursuant to this article is forever barred unless it is commenced within two years after the date the loss was or should have been discovered.

(d) Statutes of ultimate repose and abrogation, as provided for elsewhere in this Code, shall apply to claims and actions brought pursuant to this article.

(e) All provisions relating to the tolling of limitations of actions, as provided elsewhere in this Code, shall apply to causes of action brought pursuant to this article.

History. — Code 1981, § 50-21-27, enacted by Ga. L. 1992, p. 1883, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "July 1, 1992" was substituted for "the effective date of this article" in two places in subsection (b) and once in subsection (c).

JUDICIAL DECISIONS

Expouse for federal civil rights violations. — Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., does not expand the state's exposure for federal civil rights actions beyond that provided in O.C.G.A. § 9-3-33. Doe #102 v. Department of Cors., 268 Ga. 582, 492 S.E.2d 516 (1997), cert. denied, 523 U.S. 1047, 118 S. Ct. 1363, 140 L. Ed. 2d 512 (1998).

Tolling of claims against municipal

corporations. — In a tort action brought by a passenger against a regional transportation authority, the reversal of the denial of the authority's motion for judgment on the pleadings was upheld because, by its terms, O.C.G.A. § 36-33-5(d) permitted the tolling of the period of limitation only for claims against municipal corporations and it was not a municipal corporation. Foster v. Ga. Reg'l Transp. Auth., 297 Ga. 714, 777 S.E.2d 446 (2015).

Statute not tolled when plaintiff could not establish lack of fault for delay. — Statute of limitations was not tolled on the plaintiff's state law claims when the plaintiff's failure to effect proper service in accordance with the Georgia Tort Claims Act for over a year after filing the plaintiff's complaint, knowing of the defendants' attack on the sufficiency of service of process, precluded the plaintiff from establishing lack of fault for the delay. Gibbons v. McBride, 124 F. Supp. 3d 1342 (S.D. Ga. 2015).

Claim filed under the renewal statute. — Plaintiff's tort action against the Georgia Ports Authority complied with the statute of limitations and ante litem notice statute, O.C.G.A. §§ 50-21-26(a)(4) and 50-21-27(c), and the plaintiff's second action was proper under the renewal statute, O.C.G.A. § 9-2-61, but was dismissed for failure to timely attach the ante litem notice. The plaintiff's third action was improper because dismissal of the first action occurred outside the statute of limitations, so only one renewal was authorized. Burroughs v. Georgia Ports Authority, 339 Ga. App. 294, 793 S.E.2d 538 (2016).

Trial court did not err by dismissing the plaintiff's personal injury lawsuit on statute-of-limitation grounds because the first lawsuit did not name the same defendant and the two lawsuits named entirely different instrumentalities of the state; thus, the instant lawsuit was not a valid renewal action. Aaron v. Jekyll Island-State Park Authority, 348 Ga. App. 332, 822 S.E.2d 829 (2019).

Cited in Datz v. Brinson, 208 Ga. App. 455, 430 S.E.2d 823 (1993); Sylvester v. DOT, 252 Ga. App. 31, 555 S.E.2d 740 (2001); Backensto v. Ga. DOT, 284 Ga. App. 41, 643 S.E.2d 302 (2007).

50-21-28. Venue of actions.

All tort actions against the state under this article shall be brought in the state or superior court of the county wherein the tort giving rise to the loss occurred; provided, however, that wrongful death actions may be brought in the county wherein the tort giving rise to the loss occurred or the county wherein the decedent died, and provided, further, that in any case in which an officer or employee of the state may be included as a defendant in his or her individual capacity, the action may be brought in the county of residence of such officer or employee. All actions against the state for losses sustained in any other state shall be brought in the county of residence of any officer or employee residing in this state upon whose actions or omissions the claim against the state is based.

History. — Code 1981, § 50-21-28, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 2017, p. 628, § 1/SB 126.

Editor's notes. — Ga. L. 2017, p. 628, § 2/SB 126, not codified by the General Assembly, provides that the amendment of this Code section shall apply only to causes of action filed on or after July 1, 2017.

Law reviews. — For article, "Trial Practice and Procedure," see 53 Mercer L. Rev. 475 (2001). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of tort law, see 68 Mercer L. Rev. 279 (2016). For annual survey on trial practice and procedure, see 69 Mercer L. Rev. 321 (2017).

JUDICIAL DECISIONS

County of death controls. — Venue of a wrongful death action against the Department of Transportation arising from a highway auto accident was in the county where the death occurred, not where the accident took place. Evans v. DOT, 226 Ga. App. 74, 485 S.E.2d 243 (1997), aff'd, 269 Ga. 400, 499 S.E.2d 321 (1998).

Venue proper where pain and suffering occurred. — In an action under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., against a state hospital for negligent acts occurring in Richmond County, venue was proper in DeKalb County, where the patients underwent multiple corrective surgeries allegedly arising out of the alleged negligence because under O.C.G.A. §§ 50-21-22(3) and 50-21-28 a tort action could be brought against the state in the county where economic loss, pain and suffering, mental anguish, and other elements of actual damages occurred. Bd. of Regents of the Univ. Sys. of Ga. v. Jordan, 335 Ga. App. 703, 782 S.E.2d 809 (2016).

Constitutionality. — O.C.G.A. § 50-21-28 does not violate Ga. Const. 1983, Art. VI, Sec. II, Par. IX, providing for venue in certain civil actions in the county where the defendant resides. Campbell v. Department of Cors., 268 Ga. 408, 490 S.E.2d 99 (1997).

Enactment of O.C.G.A. § 50-21-28 was a valid exercise of the General Assembly's authority pursuant to Ga. Const. 1983, Art. I, Sec. II, Para. IX, and establishes the proper venue in actions brought under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., against the state as the sole defendant. Campbell v. Department of Cors., 268 Ga. 408, 490 S.E.2d 99 (1997).

O.C.G.A. § 50-21-28 establishes the proper venue in actions brought under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and against the state as the sole defendant. Doe #102 v. Department of Cors., 268 Ga. 582, 492 S.E.2d 516 (1997), cert. denied, 523 U.S. 1047, 118 S. Ct. 1363, 140 L. Ed. 2d 512 (1998).

Venue limitation set forth in O.C.G.A. § 50-21-28 is constitutional even though it is inconsistent with the joint tortfeasor venue provision of the constitution; moreover, because it is a special venue provision that is controlling and exclusive because of its use of the word "shall," it establishes the proper venue in tort actions against the state even when the state is not the sole tortfeasor. Dean v. Tabsum, Inc., 272 Ga. 831, 536 S.E.2d 743 (2000).

Cited in EHCA Cartersville, LLC v. Turner, 280 Ga. 333, 626 S.E.2d 482 (2006); Ga. Dep't of Human Servs. v. Dougherty County, 330 Ga. App. 581, 768 S.E.2d 771 (2015).

50-21-29. Trial of actions; limitations on amounts of damages; caps to limit total damages regardless of the type claimed.

(a) Trial of tort actions against the state under this article shall be conducted by a judge with a jury; provided, however, the parties may agree that the same be tried by a judge without a jury.

(b)(1) Except as provided for in paragraph (2) of this subsection, in any action or claim for damages brought under the provisions of this article, no person shall recover a sum exceeding $1 million because of loss arising from a single occurrence, regardless of the number of state government entities involved; and the state's aggregate liability per occurrence shall not exceed $3 million. The existence of these caps on liability shall not be disclosed or suggested to the jury during the trial of any action brought under this article.

(2) In any action or claim for damages brought under the provisions of this article pursuant to Article 8 of Chapter 8 of Title 31, any caps specified under Code Section 51-13-1, notwithstanding any applicability limitations specified in such Code section, shall serve as a total cap of all damages, regardless of the type of damages claimed; provided, however, that in no event shall the state's liability exceed the limits provided for in paragraph (1) of this subsection. The existence of this cap on liability shall not be disclosed or suggested to the jury during the trial of any action brought under this article.

History. — Code 1981, § 50-21-29, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 2005, p. 1493, § 6/HB 166.

JUDICIAL DECISIONS

Waiver of sovereign immunity limited. — Tort Claims Act, O.C.G.A. § 50-21-20 et seq., waives sovereign immunity for suits to recover monetary damages for the torts of state officers and employees while acting within the scope of their official duties or employment, O.C.G.A. § 50-21-23(a), subject to exceptions, O.C.G.A. § 50-21-24, and limitations, such as O.C.G.A. § 50-21-29(b). Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017).

Modification of cap was abuse of discretion. — When a pretrial order stated that the damages cap in the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., would apply, the trial court abused the court's discretion by implicitly modifying the pretrial order to support a judgment in excess of the cap. Dep't of Human Resources v. Phillips, 268 Ga. 316, 486 S.E.2d 851 (1997).

Separate caps for plaintiff and employer not authorized. — There is no authority justifying adding to the $1,000,000 per person cap just because a plaintiff was forced by operation of another law to reimburse the plaintiff's employer for benefits the employer paid under the Longshore and Harbor Workers' Compensation Act, U.S.C. Ch. 18, T. 33, before the plaintiff secured a negligence judgment against the Georgia Ports Authority. Georgia Ports Auth. v. Harris, 243 Ga. App. 508, 533 S.E.2d 404 (2000).

Referral to statutory cap on damages failed to state amount of loss required by ante litem notice. — In the plaintiff's personal injury action under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., against the Georgia Department of Transportation (DOT), alleging that a DOT employee negligently caused a vehicle collision in which the plaintiff was injured, the DOT's motion to dismiss was improperly denied because the plaintiff's ante litem notice failed to state the amount of loss the plaintiff knew at the time of the notice; the plaintiff's statement that the plaintiff intended to claim the full amount of damages allowed by law failed to satisfy the definition of the amount of loss claimed as it referred to a cap on the amount the plaintiff might be allowed to recover without providing any information about the amount the plaintiff could claim to the jury. Georgia Department of Transportation v. King, 341 Ga. App. 102, 798 S.E.2d 492 (2017).

Accrual of interest. — In a negligence action against the Department of Transportation, the court erred in entering judgment in excess of $1 million, as allowed under O.C.G.A. § 50-21-29(b), and interest accrued on the $1 million maximum allowable, not on the larger sum returned in the verdict. DOT v. Cannady, 230 Ga. App. 585, 497 S.E.2d 72 (1998), aff'd, 270 Ga. 427, 511 S.E.2d 173 (1999).

RESEARCH REFERENCES

ALR. — Construction and application of Longshore and Harbor Workers' Compensation Act (LHWCA) — Supreme Court cases, 72 A.L.R. Fed. 2d 1.

50-21-30. Punitive or exemplary damages or interest prior to judgment not allowed.

No award for damages under this article shall include punitive or exemplary damages or interest prior to judgment.

History. — Code 1981, § 50-21-30, enacted by Ga. L. 1992, p. 1883, § 1.

RESEARCH REFERENCES

ALR. — Right to prejudgment interest on punitive or multiple damages awards, 9 A.L.R.5th 63.

50-21-31. Interest rate after judgment.

In all cases where judgment is obtained under this article, the judgment shall bear interest from the date judgment is entered at the rate of 7 percent per annum.

History. — Code 1981, § 50-21-31, enacted by Ga. L. 1992, p. 1883, § 1.

JUDICIAL DECISIONS

Interest on excessive judgments. — In a negligence action against the Department of Transportation, the court erred in entering judgment in excess of $1 million, as allowed under O.C.G.A. § 50-21-29(b), and interest accrued on the $1 million maximum allowable, not on the larger sum returned in the verdict. DOT v. Cannady, 230 Ga. App. 585, 497 S.E.2d 72 (1998), aff'd, 270 Ga. 427, 511 S.E.2d 173 (1999).

50-21-32. Signing of pleadings, motions, or other papers.

In any claim, action, or proceeding brought under this article, the signature of an attorney or party constitutes a certificate by him or her that he or she has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the

omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Code section, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorneys' fees.

History. — Code 1981, § 50-21-32, enacted by Ga. L. 1992, p. 1883, § 1.

50-21-33. Liability insurance or self-insurance programs; State Tort Claims Trust Fund; premiums and deductibles; incentive programs authorized; merger of preexisting programs and funds; additional coverages.

(a) The Department of Administrative Services shall formulate and initiate a sound program providing for liability insurance, self-insurance, or a combination of both to provide for payment of judgments and claims against the state under this article.

(b) The commissioner of administrative services shall have the authority to purchase policies of liability insurance or contracts of indemnity insuring or indemnifying the state against liabilities arising under this article. In addition or alternatively, the commissioner of administrative services may retain all moneys paid to the Department of Administrative Services by state government entities as premiums for insurance or indemnity against liabilities arising under this article, and all money specifically appropriated to the Department of Administrative Services for the payment of liabilities under this article, all moneys received as interest, and all funds received from other sources to set up and maintain a reserve fund for the payment of judgments and claims against the state under this article and for payment of the expenses necessary to properly administer a self-insurance program. Any amounts held by the State Tort Claims Trust Fund which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in a trust account for credit only to the State Tort Claims Trust Fund. The state treasurer shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the State Tort Claims Trust Fund. When moneys are paid over to the Office of the State Treasurer, as provided in this subsection, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for

such withdrawal, in writing, to the state treasurer. State agencies which provide services or incur expenses in connection with any claim covered by this article may receive payment from the fund for such services and expenses.

(c) Any reserve fund created under this Code section shall be designated the State Tort Claims Trust Fund.

(d) The Department of Administrative Services shall establish and charge to state government entities such premiums, deductibles, and other payments, taking into account any direct appropriations as shall be necessary to maintain the soundness of the insurance or self-insurance programs established under this Code section. The premiums and deductibles charged to each state government entity may be established on such basis as the Department of Administrative Services shall deem appropriate and such basis may include the number of employees, the aggregate annual budget of the state government entity, and unique exposures, loss history, or claims pending against such state government entity. The department is further authorized to establish incentive programs including but not limited to differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the State Tort Claims Trust Fund provided for in this Code section.

(e) Each state government entity shall promptly remit from appropriations or other funds available to it the premium thus established.

(f) Where existing programs have previously been established by the Department of Administrative Services for the insurance or self-insurance of the state, state government entities, or state officers or employees, the commissioner of administrative services shall be authorized to merge all or part of those programs, including all or part of any self-insurance funds established thereunder, into the State Tort Claims Trust Fund. This shall include, but not be limited to, any funds established by Code Sections 45-9-4 and 50-5-16. In so doing, the Department of Administrative Services shall be authorized, through the State Tort Claims Trust Fund, to assume or not assume all or part of existing and potential liabilities of the prior established programs and funds.

(g) As to state government entities for which additional particular coverages are necessary, the Department of Administrative Services

may provide such additional particular coverages and other terms and conditions of unique exposure particular to one or more state government entities; may provide for endorsements for contract liability; and, where necessary to the public purposes of the state government entity, may also provide for additional insureds.

(h) Nothing in this Code section or in this article shall impose or create any obligation upon other funds of the state.

(i) Funds appropriated to the Department of Administrative Services for the State Tort Claims Trust Fund shall be deemed contractually obligated funds held in trust, subject to future legislative change or revision, for the benefit of persons having claims, known or unknown, or judgments payable from the funds and shall not lapse.

History. — Code 1981, § 50-21-33, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 2000, p. 1474, § 12; Ga. L. 2008, p. 245, § 12/SB 425; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.

RESEARCH REFERENCES

ALR. — Abuse and Molestation Exclusion in Liability Insurance Policies, 57 A.L.R.7th 1.

50-21-34. Payment of claims or judgments; execution or levy against state funds or property prohibited; amount of fiscal year aggregate liability.

(a) No claim or judgment against the state under this article shall be payable except from the State Tort Claims Trust Fund or from any policies of insurance or contracts of indemnity provided under this article.

(b) Nothing in this article shall be construed to authorize any execution or levy against any state property or funds. Execution or levy against state property or funds is expressly prohibited.

(c) Judgments against the state under this article shall be promptly paid by the commissioner of administrative services within 60 days after the same become final if funds are available from the State Tort Claims Trust Fund or from other policies of insurance or contracts of indemnity established under this article.

(d) The fiscal year aggregate liability of the state under this article shall never exceed the amount of funds available from the State Tort Claims Trust Fund and any other policies of insurance or contracts of indemnity established under this article. For purposes of this Code section, the term "funds available from the State Tort Claims Trust Fund" means the cash balance in the fund less the department's

operating expense allocation to the fund for the year. Any judgments obtained in excess of this limitation on annual aggregate liability will not be void. However, such excess judgments shall not be payable unless and until the General Assembly appropriates funds for the payment thereof.

History. — Code 1981, § 50-21-34, enacted by Ga. L. 1992, p. 1883, § 1.

50-21-35. Service of process; mailing of complaint.

In all civil actions brought against the state under this article, to perfect service of process the plaintiff must both: (1) cause process to be served upon the chief executive officer of the state government entity involved at his or her usual office address; and (2) cause process to be served upon the director of the Risk Management Division of the Department of Administrative Services at his or her usual office address. The time for the state to file an answer shall not begin to run until process has been served upon all required persons. A copy of the complaint, showing the date of filing, shall also be mailed to the Attorney General at his or her usual office address, by certified mail or statutory overnight delivery, return receipt requested and there shall be attached to the complaint a certificate that this requirement has been met.

History. — Code 1981, § 50-21-35, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 2000, p. 1589, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For annual survey of trial practice and procedure, see 57 Mercer L. Rev. 381 (2005). For annual survey of tort law, see 58 Mercer L. Rev. 385 (2006). For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008). For survey article on trial practice and procedure, see 60 Mercer L. Rev. 397 (2008).

JUDICIAL DECISIONS

Service on director required. — In an action against the Department of Corrections and Georgia Mental Health Institute, where only the deputy director of the Department of Risk Management, not the director, was served, the requirements of O.C.G.A. § 50-21-35 were not satisfied and the time for the defendants' answer had not commenced running. Christensen v. State, 219 Ga. App. 10, 464 S.E.2d 14 (1995).

In a slip and fall action against the Department of Corrections (DOC), failure of plaintiff to perfect service on the Director of Risk Management before the statute of limitation expired, knowing of the DOC's attack on the sufficiency of service, prevented the plaintiff from establishing lack of fault for the delay. Curry v. Georgia Dep't of Cors., 232 Ga. App. 703, 503 S.E.2d 597 (1998).

Failure to serve the director of the Risk Management Division did not comply with the condition precedent to waiver of sovereign immunity, and the state had no duty to respond to the first timely filed suit. Sylvester v. DOT, 252 Ga. App. 31, 555 S.E.2d 740 (2001).

Trial court properly granted summary judgment to the Georgia Department of Corrections (DOC) and a state prison in a medical malpractice action filed on behalf of a deceased patient/inmate as there was improper service on the state entities pursuant to O.C.G.A. § 50-21-35 because the prison was served through the prison warden and the DOC was served through the DOC's commissioner; rather, process should have been served on the Director of the Risk Management Division of the Department of Administrative Services. Green v. Cent. State Hosp., 275 Ga. App. 569, 621 S.E.2d 491 (2005).

Statute of limitations was not tolled on the plaintiff's state law claims when the plaintiff's failure to effect proper service in accordance with the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., for over a year after filing the plaintiff's complaint, knowing of the defendants' attack on the sufficiency of service of process, precluded the plaintiff from establishing lack of fault for the delay. Gibbons v. McBride, 124 F. Supp. 3d 1342 (S.D. Ga. 2015).

Plaintiff could not sidestep the notice requirements of the Georgia Tort Claims Act (GTCA) by alleging that the plaintiff was suing the defendants as individuals acting outside of the scope of their official duties and employment as the GTCA was the exclusive remedy for any tort committed by a state officer or employee, and the defendants' immunity was only lost if it was proved that the defendants' conduct was not within the scope of the defendants' official duties or employment. Gibbons v. McBride, 124 F. Supp. 3d 1342 (S.D. Ga. 2015).

Plaintiff's failure to serve the director of the Risk Management Division of the Department of Administrative Services as required by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., precluded compliance with the condition precedent to waiver of sovereign immunity and rendered void the plaintiff's action such that the statute of limitations was not tolled. Despite the "procedural, not jurisdictional" language in the Georgia Supreme Court's Georgia Pines opinion, it did not apply when no service of process had occurred on one of the necessary parties, especially when the defendants contested this failure at the first opportunity and consistently thereafter. Gibbons v. McBride, 124 F. Supp. 3d 1342 (S.D. Ga. 2015).

Employee's tort claim for invasion of privacy and eavesdropping against the employee's former supervisor at a state agency failed to comply with O.C.G.A. § 50-21-26(a) or O.C.G.A. § 50-21-35 by serving the employee's notice of claim with the proper state officials within 12 months and serving the complaint on an officer at the agency or the director of risk management; dismissal was proper. Stephens v. Coan, 349 Ga. App. 147, 825 S.E.2d 525 (2019).

Civil Practice Act governs method of service. — O.C.G.A. § 50-21-35 does not provide the exclusive method for service of process on a state entity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq.; rather, O.C.G.A. § 9-11-4(e)(5), part of the Civil Practice Act, O.C.G.A. T. 9, C. 11, applies to claims brought under the Georgia Tort Claims Act and, accordingly, service on a community board was not improper when the summons and complaint were not handed personally to the board's director. Ga. Pines Cmty. Serv. Bd. v. Summerlin, 282 Ga. 339, 647 S.E.2d 566 (2007).

Failure to meet service requirements barred dismissal under § 9-2-5. — Because the Department of Transportation failed to show that service of process had been effectuated in an alleged prior pending personal injury suit filed in Brantley County, based on the same accident a driver sued upon in Wayne County, the Brantley County suit was not "pending," as that term was defined in O.C.G.A. § 9-2-5(a). Thus, the trial court erred in dismissing the driver's Wayne County suit. Watson v. Ga. DOT, 288 Ga. App. 40, 653 S.E.2d 763 (2007).

Cure of defect in mailing requirement. — Plaintiff should be allowed to cure a defect in the compliance with the mailing requirement so long as the delay in providing a copy of the complaint to the Attorney General did not cause any prejudice to the state; moreover, because no specific proscriptions against amendments to cure a defect in the O.C.G.A.

§ 50-21-35 requirements existed, an amendment should generally be allowed prior to the entry of a pretrial order, unless there was good reason to deny the amendment. Camp v. Coweta County, 280 Ga. 199, 625 S.E.2d 759 (2006).

Failure to meet service requirements did not require automatic dismissal. — Trial court erred in dismissing an injured party's personal injury action against a state agency because under the current precedent failure to meet the notice requirements of O.C.G.A. § 50-21-35 did not automatically require a dismissal and the injured party's act of refiling the complaint under the renewal statute, O.C.G.A. § 9-2-61, was allowable under the circumstances. Shiver v. DOT, 277 Ga. App. 616, 627 S.E.2d 204 (2006).

Because the trial court dismissed a couple's damages complaint against the Department of Transportation arising out of a collision between their vehicle and a road sign without a clear finding as to whether actual prejudice was based on the expiration of the statute of limitations under O.C.G.A. § 50-21-27(c) or some other facts before the court, remand was ordered for the court to make that determination before resorting to dismissal. Backensto v. Ga. DOT, 284 Ga. App. 41, 643 S.E.2d 302 (2007).

Service on clerk of chief operating officer. — Administratrix's acts of serving ante litem notice of the claims in a wrongful death action upon the clerk of a service provider's chief executive officer at the office address of the officer was sufficient under both O.C.G.A. §§ 9-11-4 and 50-21-35 to avoid summary judgment on this issue; moreover, the provider waived any service of process defense through its: (1) actual knowledge of the instant suit; (2) active participation in discovery; and (3) failure to show prejudice by any alleged defect in the service of process. Summerlin v. Ga. Pines Cmty. Serv. Bd., 278 Ga. App. 831, 630 S.E.2d 115 (2006), aff'd, 282 Ga. 339, 647 S.E.2d 566 (2007).

Provision not jurisdictional. — Service of process provision of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., is procedural in nature, not jurisdictional; thus, service of process could be waived. Ga. Pines Cmty. Serv. Bd. v. Summerlin, 282 Ga. 339, 647 S.E.2d 566 (2007).

Dismissal for failure to comply with section remanded for agency to show actual prejudice. — Absent evidence that the Department of Transportation demonstrated actual prejudice from a surviving spouse's failure to comply with O.C.G.A. § 50-21-35 by failing to timely amend a damages complaint with a certificate showing service upon the attorney general, a dismissal order was vacated, and the case was remanded. Ingram v. DOT, 286 Ga. App. 220, 648 S.E.2d 729 (2007).

Failure to include transcript. — Because a couple appealing the dismissal of their complaint against the Department of Transportation on the ground that the couple had not complied with O.C.G.A. § 50-21-35 had not included a transcript of the hearing on the motion to dismiss, the court had to affirm the trial court's finding of actual prejudice in dismissing the complaint. Backensto v. Ga. DOT, 291 Ga. App. 293, 661 S.E.2d 647 (2008).

Cited in Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857 (2014); Bailey v. Ga. World Congress Ctr., 351 Ga. App. 629, 832 S.E.2d 446 (2019).

50-21-36. Settlement of claims.

The commissioner of the Department of Administrative Services, or his or her delegate, shall have the authority, within the limits provided in this article, to make settlement of claims, causes of action, and actions under this article.

History. — Code 1981, § 50-21-36, enacted by Ga. L. 1992, p. 1883, § 1.

JUDICIAL DECISIONS

Cited in Shekhawat v. Jones, 293 Ga. 468, 746 S.E.2d 89 (2013).

50-21-37. Hold harmless and indemnification agreements.

(a) If a state government entity enters into or is the beneficiary of any agreement under which a third party agrees to hold a state government entity or the State Tort Claims Trust Fund harmless or to indemnify a state government entity or the State Tort Claims Trust Fund, or to provide insurance for those purposes, then the third party or the insurer, as the case may be, shall be liable to the State Tort Claims Trust Fund in accordance with such agreement or contract of insurance, for reimbursement of the amount of any disbursements from the State Tort Claims Trust Fund in satisfaction of any liability, whether established by judgment or settlement in accordance with this article, to the extent of the hold harmless obligation or requirement to procure insurance undertaken under such agreement or contract of insurance obtained pursuant to such agreement. The liability limits specified under Code Section 50-21-29 shall not be increased by the existence of hold harmless or indemnity obligations in such contractual agreements or by the obligation to procure insurance for such purposes or by the limits set forth in any such contractual agreement or contract of insurance procured pursuant thereto.

(b) No policy of insurance shall be delivered in this state which negates the provisions of this Code section or which provides that the limits of the policy are excess over amounts payable from the State Tort Claims Trust Fund under this Code section.

History. — Code 1981, § 50-21-37, enacted by Ga. L. 1994, p. 1717, § 13.

JUDICIAL DECISIONS

Cited in Considine v. Murphy, 297 Ga. 164, 773 S.E.2d 176 (2015).

CHAPTER 22

MANAGERIAL CONTROL OVER ACQUISITION OF PROFESSIONAL SERVICES

Sec.
50-22-1. Purpose and policy.
50-22-2. Definitions.
50-22-3. Public notice of proposed project requiring professional services.
50-22-4. Submission of information to state agency by persons desiring to provide professional services; preliminary selections.
50-22-5. Final selection of professional by other than contract negotiations [Repealed].
50-22-6. Selection of professional through contract negotiations; contractual prohibition against contingent fees; right to terminate contract.
50-22-7. Exemptions from requirements; construction with Code Section 50-6-25.
50-22-8. Rules and regulations.
50-22-9. Waiver of chapter requirements in emergencies.

Code Commission notes. — Ga. L. 1982, p. 2261, § 1 added a "Chapter 21" to this title, relating to the Georgia Commission on State Growth Policy. That chapter was unofficially designated "Chapter 22" owing to the earlier enactment of a Chapter 21 by Ga. L. 1982, p. 495, § 2. The Code sections enacted by Ga. L. 1982, p. 2261, § 1 were then officially redesignated as Code Sections 50-12-130 through 50-12-137 and placed in a new Article 8 of Chapter 12 of this title by Ga. L. 1983, p. 3, § 39. Former Code Sections 50-12-130 through 50-12-137 were repealed pursuant to the terms of former Code Section 50-12-137, which provided for repeal on June 30, 1985.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 33.

C.J.S. — 73A C.J.S., Public Contracts, § 15.

50-22-1. Purpose and policy.

The purpose of this chapter is to provide managerial control by the state over the acquisition of the professional services provided by architects, professional engineers, landscape architects, land surveyors, and interior designers. It is declared to be the policy of this state to announce publicly requirements for such professional services, to encourage all qualified persons to put themselves in a position to be considered for a contract, and to enter into contracts for such professional services on the basis of demonstrated competence and qualification for the types of professional services required at fair and reasonable fees.

History. — Code 1981, § 50-22-1, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 2005, p. 1139, § 1/HB 155.

OPINIONS OF THE ATTORNEY GENERAL

Legislation required to allow Department of Transportation to exceed limitations on professional services contracts. — While the provisions of O.C.G.A. § 32-2-73 do not apply to contracts for professional services which are governed by O.C.G.A. T. 50, C. 22, legislation is required to allow the Department of Transportation to exceed the limitations on such professional services contracts found in O.C.G.A. § 50-6-25(b). 1994 Op. Att'y Gen. No. U94-14.

50-22-2. Definitions.

As used in this chapter, the term:

(1) "Agency" means every state department, agency, board, bureau, commission, and authority, unless otherwise exempted under the provisions of subsection (b) of Code Section 50-22-7.

(2) "Person" means an individual, a corporation, a partnership, a business trust, an association, a firm, or any other legal entity.

(2.1) "Predesign" means that phase of an activity where requirements programming, site analysis, and other appropriate studies are conducted to develop essential information, including cost estimates, to support and advance the decision-making process prior to the design and implementation phases of an activity.

(3) "Principal representative" means the governing board of a state agency or the executive head of a state agency who is authorized to contract for the agency for professional services.

(4) "Professional services" means those services within the scope of the following:

(A) The practice of architecture, as defined in paragraph (11) of Code Section 43-4-1;

(B) The practice of registered interior design, as defined in Code Section 43-4-30;

(C) The practice of professional engineering, as defined in paragraph (11) of Code Section 43-15-2;

(D) The practice of land surveying, as defined in paragraph (6) of Code Section 43-15-2; or

(E) The practice of landscape architecture, as defined in paragraph (3) of Code Section 43-23-1.

(5) "Project" means any activity requiring professional services estimated by the state agency to have:

(A) A cost in excess of $1 million; or

(B) Costs for professional services in excess of $75,000.00.

History. — Code 1981, § 50-22-2, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 1998, p. 1372, §§ 3, 4; Ga. L. 2001, p. 4, § 50; Ga. L. 2005, p. 1139, § 2/HB 155; Ga. L. 2010, p. 748, § 5/HB 231.

50-22-3. Public notice of proposed project requiring professional services.

Public notice shall be required for each proposed project which requires professional services. Such public notice shall be given at least 15 days prior to the selection of the three or more most highly qualified persons by the principal representative or the principal representative's designee pursuant to subsection (b) of Code Section 50-22-4. Such public notice shall be given by publication at least once in the Georgia Procurement Registry established under subsection (b) of Code Section 50-5-69 and in addition may be given by publication in one or more daily newspapers of general circulation in this state, shall contain a general description of the proposed project, and shall indicate what selection method shall be used and the procedure by which interested persons may apply for consideration for the contract.

History. — Code 1981, § 50-22-3, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 1998, p. 1372, § 5.

50-22-4. Submission of information to state agency by persons desiring to provide professional services; preliminary selections.

(a) Any person desiring to provide professional services to a state agency shall submit to the agency a statement of qualifications and performance data and such other information as may be required by the agency. The agency may request such person to update such statement periodically in order to reflect changed conditions in the status of such person.

(b) For each proposed project for which professional services are required, the principal representative or his or her designee of the state agency for which the project is to be done shall evaluate statements of qualifications and performance data as required in the public notice provided for in Code Section 50-22-3 and shall conduct discussions with not less than three persons regarding their qualifications, approaches to the project, abilities to furnish the required professional services, anticipated design concepts, and use of alternative methods of approach for furnishing the required professional services. The principal representative or his or her designee shall then select not less than three nor

more than five persons deemed to be most highly qualified to perform the required professional services after considering, and based upon, such factors as the ability of professional personnel, past performance, willingness to meet time requirements, project location, office location, the professional's current and projected workloads, the professional's approach, quality control procedures, the volume of work previously awarded to the person by the state agency, and the extent to which said persons have and will involve minority subcontractors, with the object of effecting an equitable distribution of contracts among qualified persons as long as such distribution does not violate the principle of selection of the most highly qualified person. In selection, as mentioned in this Code section, persons who maintain an office in Georgia shall be given preference when qualifications appear to be equal.

History. — Code 1981, § 50-22-4, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 2005, p. 1139, § 3/HB 155.

50-22-5. Final selection of professional by other than contract negotiations.

Reserved. Repealed by Ga. L. 2005, p. 1139, § 4/HB 155, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1981, § 50-22-5, enacted by Ga. L. 1984, p. 1648, § 1.

50-22-6. Selection of professional through contract negotiations; contractual prohibition against contingent fees; right to terminate contract.

(a) The principal representative or his or her designee shall rank in order not less than three nor more than five persons deemed most qualified to perform such professional services. The principal representative or his or her designee shall then negotiate a contract with the highest qualified person providing professional services for such services at compensation which the principal representative or his or her designee determines in writing to be fair and reasonable. In making such decision, the principal representative or his or her designee shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature thereof.

(b) If the principal representative or his or her designee is unable to negotiate a satisfactory contract with the person considered to be the most qualified at a price the principal representative determines to be fair and reasonable, negotiations with that person shall be formally terminated. The principal representative or his or her designee shall then undertake negotiations with the second most qualified person. If

the principal representative or his or her designee fails to negotiate a contract with the second most qualified person, the principal representative or his or her designee shall formally terminate such negotiations. The principal representative or his or her designee shall then undertake negotiations with the third most qualified person.

(c) If the principal representative or his or her designee is unable to negotiate a satisfactory contract with any of the selected persons, the principal representative or his or her designee shall either select additional persons in order of their competence and qualifications and continue negotiations in accordance with this Code section until a contract is reached or review the contract under negotiation to determine the possible cause for failure to achieve a negotiated contract.

(d) Each contract for professional services entered into by the principal representative shall contain a prohibition against contingent fees as follows: the architect, registered land surveyor, professional engineer, landscape architect, or interior designer, as applicable, warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for him or her, to solicit or secure this contract and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him or her, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this contract.

(e) Upon any violation of this Code section, the principal representative shall have the right to terminate the contract without liability and, at his or her discretion, to deduct from the contract price or recover otherwise the full amount of such fee, commission, percentage, or consideration.

History. — Code 1981, § 50-22-6, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 2005, p. 1139, § 5/HB 155.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "his or her" was substituted for "his" throughout this Code section.

50-22-7. Exemptions from requirements; construction with Code Section 50-6-25.

(a) Notwithstanding any other provisions of this chapter, there shall be no public notice requirement or utilization of the selection process as provided for in this chapter for projects in which the state agency is able to reuse existing drawings, specifications, designs, or other documents from a prior project by retention of the person who provided the professional services and who prepared the original documents.

(b) Notwithstanding any other provisions of this chapter, the Board of Regents and University System of Georgia shall be exempt from the provisions of this chapter.

(c) The provisions of Code Section 50-6-25, relating to the eligibility of architectural and engineering firms to do business with the state, shall not be affected or superseded by the provisions of this chapter.

(d) Notwithstanding any other provisions of this chapter, there shall be no public notice requirement or utilization of the selection process as provided for in this chapter for services required for the predesign phase of any state agency construction project unless the state agency estimates the predesign phase alone to have costs for professional services in excess of $75,000.00. No award of a contract to provide predesign services under this exemption shall be interpreted to preclude the lawful necessity to give public notice and use the selection process for design of projects meeting the criteria of paragraph (5) of Code Section 50-22-2. Costs for predesign services, whether or not those services are exempt under this subsection, shall be added to any other costs of an activity for purposes of determining whether the activity is a project.

History. — Code 1981, § 50-22-7, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 1998, p. 1372, § 6.

50-22-8. Rules and regulations.

A state agency shall be authorized to promulgate rules and regulations to carry out the provisions of this chapter.

History. — Code 1981, § 50-22-8, enacted by Ga. L. 1984, p. 1648, § 1.

50-22-9. Waiver of chapter requirements in emergencies.

In an emergency situation, agencies may waive all the requirements of this chapter and select by the most expeditious means possible the person to provide the professional services.

History. — Code 1981, § 50-22-9, enacted by Ga. L. 1984, p. 1648, § 1.

CHAPTER 23

ENVIRONMENTAL FINANCE AUTHORITY

Article 1

Environmental Finance Authority

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RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, § 143 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 102 et seq., 172.

ARTICLE 1

ENVIRONMENTAL FINANCE AUTHORITY

PART 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 2008, p. 644, § 2-6/SB 342, effective July 1, 2008, designated Code Sections 50-23-1 through 50-23-20 as Part 1 of this Article.

50-23-1. Short title.

This article shall be known and may be cited as the "Georgia Environmental Finance Authority Act."

History. — Code 1981, § 50-23-1, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2010, p. 949, § 1/HB 244.

50-23-2. Legislative intent; assumption of rights, duties, and assets of the Georgia Development Authority.

(a) It is found and declared that the availability of adequate environmental facilities is an important element in the ability of a community to provide for the continuing economic growth and development that provide jobs for the state's citizens. It is also recognized that many communities lack the financial resources to provide for the needed facilities that both protect the environment and provide for such future economic expansion. Financial assistance is an important aid for the local governments in meeting these needs and it is declared in the public interest and for the public benefit and good and is so desired as a matter of legislative intent.

(b) It is the purpose and intent of this article to provide an instrumentality to assist in constructing, extending, rehabilitating, repairing, and renewing environmental facilities and to assist in the financing of such needs by providing grants, loans, bonds, and other assistance to local governments and instrumentalities of the state.

(c) The authority shall receive all assets of the Georgia Development Authority held immediately prior to the creation of the Georgia Environmental Finance Authority except those assets received under the provisions of Public Law 499, Eighty-first Congress, Second Session, or funds or assets derived from such funds or assets. The authority shall

be responsible for any contracts, leases, agreements, or other obligations entered into regarding the environmental facilities projects of the Georgia Development Authority prior to the creation of the Georgia Environmental Finance Authority and the Georgia Environmental Finance Authority is substituted as party to any such contract, agreement, lease, or other obligation and shall be responsible for performance thereon as if it had been the original party and shall be entitled to all benefits and rights of enforcement by any other parties to such contracts, agreements, leases, or other obligations.

History. — Code 1981, § 50-23-2, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2001, p. 1225, § 2; Ga. L. 2010, p. 949, § 1/HB 244.

Cross references. — Georgia Development Authority, T. 50, C. 10.

U.S. Code. — Public Law 499, Eighty-first Congress, Second Session was codified at 40 U.S.C. §§ 440 through 444, but has been omitted as having been executed.

50-23-3. Creation; members; quorum; travel and expenses; legal services; members' accountability recordkeeping; authority assigned.

(a) There is created a body corporate and politic to be known as the Georgia Environmental Finance Authority which shall be deemed an instrumentality of the state and a public corporation; and by that name, style, and title such body may contract and be contracted with and bring and defend actions in all courts of this state. The authority shall consist of 11 members: the commissioner of community affairs, ex officio; the state auditor, ex officio; the commissioner of economic development, ex officio; and eight members to be appointed by the Governor. Three members shall be municipal officials, three members shall be county officials, and two members shall be at large. Any municipal or county official shall serve only so long as such official remains in office as a municipal or county official. The Governor shall appoint one municipal official, one county official, and one at-large member to serve until July 1, 1989; and shall appoint two municipal officials, two county officials, and one at-large member of the authority to serve until July 1, 1990. After the expiration of these terms, the terms of all succeeding members shall be for four years.

(b) A majority of the members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of a majority of the appointed members from exercising all rights and performing all duties of the authority. The members of the authority shall be entitled to and shall be reimbursed for their actual travel and expenses necessarily incurred in the performance of their duties and shall receive the same per diem as do members of the General Assembly. The authority shall make rules and regulations for its own government. The authority shall have perpetual existence. Any change

in the name or composition of the authority shall in no way affect the vested rights of any person under this article or impair the obligations of any contracts existing under this article. The Attorney General shall provide legal services for the authority and in connection therewith Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

(c) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable books and records of all actions and transactions and shall submit such books together with a statement of the authority's financial position to an independent auditing firm selected by the authority on or about the close of the state's fiscal year for the purpose of obtaining a certified audit of the authority's finances.

(d) The authority is assigned to the Department of Community Affairs for administrative purposes only.

History. — Code 1981, § 50-23-3, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1641, § 17; Ga. L. 1991, p. 1685, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2004, p. 690, § 42; Ga. L. 2010, p. 949, § 1/HB 244.

Editor's notes. — Ga. L. 1989, p. 1641, which amended this Code section, provides in § 18, not codified by the General Assembly: "In the event of any substantive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act."

50-23-4. Definitions.

As used in this chapter, the term:

(1) "Authority" means the Georgia Environmental Finance Authority.

(2) "Bond" includes revenue bond, bond, note, or other obligation.

(3) "Cost of project" or "cost of any project" means:

(A) All costs of acquisition, by purchase or otherwise, construction, assembly, installation, modification, renovation, extension, or rehabilitation incurred in connection with any project or any part of any project;

(B) All costs of real property, fixtures, or personal property used in or in connection with or necessary for any project or for any facilities related thereto, including but not limited to, the cost of all land, interests in land, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furni-

ture, and other property used in or in connection with or necessary for any project;

(C) All financing charges, bond insurance, and loan or loan guarantee fees and all interest on revenue bonds, notes, or other obligations of the authority which accrue or are paid prior to and during the period of construction of a project and during such additional period as the authority may reasonably determine to be necessary to place such project in operation;

(D) All costs of engineering, surveying, planning, environmental assessments, financial analyses, and architectural, legal, and accounting services and all expenses incurred by engineers, surveyors, planners, environmental scientists, fiscal analysts, architects, attorneys, accountants, and any other necessary technical personnel in connection with any project;

(E) All expenses for inspection of any project;

(F) All fees of fiscal agents, paying agents, and trustees for bondholders under any bond resolution, trust agreement, indenture of trust, or similar instrument or agreement; all expenses incurred by any such fiscal agents, paying agents, and trustees; and all other costs and expenses incurred relative to the issuance of any bonds, revenue bonds, notes, or other obligations for any project, including bond insurance;

(G) All fees of any type charged by the authority in connection with any project;

(H) All expenses of or incidental to determining the feasibility or practicability of any project;

(I) All costs of plans and specifications for any project;

(J) All costs of title insurance and examinations of title with respect to any project;

(K) Repayment of any loans for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(L) Administrative expenses of the authority and such other expenses as may be necessary or incidental to any project or the financing thereof or the placing of any project in operation; and

(M) The establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, or such other funds or reserves as the authority may approve with respect to the financing and operation of any project and as may be authorized by any bond resolution, trust agreement, indenture, or

trust or similar instrument or agreement pursuant to the provisions of which the issuance of any revenue bonds, notes, or other obligations of the authority may be authorized.

Any cost, obligation, or expense incurred for any of the purposes specified in this paragraph shall be a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds, notes, or other obligations issued by the authority.

(4) "County" means any county created under the Constitution or laws of this state.

(5) "Environmental facilities" means any projects, structures, and other real or personal property acquired, rehabilitated, constructed, or planned:

(A) For the purposes of supplying, distributing, and treating water and diverting, channeling, or controlling water flow and head including, but not limited to, surface or ground water, canals, reservoirs, channels, basins, dams, aqueducts, standpipes, penstocks, conduits, pipelines, mains, pumping stations, water distribution systems, compensating reservoirs, intake stations, waterworks or sources of water supply, wells, purification or filtration plants or other treatment plants and works, connections, water meters, mechanical equipment, electric generating equipment, rights of flowage or division and other plant structures, equipment, conveyances, real or personal property or rights therein and appurtenances, furnishings, accessories, and devices thereto necessary or useful and convenient for the collection, conveyance, distribution, pumping, treatment, storing, or disposing of water;

(B) For the purposes of collecting, treating, or disposing of sewage including, but not limited to, main, trunk, intercepting, connecting, lateral, outlet, or other sewers, outfall, pumping stations, treatment and disposal plants, ground water rechange basins, backflow prevention devices, sludge dewatering or disposal equipment and facilities, clarifiers, filters, phosphorus removal equipment and other plants, soil absorption systems, innovative systems or equipment, structures, equipment, vehicles, conveyances, real or personal property or rights therein, and appurtenances thereto necessary or useful and convenient for the collection, conveyance, pumping, treatment, neutralization, storing, and disposing of sewage;

(C) For the purposes of collecting, treating, recycling, composting, or disposing of solid waste, including, but not limited to, trucks, dumpsters, intermediate reception stations or facilities, transfer stations, incinerators, shredders, treatment plants, landfills, landfill equipment, barrels, binders, barges, alternative tech-

nologies and other plant structures, equipment, conveyances, improvements, real or personal property or rights therein, and appurtenances, furnishings, accessories, and devices thereto necessary or useful and convenient for the collection, treatment, or disposal of solid waste; or

(D) For the purposes of carrying out a community land conservation project or a state land conservation project pursuant to Chapter 22 of Title 36.

(6) "Environmental services" means the provision, collectively or individually, of water facilities, sewerage facilities, solid waste facilities, community land conservation projects or state land conservation projects pursuant to Chapter 22 Title 36, or management services.

(7) "Local government" or "local governing authority" means any municipal corporation or county or any local water or sewer or sanitary district and any state or local authority, board, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the state.

(8) "Management services" means technical, administrative, instructional, or informational services provided to any current or potential loan recipient in, but not limited to, the areas of service charge structure; accounting, capital improvements budgeting or financing; financial reporting, treasury management, debt structure or administration or related fields of financial management; contract or grant administration; management of water, sewer, or solid waste systems; and economic development administration or strategies. Management services may be furnished either directly, on-site, or through other written or oral means of communication and may consist of reports, studies, presentations, or other analyses of a written or oral nature.

(9) "May" means permission and not command.

(10) "Municipal corporation" or "municipality" means any city or town in this state.

(10.1) "Nongovernmental entity" means a nonprofit organization the primary purposes of which are the permanent protection and conservation of land and natural resources.

(10.2) "Nonprofit corporation" means any corporation qualified as a not for profit corporation by the Internal Revenue Service under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code.

(11) "Obligation" means any bond, revenue bond, note, lease, contract, evidence of indebtedness, debt, or other obligation of the

authority, the state, or local governments which are authorized to be issued under this chapter or under the Constitution or other laws of this state, including refunding bonds.

(12) "Project" means:

(A) The acquisition, construction, installation, modification, renovation, repair, extension, renewal, replacement, or rehabilitation of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of providing environmental facilities and services so as to meet public health and environmental standards, protect the state's valuable natural resources, or aid the development of trade, commerce, industry, agriculture, and employment opportunities, including, but not limited to, any project as defined by Code Section 12-5-471;

(B) Projects authorized by the Georgia Regional Transportation Authority created by Chapter 32 of this title and as defined in such chapter, where such authority has been directed to issue revenue bonds, bonds, notes, or other obligations to finance such project or the cost of a project in whole or in part, provided that such authority's power with respect to such projects authorized by the Georgia Regional Transportation Authority shall be limited to providing such financing and related matters as authorized by the Georgia Regional Transportation Authority; and

(C) Projects authorized by the Atlanta-region Transit Link "ATL" Authority created pursuant to Chapter 39 of this title and as defined in such chapter, where such authority has been directed to issue revenue bonds, bonds, notes, or other obligations to finance such project or the cost of a project in whole or in part, provided that such authority's power with respect to such projects authorized by the Atlanta-region Transit Link "ATL" Authority shall be limited to providing such financing and related matters as authorized by the Atlanta-region Transit Link "ATL" Authority.

(13) "Revenue bond" includes bond, note, or other obligation.

(14) "Self-liquidating project" means any project or combination of projects if, in the judgment of the authority, the revenues, rents, or earnings to be derived by the authority therefrom will be sufficient to pay the cost of maintaining, repairing, and operating the project and to pay the principal and interest of revenue bonds which may be issued for the cost of such project, projects, or combination of projects.

(15) "Sewerage facility" means any environmental facility described in subparagraph (B) of paragraph (5) of this Code section, defining "environmental facilities."

(15.5) "Solid waste facility" means any environmental facility described in subparagraph (C) of paragraph (5) of this Code section, defining "environmental facilities."

(16) "Water facility" means any environmental facility described in subparagraph (A) of paragraph (5) of this Code section, defining "environmental facilities."

History. — Code 1981, § 50-23-4, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1289, §§ 1-3; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 1108, § 6; Ga. L. 1999, p. 112, § 8; Ga. L. 2006, p. 267, § 1/HB 1319; Ga. L. 2008, p. 90, § 3-1/HB 1176; Ga. L. 2008, p. 644, § 2-2/SB 342; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2018, p. 377, § 4-7/HB 930.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "and" was inserted preceding "connections for utility services" and "the cost of" was inserted preceding "fees" in subparagraph (3)(B), and "waterworks" was substituted for "water works" in subparagraph (5)(A).

Pursuant to Code Section 28-9-5, in 1989, the period at the end of paragraph (15) was moved inside the closing quotation marks.

Editor's notes. — Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

U.S. Code. — Section 501(c)(3) and Section 501(c)(4) of the Internal Revenue Code, referred to in paragraph (10.2) of this Code section, is codified as 26 U.S.C. § 501(c)(3) and 26 U.S.C. § 501(c)(4), respectively.

Law reviews. — For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990). For article, "Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority," see 36 Ga. L. Rev. 247 (2001).

For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 233 (1999).

50-23-5. Purpose, powers, and duties.

(a) The corporate purpose and the general nature of the business of the Georgia Environmental Finance Authority shall be assistance in constructing, extending, rehabilitating, repairing, replacing, and renewing environmental facilities necessary for public purposes and commercial, residential, and industrial development purposes or necessary or incidental to such purposes by providing grants, loans, bonds, and other forms of financial and technical assistance to local governments and instrumentalities of the state to finance any project or pay the cost of any project.

(b) The authority shall have power:

(1) To sue and be sued in all courts of this state, the original jurisdiction and venue of such actions being the Superior Court of Fulton County;

(2) To have a seal and alter the same at its pleasure;

(3) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, such contracts, leases, or instruments to include contracts for construction, operation, management, or maintenance of projects and facilities owned by local government, the authority, or by the state or any state authority; and any and all local governments, departments, institutions, authorities, or agencies of the state are authorized to enter into contracts, leases, agreements, or other instruments with the authority upon such terms and to transfer real and personal property to the authority for such consideration and for such purposes as they deem advisable;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(5) To appoint an executive director who shall be executive officer and administrative head of the authority. The executive director shall be appointed and serve at the pleasure of the authority. The executive director shall hire officers, agents, and employees, prescribe their duties and qualifications and fix their compensation, and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director;

(6) To finance projects by loan, loan guarantee, grant, lease, or otherwise, and to pay the cost of any project from the proceeds of bonds, revenue bonds, notes, or other obligations of the authority or any other funds of the authority or from any contributions or loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the authority is authorized to receive, accept, and use;

(7) To make loans, through the acquisition of bonds, revenue bonds, notes, or other obligations, and to make grants to local governments to finance projects and to pay the cost of any project by local government and to adopt rules, regulations, and procedures for making such loans and grants;

(8) To borrow money to further or carry out its public purpose and to issue revenue bonds, notes, or other obligations to evidence such

loans and to execute leases, trust indentures, trust agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable in the judgment of the authority, and to evidence and to provide security for such loans;

(9) To issue revenue bonds, bonds, notes, or other obligations of the authority, to receive payments from the Department of Community Affairs, and to use the proceeds thereof for the purpose of:

(A) Paying or loaning the proceeds thereof to pay, all or any part of, the cost of any project or the principal of and premium, if any, and interest on the revenue bonds, bonds, notes, or other obligations of any local government issued for the purpose of paying in whole or in part, the cost of any project and having a final maturity not exceeding three years from the date of original issuance thereof;

(B) Paying all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out the purposes of the authority; and

(C) Paying all costs of the authority incurred in connection with the issuance of the revenue bonds, bonds, notes, or other obligations;

(10) To collect fees and charges in connection with its loans, commitments, management services, and servicing including, but not limited to, reimbursements of costs of financing, as the authority shall determine to be reasonable and as shall be approved by the authority;

(11) Subject to any agreement with bondholders, to invest moneys of the authority not required for immediate use to carry out the purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government and its subsidiary corporations and instrumentalities or entities sanctioned or authorized by the United States government including,

but not limited to, the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, Farm Credit Banks regulated by the Farm Credit Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks or federal savings and loan associations located within the state which have deposits insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation and certificates of deposit of state building and loan associations located within the state which have deposits insured by any Georgia deposit insurance corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank located within the state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other

similar banking arrangements with a bank or trust company having capital and surplus aggregating at least $50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least $50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys;

(G) Prime bankers' acceptances; and

(H) State operated investment pools;

(12) To acquire or contract to acquire from any person, firm, corporation, local government, federal or state agency, or corporation by grant, purchase, or otherwise, leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and local government is authorized to grant, sell, or otherwise alienate leaseholds, real and personal property, or any interest therein to the authority;

(13) To invest any moneys held in debt service funds or sinking funds not restricted as to investment by the Constitution or laws of this state or the federal government or by contract not required for immediate use or disbursement in obligations of the types specified in paragraph (11) of this subsection, provided that, for the purposes of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service, which debt service shall be the principal installments and interest payments, schedule for which such moneys are to be applied;

(14) To provide advisory, technical, consultative, training, educational, and project assistance services to the state and local government and to enter into contracts with the state and local government to provide such services. The state and local governments are authorized to enter into contracts with the authority for such services and to pay for such services as may be provided them;

(15) To make loan commitments and loans to local government and to enter into option arrangements with local government for the purchase of said bonds, revenue bonds, notes, or other obligations;

(16) To sell or pledge any bonds, revenue bonds, notes, or other obligations acquired by it whenever it is determined by the authority that the sale thereof is desirable;

(17) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(18) To lease to local governments any authority owned facilities or property or any state owned facilities or property which the authority is managing under contract with the state;

(19) To contract with state agencies or any local government for the use by the authority of any property or facilities or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the authority and such state agencies and local governments are authorized to enter into such contracts;

(20) To extend credit or make loans, including the acquisition of bonds, revenue bonds, notes, or other obligations to the state, any local government, or other entity, including the federal government, for the cost or expense of any project or any part of the cost or expense of any project, which credit or loans may be evidenced or secured by trust indentures, loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, or assignments, on such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such trust indentures, loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project and such other terms and conditions as the authority may deem necessary or desirable;

(21) As security for repayment of any bonds, revenue bonds, notes, or other obligations of the authority, to pledge, lease, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority including, but not limited to, real property, fixtures, personal property, and revenues or other funds and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds, notes or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such

revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument;

(22) To receive and use the proceeds of any tax levied by a local government to pay all or any part of the cost of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(23) To use income earned on any investment for such corporate purposes of the authority as the authority in its discretion shall determine, including, but not limited to, the use of repaid principal and earnings on funds, the ultimate source of which was an appropriation to a budget unit of the state to make loans for solid waste projects;

(23.1) To exercise such powers and perform such functions as provided for the authority under Chapter 6A of Title 12, including but not limited to the making of grants and loans as provided therein, for purposes of land conservation projects as defined in said chapter; and to provide advisory, technical, consultative, training, educational, and assistance services and enter into agreements for the same for purposes of such land conservation projects;

(23.2) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and to accomplish any of the purposes of the authority including but not limited to accepting donations to be used to advance state-wide energy education and energy efficiency and conservation initiatives. Any such subsidiary corporation shall be a nonprofit corporation, a public body corporate and politic, a political subdivision of the state, and an instrumentality of the state and shall exercise essential governmental functions. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the State of Georgia. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents;

(24) To cooperate and act in conjunction with industrial, commercial, medical, scientific, public interest, or educational organizations;

with agencies of the federal government and this state and local government; with other states and their political subdivisions; and with joint agencies thereof and such state agencies, local government, and joint agencies are authorized and empowered to cooperate and act in conjunction, and to enter into contracts or agreements with the authority and local government to achieve or further the policies of the state declared in this chapter;

(25) To adopt bylaws governing the conduct of business by the authority, the election and duties of officers of the authority, and other matters which the authority determines to deal with in its bylaws;

(26) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(27) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(28) To designate three or more of its number to constitute an executive committee who, to the extent provided in such resolution or in the bylaws of the authority, shall have and may exercise the powers of the authority in the management of the affairs and property of the authority and the exercise of its powers;

(29) To procure insurance against any loss in connection with its property and other assets or obligations or to establish cash reserves to enable it to act as self-insurer against any and all such losses;

(30) To administer funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to Title VI of the Federal Water Pollution Control Act and Title XIV of the federal Safe Drinking Water Act, as now or hereafter amended, for the purpose of providing assistance to municipalities or counties or any combination thereof or to any public authority or, if authorized by law, any private agency, commission, or institution for construction of treatment works as that term is defined in Section 212 of the federal Clean Water Act of 1977, P.L. 95-217, which are publicly owned. The authority may also administer funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to Title XIV of the federal Safe Drinking Water Act, as now or hereafter amended, for the purpose of providing assistance to municipalities or counties or any combination thereof or any public or, if authorized by law, any private authority, agency, commission, or institution for the construction of public drinking water works as such term is defined in Section 1401 of the federal Safe Drinking Water Act Amendments of 1986, P.L. 99-339. The authority may also administer funds granted to the state by the administrator of the

federal Environmental Protection Agency pursuant to 33 U.S.C.A. Section 1381, et seq., for the purpose of providing financial assistance for any eligible water pollution control project. The authority shall deposit any such funds received from the administrator of the federal Environmental Protection Agency into a separate water pollution control revolving fund or a drinking water revolving fund transferred to the authority from the Environmental Protection Division of the Department of Natural Resources or hereafter established; provided, however, that where appropriate, the authority may deposit funds received from the administrator of the federal Environmental Protection Agency into the Georgia Reservoir Fund established by Code Section 50-23-28. The forms and administration of such funds shall be established by the authority in accordance with federal requirements;

(30.1) To exercise any powers necessary or convenient to conduct the activities and perform the acts that are contemplated for the authority by Chapter 22 of Title 36;

(30.2) To fund, or partially fund, the Georgia Land Conservation Revolving Loan Fund established by Chapter 22 of Title 36;

(31) To contract with the Environmental Protection Division of the Department of Natural Resources for the implementation and operation, in whole or in part, of any drought protection or reservoir program and for the purposes of Article 6 of Chapter 5 of Title 12;

(31.1) To fund, or partially fund, the Georgia Reservoir Fund established by Code Section 50-23-28. Proceeds of any bonds authorized by the General Assembly for the purposes of said Code section, and any repayment of such proceeds after their expenditure, may be deposited in such fund;

(31.2) For the purpose of supplementing and extending the ability of the authority to expedite and accommodate the construction of projects, to enter into arrangements, consistent with existing bond indenture and other obligations of the authority, whereby the authority agrees to enter into one or more notes with a financial institution or other lender, the proceeds of which shall be payable to the authority and which constitute an obligation of the authority, together with a companion note or notes on substantially the same terms payable from the authority to a local government, with such companion notes, and the obligation of repayment thereon, pledged as security for the repayment of such notes, on such terms as may be agreeable to the parties thereto;

(32) To lend any of the securities of the type described in this subsection;

(33) To transfer to the state any funds of the authority determined by the authority to be in excess of those needed for its corporate purposes; and

(34) To make loan commitments and loans to local governments and nongovernmental entities for projects that permanently protect land and water, or interests therein, that are in their undeveloped natural states or have been developed to be consistent with, or are restored to be consistent with, one or more of the following conservation purposes:

(A) Water quality protection for rivers, streams, and lakes;

(B) Flood protection;

(C) Wetlands protection;

(D) Reduction of erosion through protection of steep slopes, areas with erodible soils, and stream banks;

(E) Protection of riparian buffers and other areas that serve as natural habitats and corridors for native plant and animal species;

(F) Protection of prime agricultural and forestry lands;

(G) Protection of cultural sites, heritage corridors, and archeological and historic resources;

(H) Scenic protection;

(I) Provision of recreation in the form of boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, or similar outdoor activities; and

(J) Connection of existing or planned areas contributing to the goals set out in this paragraph.

(c) The authority shall not have the power of eminent domain.

History. — Code 1981, § 50-23-5, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1991, p. 94, § 50; Ga. L. 1992, p. 6, § 50; Ga. L. 1992, p. 2316, § 1; Ga. L. 1994, p. 555, § 2; Ga. L. 1994, p. 1108, § 6; Ga. L. 2000, p. 458, § 3; Ga. L. 2001, p. 1225, § 3; Ga. L. 2003, p. 359, § 2; Ga. L. 2004, p. 319, § 4; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2006, p. 267, § 2/HB 1319; Ga. L. 2008, p. 90, § 3-2/HB 1176; Ga. L. 2008, p. 644, § 2-3/SB 342; Ga. L. 2010, p. 949, §§ 1, 1A, 2/HB 244; Ga. L. 2020, p. 566, § 2/HB 901.

The 2020 amendment, effective August 3, 2020, in subsection (b), deleted "and" at the end of paragraph (b)(32), substituted "; and" for the period at the end of paragraph (b)(33), and added paragraph (b)(34).

Code Commission notes. — Pursuant to Code Section 28-9-5, subsection (e) of this Code section, as enacted by Ga. L. 1986, p. 569, § 1, was redesignated as subsection (c), inasmuch as the Code section as enacted contained no subsection (c) or (d).

Pursuant to Code Section 28-9-5, in 1986, a comma was deleted following "qualifications" in paragraph (b)(5).

Pursuant to Code Section 28-9-5, in 1990, a semicolon was substituted for the period at the end of paragraph (b)(24).

U.S. Code. — The Bank Holding Company Act of 1956, referred to in subparagraph (b)(11)(F), is codified at 12 U.S.C. § 1841 et seq.

The federal Water Pollution Control Act, as amended, and the federal Clean Water Act of 1977, as amended, referred to in paragraph (b)(30) of this Code section, are codified at 33 U.S.C. § 1251 et seq.

The federal Safe Drinking Water Act, referred to in paragraph (b)(30) of this Code section, is codified at 42 U.S.C. § 300f et seq.

Administrative rules and regulations. — Regional solid waste management incentive grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Grant Program Description for Georgia Environmental Facilities Authority, Chapter 267-1.

Recycling and waste reduction grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Grant Program Description for Georgia Environmental Facilities Authority, Chapter 267-2.

Drinking water state revolving loan program for disadvantaged communities, Official Compilation of the Rules and Regulations of the State of Georgia, Grant Program Description for Georgia Environmental Facilities Authority, Chapter 267-13.

Empowerment zone, enterprise community loan grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Grant Program Description for Georgia Environmental Facilities Authority, Chapter 267-9.

Law reviews. — For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 29 (2000).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of lead limitations and "lead and copper" rule of Safe Drinking Water Act, 16 A.L.R. Fed. 3d 3.

Citizen's cause of action under Safe Drinking Water Act, 42 U.S.C.A. § 300j-8, 16 A.L.R. Fed. 3d 4.

50-23-6. Loans to local governments; repayment.

(a) Reserved.

(b) The authority may make loans to a local government to pay all or any part of the cost of a project. The authority may require the local government to issue bonds or revenue bonds as evidence of such loans. The authority and a local government may enter into such loan commitments and option agreements as may be determined appropriate by the authority.

(c) The authority may require as a condition of any loan to a local government that such local government shall perform any or all of the following:

(1) As appropriate and permitted by law, establish and collect taxes, rents, rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) Costs of operation, maintenance, replacement, renewal, and repairs; and

(B) Outstanding indebtedness incurred for the purposes of such project, including the principal of and interest on the bonds,

revenue bonds, notes, or other obligations issued by the local government, as the same shall become due and payable, and to create and maintain any required reserves;

(2) Create and maintain a special fund or funds as additional security for the payment of the principal revenue bonds and the interest thereon and any other amounts becoming due under any agreement entered into in connection with such bonds and for the deposit of such revenues as shall be sufficient to make such payment as the same shall become due and payable;

(3) Create and maintain such other special funds as may be required by the authority; and

(4) Such other acts, including the conveyance of real and personal property together with all right, title, or interest therein to the authority, as may be deemed necessary or desirable by the authority to secure the payment of the principal of and interest on bonds, revenue bonds, notes, or other obligations and to provide for the remedies of the authority in the event of any default by such local government in such payment.

(d) All local governments issuing and selling bonds, revenue bonds, notes, or other obligations to the authority are authorized to perform such acts, take such action, adopt such proceedings, and make and carry out such contracts with the authority as may be contemplated by this article.

(e) In connection with the making of any loan authorized by this article, the authority may fix and collect such fees and charges, including but not limited to reimbursement of all costs of financing by the authority, as the authority shall determine to be reasonable. Neither the Public Service Commission nor any local government or state agency shall have jurisdiction over the authority's power over the regulation of such fees or charges.

(f) A mutual undertaking by a local government to borrow and an undertaking by the authority to lend funds from and to each other for projects shall be a provision for services and an activity within the meaning of Article IX, Section III, Paragraph I(a) of the Constitution.

History. — Code 1981, § 50-23-6, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1289, § 4; Ga. L. 1994, p. 1108, § 6; Ga. L. 2006, p. 267, § 3/HB 1319; Ga. L. 2008, p. 90, § 3-3/HB 1176.

OPINIONS OF THE ATTORNEY GENERAL

Community reservoirs. — Georgia Environmental Facilities Authority may lend proceeds from general obligation bonds of the state to local governments,

acting either jointly or separately, to establish community reservoirs. 1988 Op. Att'y Gen. No. 88-26.

Constitutionality of loans by Georgia Environmental Facilities Authority. — Loans by the Department of Natural Resources pursuant to O.C.G.A. § 12-5-38.1 and loans by the Georgia Environmental Facilities Authority pursuant to O.C.G.A. § 50-23-1 et seq. do not cause a city or county to incur debt in accordance with Ga. Const. 1983, Art. IX, Sec. V, Para. I. The constitutional underpinning of these programs is in the intergovernmental contract clause, Ga. Const. 1983, Art. IX, Sec. III, Para. I(a). Thus, the procedural requirements in O.C.G.A. § 48-8-111 for submitting a debt question are not triggered when proceeds derived from the sales tax are to be applied to repayment of the loans by the Department of Natural Resources (DNR) or the Georgia Environmental Facilities Authority (GEFA). 1990 Op. Att'y Gen. No. U90-7.

Authority of Georgia Environmental Facilities Authority and City of Atlanta regarding loans. — Georgia Environmental Facilities Authority is statutorily empowered to make the administrative and policy determinations requiring the City of Atlanta to pledge the city's full faith and credit as security for a loan from the Authority, there are no constitutional prohibitions upon the city pledging the city's full faith and credit for such a loan, and a referendum is not required prior to the city making the pledge. 2004 Op. Att'y Gen. No. 2004-8.

50-23-7. Lease agreements.

(a) For the purposes of this article, the term "lease agreement" shall mean and include a lease, operating lease rental agreement, usufruct, sale and lease back, or any other lease agreement having a term of not more than 50 years and concerning real, personal, or mixed property, any right, title, or interest therein by and between the state, the authority, a local government, or any combination thereof.

(b) A local government by resolution of its governing body may enter into a lease agreement for the provision of environmental services utilizing facilities owned by the authority upon such terms and conditions as the authority shall determine to be reasonable including, but not limited to, the reimbursement of all costs of construction and financing and claims arising therefrom.

(c) No lease agreement shall be deemed to be a contract subject to any law requiring that contract shall be let only after receipt of competitive bids.

(d) Any lease agreement may provide for the construction of such environmental facility by the local government as agent for the authority. In such event, all contracts for such construction shall be let by such local government in accordance with the provisions of law otherwise applicable to the letting of such contracts by such local government and with the provisions of state law pertaining to prevailing wages, labor standards, and working hours. Any such lease agreement may contain provisions by which such local government shall indemnify the authority against any and all damages resulting from acts or omissions to act on the part of such local government or its officers, agents, or employees

in constructing such facility or facilities, in letting any contracts in connection therewith, or in operating and maintaining the same.

(e) Any lease agreement executed by the authority directly with any local government may provide at the termination thereof that title to the environmental facility project shall vest in the local government or its successor in interest, if any, free and clear of any liens or encumbrances created in connection with any contract or bonds, revenue bonds, notes, or other obligations involving the authority.

(f) Any lease agreement directly between the state or authority and a local government may contain provisions requiring the local government to perform any or all of the following:

(1) As appropriate and otherwise permitted by law, establish and collect taxes, rents, rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) The costs of operation, maintenance, renewal, replacement, and repairs of any project of such local government; and

(B) Outstanding bonds, revenue bonds, notes, or other obligations incurred for the purposes of such project and to provide for the payment of all amounts as they shall become due and payable under the terms of such lease agreement, including amounts for the creation and maintenance of any required reserves;

(2) Create and maintain reasonable reserves or other special funds;

(3) Create and maintain a special fund or funds as additional security for the punctual payment of any rentals due under such lease agreement and for the deposit of such revenues as shall be sufficient to pay rentals and any other amounts becoming due under such lease agreements as the same shall become due and payable; and

(4) Such other acts and take such other action as may be deemed necessary and desirable by the authority to secure the complete and punctual performance by such local government of such lease agreements and to provide for the remedies of the authority in the event of a default by such local government in such payment.

History. — Code 1981, § 50-23-7, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1289, § 5; Ga. L. 1994, p. 1108, § 6; Ga. L. 2006, p. 267, § 4/HB 1319.

50-23-8. Issuing and refunding of bonds.

(a) The authority shall have the power and is authorized from time to time to issue bonds, in such principal amounts as it may determine to be necessary to pay all or a portion of the cost of any project or

environmental facilities, to provide amounts necessary for any corporate purposes, including incidental expenses in connection with the issuance of the bonds.

(b) In addition, the authority shall have the power and is authorized to issue bonds in such principal amounts as the authority deems appropriate, such bonds to be primarily secured by a pool of obligations issued by local governments when the proceeds of the local government obligations are applied to local environmental facility projects.

(c) The authority shall have the power from time to time to refund any bonds by the issuance of new bonds whether the bonds to be refunded have or have not matured and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose.

(d) Bonds issued by the authority may be general or limited obligations payable solely out of particular revenues or other moneys of the authority as may be designated in the proceedings of the authority under which the bonds shall be authorized to be issued, subject to any agreements entered into between the authority and state agencies, local government, or private parties and subject to any agreements with the holders of outstanding bonds pledging any particular revenues or moneys.

(e)(1) The authority is authorized to obtain from any department, agency, or corporation of the United States of America or governmental insurer, including the state, any insurance or guaranty, to the extent now or hereafter available, as to or for the payment or repayment of interest or principal, or both, or any part thereof on any bonds or notes issued by the authority or on any obligations of federal, state, or local governments purchased or held by the authority; and to enter into any agreement or contract with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the authority to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the authority.

(2) Bonds issued by the authority shall be authorized by resolution of the authority, be in such denominations, bear such date or dates, and mature at such time or times as the authority determines to be appropriate, except that bonds and any renewal thereof shall mature within 25 years of the date of their original issuance. Such bonds shall be subject to such terms of redemption, bear interest at such rate or rates payable at such times, be in such form, either coupon or registered, as to principal or interest or both principal and interest, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be

subject to such terms and conditions as such resolution of the authority may provide. Bonds may be sold at public or private sale for such price or prices as the authority shall determine.

(3) Any resolution or resolutions authorizing bonds or any issue of bonds may contain provisions which may be a part of the contract with the holders of the bonds thereby authorized as to:

(A) Pledging all or part of its revenues, together with any other moneys, securities, contracts, or property, to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(B) Setting aside of reserves and the creation of sinking funds and the regulation and disposition thereof;

(C) Limiting the purpose to which the proceeds from the sale of bonds may be applied;

(D) Limiting the right of the authority to restrict and regulate the use of any project or part thereof in connection with which bonds are issued;

(E) Limiting the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(F) Setting the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, including the proportion of bondholders which must consent thereto and the manner in which such consent may be given;

(G) Creating special funds into which any revenues or other moneys may be deposited;

(H) Setting the terms and provisions of any trust, deed, or indenture or other agreement under which the bonds may be issued;

(I) Vesting in a trustee or trustees such properties, rights, powers, and duties in trust as the authority may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the bondholders pursuant to Code Section 50-10-11 and limiting or abrogating the rights of the bondholders to appoint a trustee under such Code section or limiting the rights, duties, and powers of such trustee;

(J) Defining the acts or omissions to act which may constitute a default in the obligations and duties of the authority to the bondholders and providing for the rights and remedies of the bondholders in the event of such default, including as a matter of

right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this article;

(K) Limiting the power of the authority to sell or otherwise dispose of any environmental facility or any part thereof or other property, including municipal bonds held by it;

(L) Limiting the amount of revenues and other moneys to be expended for operating, administrative, or other expenses of the authority;

(M) Providing for the payment of the proceeds of bonds, obligations, revenues, and other moneys to a trustee or other depository and for the method of disbursement thereof with such safeguards and restrictions as the authority may determine; and

(N) Establishing any other matters of like or different character which in any way affect the security for the bonds or the rights and remedies of bondholders.

(4) In addition to the powers conferred upon the authority to secure its bonds, the authority shall have power in connection with the issuance of bonds to enter into such agreements as the authority may deem necessary, consistent, or desirable concerning the use or disposition of its revenues or other moneys or property, including the mortgaging of any property and the entrusting, pledging, or creation of any other security interest in any such revenues, moneys, or property and the doing of any act, including refraining from doing any act, which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this article and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of bonds of the authority.

(5) Any pledge of or other security interest in revenues, moneys, accounts, contract rights, general intangibles, or other personal property made or created by the authority shall be valid, binding, and perfected from the time when such pledge is made or other security interest attaches without any physical delivery of the collateral or further act, and the lien of any such pledge or other security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

(6) All bonds issued by the authority shall be executed in the name of the authority by the chairperson and secretary of the authority and

shall be sealed with the official seal or a facsimile thereof. Coupons, if any, shall be executed in the name of the authority by the chairperson of the authority, the facsimile signature of the chairperson and the secretary of the authority may be imprinted in lieu of the manual signature if the authority so directs; and the facsimile of the chairperson's signature shall be used on coupons, if such are attached. Bonds and interest coupons appurtenant thereto bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid, notwithstanding the fact that before or after delivery thereof such person ceased to hold such office.

(7) Prior to the preparation of definitive bonds, the authority may issue interim receipts, interim certificates, or temporary bonds exchangeable for definitive bonds upon the issuance of the latter; the authority may provide for the replacement of any bond which shall become mutilated or be destroyed or lost.

(8) All bonds issued by the authority under this article may be executed, confirmed, and validated under and in accordance with Article 3 of Chapter 82 of Title 36, except as otherwise provided in this article.

(9) The venue for all bond validation proceedings pursuant to this article shall be Fulton County, and the Superior Court of Fulton County shall have exclusive final court jurisdiction over such proceedings.

(10) Bonds issued by the authority shall have a certificate of validation bearing the facsimile signature of the clerk of the Superior Court of Fulton County and shall state the date on which said bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court of this state.

(11) The authority shall reimburse the district attorney for his or her actual costs, if any, associated with the bond validation proceedings. The fees payable to the clerk of the Superior Court of Fulton County for validation shall be as follows for each bond, regardless of the denomination of such bond:

(A) One dollar each for the first 100 bonds;

(B) Twenty-five cents each for the next 400 bonds; and

(C) Ten cents for each such bond over 500.

(12) Whether or not the bonds of the authority are of such form and character as to be negotiable instruments, the bonds are made negotiable instruments within the meaning of and for all the pur-

poses of Georgia law subject only to the provisions of the bonds for registration.

(13) Neither the members of the authority nor any person executing bonds shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof.

(14) The authority, subject to such agreements with bondholders as then may exist, shall have power out of any moneys available therefor to purchase bonds of the authority, which shall thereupon be canceled, at a price not in excess of the following:

(A) If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date; or

(B) If the bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the bonds become subject to redemption, plus accrued interest to the next interest payment date.

(15) In lieu of specifying the rate or rates of interest which bonds to be issued by an authority are to bear, the notice to the district attorney or the Attorney General, the notice to the public of the time, place, and date of the validation hearing, and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest, which rate may be fixed or may fluctuate or otherwise change from time to time, specified in such notices and petition and complaint or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate, which rate may be fixed or may fluctuate or otherwise change from time to time, so specified; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint.

History. — Code 1981, § 50-23-8, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following "property" in subparagraph (e)(3)(A) and a comma was inserted following "secured" in subparagraph (e)(3)(E).

Pursuant to Code Section 28-9-5, in 1990, "original" was substituted for "originl" in paragraph (e)(10).

Editor's notes. — Code Section 50-10-11, referred to in subdivision (e)(3)(I), was repealed by Ga. L. 1986, p. 705, § 4, effective April 2, 1986.

50-23-9. Review of contracts and agreements by Environmental Protection Division or Georgia Land Conservation Council.

(a) Except as otherwise provided by Article 6 of Chapter 5 of Title 12, the authority shall not enter into any contract or agreement with any local government with respect to the financing of any environmental facility pursuant to this article, unless the director of the Environmental Protection Division of the Department of Natural Resources shall have completed all existing statutory reviews and approvals with respect to such project. Nothing in this article shall be construed to diminish the full authority and responsibility of the director of the Environmental Protection Division of the Department of Natural Resources for existing statutory reviews and approvals.

(b) The authority shall not enter into any contract or agreement with any local government or the Department of Natural Resources with respect to the financing, by loan or grant, of any community land conservation project or state land conservation project pursuant to Chapter 22 of Title 36 unless the Georgia Land Conservation Council has approved the community land conservation project or state land conservation project and the chairperson has directed the authority to execute the approval decision of the Georgia Land Conservation Council. Nothing in this article shall be construed to diminish the full authority and responsibility of the Georgia Land Conservation Council's existing statutory reviews and approvals.

History. — Code 1981, § 50-23-9, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2006, p. 267, § 5/HB 1319; Ga. L. 2008, p. 644, § 2-4/SB 342.

Cross references. — Community greenspace preservation, T. 36, C. 22.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, a comma was deleted following "Department of Natural Resources" in the first sentence of subsection (a).

50-23-10. Bonds of authority approved for investment and deposit by state, local governments, and others.

The bonds of the authority are made securities in which all public officials and bodies of the state and all municipalities, all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business, and administrators, guardians, executors, trustees, and other fiduciaries and all other persons whatsoever, who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or

belonging to them. The bonds are also made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities for any purposes for which the deposit of bonds or other obligations of this state are now or hereafter may be authorized.

History. — Code 1981, § 50-23-10, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.

50-23-11. Pledge of state not to alter or limit the rights of bondholders.

The State of Georgia does pledge to and agree with the holders of any bonds issued by the authority pursuant to this article that the state will not alter or limit the rights vested in the authority to fulfill the terms of any agreement made with or for the benefit of the holders of bonds or in any way impair the rights and remedies of bondholders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged or funds for the payment of such are fully provided. The authority is authorized to include this pledge and agreement of the state in any agreement with bondholders.

History. — Code 1981, § 50-23-11, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.

50-23-12. Personal liability of members of authority, officers, and employees.

Neither the members of the authority nor any officer or employee of the authority acting in behalf thereof, while acting within the scope of his or her authority, shall be subject to any liability resulting from:

(1) The construction, ownership, maintenance, or operation of any project financed with the assistance of the authority;

(2) The construction, ownership, maintenance, or operation of any solid waste system, sewerage system, environmental facility, or water system owned by a local government; or

(3) Carrying out any of the powers expressly given in this article.

History. — Code 1981, § 50-23-12, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1289, § 6; Ga. L. 1994, p. 1108, § 6.

50-23-13. Liberal construction; bonds exempt from securities law; necessity of notice, proceeding, or publication; referendums.

The provisions of this article shall be liberally construed to effect the purposes of this article. The offer, sale, or issuance of bonds, notes, or other obligations by the authority shall not be subject to regulation under Chapter 5 of Title 10, known as the "Georgia Uniform Securities Act of 2008." No notice, proceeding, or publication except those required in this article shall be necessary to the performance of any act authorized in this article; nor shall any such act be subject to referendum.

History. — Code 1981, § 50-23-13, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2008, p. 381, § 10/SB 358.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Chapter 5" was substituted for "Chapter 1" in the second sentence.

50-23-14. Bonds not indebtedness of state; guarantee of bonds by state.

No bonds, notes, or other obligations of and no indebtedness incurred by the authority shall constitute an indebtedness or obligation or a pledge of the faith and credit of the State of Georgia or of its agencies; nor shall any act of the authority in any manner constitute or result in the creation of an indebtedness of the state or its agencies or a cause of action against the state or its agencies; provided, however, the state, to the extent permitted by its Constitution, may guarantee payment of such bonds, notes, or other obligations as guaranteed revenue debt.

History. — Code 1981, § 50-23-14, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 1108, § 6.

50-23-15. Exemptions from taxation.

It is found, determined, and declared that the creation of this authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this article. For such reasons the state covenants with the holders from time to time of the bonds, notes, and other obligations issued under this article that the authority shall not be required to pay any taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others, or upon its activities

in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise, and that the bonds, notes, and other obligations of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this article shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority.

History. — Code 1981, § 50-23-15, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.

50-23-16. Rights under federal Constitution.

The authority shall have all rights afforded the state by virtue of the Constitution of the United States, and nothing in this article shall be construed to remove any such rights.

History. — Code 1981, § 50-23-16, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.

50-23-17. Approval of bond issues and other obligations by state financing and investment commission.

The issuance of any bond, revenue bond, note, or other obligation or incurring of debt, public or otherwise, by the authority must be approved by the commission established by Article VII, Section IV, Paragraph VII of the Constitution of the State of Georgia of 1983 or its successor.

History. — Code 1981, § 50-23-17, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.

50-23-18. Liberal construction.

This article, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes specified in this article.

History. — Code 1981, § 50-23-18, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.

50-23-19. Limitation on issue of bonds.

Nothing contained in this article shall permit the authority to issue bonds or revenue bonds at any time when the sum of:

(1) The highest aggregate annual debt service requirements for the then current fiscal year or any subsequent fiscal year for outstanding authority bonds or revenue bonds, including the proposed bonds or revenue bonds; and

(2) The highest annual debt service requirements for the then current fiscal year or any subsequent fiscal year on general obligation debt of the state issued for authority projects

exceeds 1 percent of the total revenue receipts, less refunds, of the state treasury in the fiscal year immediately preceding the year in which any such bond or revenue bond is to be issued; provided, however, that unless the director of the Water Supply Division of the authority has issued the certification provided for by Code Section 12-5-480, the authority, with the approval of the Governor and the commission established by Article VII, Section IV, Paragraph VII of the Constitution, may issue bonds for the purposes of Article 6 of Chapter 5 of Title 12 notwithstanding such limitations.

History. — Code 1981, § 50-23-19, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2008, p. 644, § 2-5/SB 342.

50-23-20. Withholding state funds from local governments or nongovernmental entities failing to collect and remit amounts when due.

(a) In the event of a failure of any local government or nongovernmental entity to collect and remit in full all amounts due to the authority and all amounts due to others, which involve the credit or guarantee of the authority or of the state, on the date such amounts are due under the terms of any bond, revenue bond, note, or other obligation of the local government or nongovernmental entity, it shall be the duty of the authority to notify the state treasurer who shall withhold all funds of the state and all funds administered by the state, its agencies, boards, and instrumentalities allotted to such local government or nongovernmental entity until such local government or nongovernmental entity has collected and remitted in full all sums due and cured or remedied all defaults on any such bond, revenue bond, note, or other obligation.

(b) Nothing contained in this Code section shall mandate the withholding of funds allocated to a local government or nongovernmental entity which would violate contracts to which the state is a party, the

requirements of federal law imposed on the state, or judgments of any court binding the state.

History. — Code 1981, § 50-23-20, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 1108, § 6; Ga. L. 2008, p. 90, § 3-4/HB 1176; Ga. L. 2010, p. 863, § 3/SB 296.

50-23-21. Grants for clean energy property; rules and regulations; annual report.

(a) As used in this Code section, the term:

(1) "Authority" means the Georgia Environmental Finance Authority.

(2) "Clean energy property" includes any of the following:

(A) Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active and passive space heating and cooling, generating electricity, distillation, desalinization, or the production of industrial or commercial process heat, as well as related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy;

(B) Energy Star certified geothermal heat pump systems;

(C) Energy efficient projects as follows:

(i) **Lighting retrofit projects.** "Lighting retrofit project" means a lighting retrofit system that employs dual switching (ability to switch roughly half the lights off and still have fairly uniform light distribution), delamping, daylighting, relamping, or other controls or processes which reduce annual energy and power consumption by 30 percent compared to the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004); and

(ii) **Energy efficient buildings.** "Energy efficient building" means for other than single-family residential property new or retrofitted buildings that are designed, constructed, and certified to exceed the standards set forth in the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004) by 30 percent; and

(D) Wind equipment required to capture and convert wind energy into electricity or mechanical power as well as related devices that may be required for converting, conditioning, and storing the electricity produced by wind equipment.

(3) "Cost" means:

(A) In the case of clean energy property owned by a person, cost is the aggregate funds actually invested and expended by a person to put into service the clean energy property; and

(B) In the case of clean energy property a person leases from another, cost is eight times the net annual rental rate, which is the annual rental rate paid by the person less any annual rental rate received by the person from subrentals.

(4) "Installation" means the year in which the clean energy property is put into service and becomes eligible for a grant allowed by this Code section.

(b)(1) The authority may issue a grant to any person for the construction, purchase, or lease of clean energy property that is placed into service in this state, other than in single-family residential structures, between January 1, 2009, and December 31, 2012, subject to the provisions of this Code section.

(2) A person that receives a grant allowed under this Code section shall not be eligible to claim any tax credit under Code Section 48-7-29.14 or any other grant under this Code section with respect to the same clean energy property.

(3) A person shall not receive a grant allowed in this Code section for clean energy property the person leases from another unless such person obtains the lessor's written certification that the lessor will not receive a grant under this Code section or claim a credit under Code Section 48-7-29.14 with respect to the same clean energy property.

(4) Grants shall not be issued under this Code section except to effect participation in a federal government program which authorizes the use of federal funds for purposes of this Code section. In no event shall the total amount of grants allowed by this Code section exceed federal funds allocated by the authority for such purposes. No funds derived from any other sources shall be granted under this Code section.

(5)(A) Any person seeking any grant provided for under this Code section shall submit an application to the authority for approval of such grant. The authority shall promulgate the forms on which the application is to be submitted. The authority shall review such application and shall approve such application upon determining that it meets the requirements of this Code section within 60 days after receiving such application, subject to availability of funds as provided by paragraph (4) of this subsection.

(B) To apply for a grant allowed by this Code section, the person shall provide any information required by the authority. Every

person receiving a grant under this Code section shall maintain and make available for inspection by the authority any records that the authority considers necessary to determine and verify the amount of the grant to which the person is entitled. The burden of proving eligibility for a grant and the amount of the grant shall rest upon the applicant, and no grant shall be allowed to a person that fails to maintain adequate records or to make them available for inspection.

(C) The authority shall issue the grants on a first come, first served basis. In no event shall the aggregate amount of grants approved by the authority for all applicants under this Code section exceed the limitations specified in paragraph (4) of this subsection.

(6) Any grant allowed by paragraph (1) of this subsection shall not exceed the lesser of 35 percent of the cost of the clean energy property described in subparagraphs (a)(2)(A) through (a)(2)(D) of this Code section or the following grant amounts for any clean energy property:

(A) A ceiling of $500,000.00 per installation applies to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating and wind equipment as described in subparagraphs (a)(2)(A) and (a)(2)(D) of this Code section;

(B) The sum of $100,000.00 per installation applies to clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(2)(A) of this Code section which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors;

(C) For Energy Star certified geothermal heat pump systems as described in subparagraph (a)(2)(B) of this Code section, the sum of $100,000.00;

(D) For a lighting retrofit project as described in division (a)(2)(C)(i) of this Code section, the sum of $0.60 per square foot of the building with a maximum of $100,000.00; and

(E) For an energy efficient building as described in division (a)(2)(C)(ii) of this Code section, the sum of the cost of energy efficient products installed during construction at $1.80 per square foot of the building, with a maximum of $100,000.00.

(c) The authority shall be authorized to adopt rules and regulations to provide for the administration of any grant provided by this Code section. Specifically, the authority shall create a mechanism to track

and report the status and availability of grants for the public to review at a minimum on a quarterly basis.

(d) The authority shall provide an annual report of:

(1) The number of persons that claimed the grants allowed in this Code section;

(2) The cost of clean energy property with respect to which grants were issued;

(3) The type of clean energy property installed and the location;

(4) A determination of associated energy and economic benefits to the state; and

(5) The total amount of grants allowed.

History. — Code 1981, § 50-23-21, enacted by Ga. L. 2009, p. 153, § 1/HB 473.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, a comma was deleted following "subparagraphs (a)(2)(A) and (a)(2)(D)" in subparagraph (b)(6)(A).

Pursuant to Code Section 28-9-5, in 2010, "Georgia Environmental Finance Authority" was substituted for "Georgia Environmental Facilities Authority" in paragraph (a)(1).

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

Part 2

Water Supply Division

50-23-25. "Division" defined.

As used in this part, the term "division" means the Water Supply Division of the Georgia Environmental Finance Authority created by Code Section 50-23-26.

History. — Code 1981, § 50-23-25, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342; Ga. L. 2010, p. 949, § 1/HB 244.

50-23-26. Creation of Water Supply Division; director.

There is created within the Georgia Environmental Finance Authority a Water Supply Division. The executive director of the authority or an employee of the authority designated by the director shall serve as the director of the division and shall have full authority over the operation, personnel, and facilities of the division.

History. — Code 1981, § 50-23-26, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342; Ga. L. 2010, p. 949, § 1/HB 244.

50-23-27. Powers, duties, and responsibilities.

The division shall have the authority and responsibility to:

(1) Administer this part;

(2) Coordinate with the Department of Natural Resources and with other departments, divisions, agencies, or officials of this state or political subdivisions thereof and appropriate private and professional organizations in matters related to water supply. The division and any other department, educational institution, agency, or official of this state or political subdivision thereof which in any way would affect the administration or enforcement of this part or Article 6 of Chapter 5 of Title 12 shall be required to coordinate all such activities with the division to assure orderly and efficient administration and enforcement of this part;

(3) Do all things necessary to cooperate with the United States government and qualify for, accept, and disburse any public or private grant intended for the administration of this part;

(4) Apply for, receive, accept, and administer federal funds and programs made available to this state for the purposes of this part;

(5) Contract for services if such services cannot be satisfactorily performed by employees of the division or by any other state agency;

(6) Design and implement programs to assist local governing authorities and other entities in implementing water supply projects; and

(7) Exercise such powers and perform such duties as assigned or contracted to the division or the authority under Article 6 of Chapter 5 of Title 12.

History. — Code 1981, § 50-23-27, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342.

50-23-28. Establishment of Georgia Reservoir Fund; administration; report.

(a) There shall be established the Georgia Reservoir Fund, to consist of proceeds of bonds issued under this article for purposes of this part, any moneys paid to the authority under intergovernmental contracts for purposes of this part, voluntary contributions to such fund, and any federal moneys deposited in such fund. Moneys which are restricted as to their usage, including, but not limited to, restrictions on the kinds of

projects for which the moneys may be expended or loaned, on the entity that may receive grants or loans of such moneys, on the manner in which such moneys may be expended or loaned, and any other condition, limitation, or restriction, may nevertheless be deposited in the fund so long as any such restriction shall not prevent the moneys so deposited from being expended, loaned, or otherwise used in a manner that is consistent with the purposes of this part. All balances in the fund shall be deposited in interest-bearing accounts.

(b) The authority shall administer the fund and may use the fund for projects as defined by Code Section 12-5-471, in accordance with this article and Article 6 of Chapter 5 of Title 12.

(c) The authority shall prepare, by September 30 of each year, an accounting of the moneys received and expended from the fund for the most recently completed fiscal year. The report shall be made available electronically to the members of the General Assembly and shall be public record.

(d) Principal and interest payments on loans made from the fund may be deferred for a maximum of 20 years or until construction of the project is completed, whichever is later.

(e) The authority may expend moneys from the fund for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs without the designation of such funds to a specific project or the final regulatory or statutory review and approval of such project if the director determines that a reasonable expectation exists that the expenditure of such funds will further the purposes of this part or Article 6 of Chapter 5 of Title 12.

History. — Code 1981, § 50-23-28, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342.

50-23-28.1. Authority to make loans and grants to local governments for expansion of existing reservoirs; criteria.

(a) The division may make loans and grants to a local government to pay all or any part of the cost of expanding and increasing the capacity of existing reservoirs. Such loans and grants shall be made as provided in Code Section 50-23-6. The criteria used in consideration for requests for assistance shall include, but not be limited to:

(1) The effect of recurring drought on the region;

(2) Interconnectivity of the requesting entity's water supply system with one or more surrounding local governments; and

(3) Unique regional conditions.

(b) Beginning in 2010, on July 1 of each year in which adequate funds are available, the division shall give public notice that it will

accept applications for loans and grants as provided in subsection (a) of this Code section. Requests shall be submitted and awards shall be made according to such schedules and deadlines as may be provided by the division.

History. — Code 1981, § 50-23-28.1, enacted by Ga. L. 2010, p. 204, § 3/SB 380.

Cross references. — Completion and submission of emergency plan and costs, § 12-5-204.

Editor's notes. — Ga. L. 2010, p. 204, § 1/SB 380, not codified by the General Assembly, provides: "Section 2 of this Act shall be known and may be cited as the 'Water System Interconnection, Redundancy, and Reliability Act.'" Section 2 added a new Part 6 to T. 12, C. 5, A. 3.

50-23-28.2. Participation by division in certain local water reservoir, facilities, and systems projects.

(a) Those definitions made applicable to Article 4 of Chapter 91 of Title 36 by Code Section 36-91-100 shall be applicable to this Code section.

(b) The division may evaluate any project to determine, in the judgment of the division, appropriate or desirable levels of state or private participation in such project. In identifying any such project and making such determination, the division shall seek the advice and input of the affected local governments and shall be authorized to seek and receive advice and input from local authorities and the private financial and construction sectors. The division may also propose projects to local governing authorities and local authorities as appropriate for the procedures of Article 4 of Chapter 91 of Title 36. The division shall be authorized to consult with local governing authorities and local authorities regarding its conclusions with respect to projects subject to this subsection.

(c) Local governing authorities and local authorities participating in the consideration of a project may, by mutual consent, request in writing that the division participate in the project in any capacity authorized by law, pursuant to the provisions of paragraph (7) of subsection (b) of Code Section 50-23-5 and Code Section 50-23-6. The participating local governments and local authorities may request in writing that the division serve as the lead local authority for such project, and if the division accedes to such request, the division shall assume all of the duties and responsibilities of the lead local authority pursuant to the provisions of Article 4 of Chapter 91 of Title 36, for itself and on behalf of such local governing authorities and local authorities, subject to the conditions and limitations of such article.

(d) In addition to the conditions and limitations of Article 4 of Chapter 91 of Title 36, the following shall be applicable to the division when acting pursuant to this Code section:

(1) Public notice of any request for proposals shall be made at least 90 days prior to the date set for receipt of proposals by posting a legal notice on the website of the Department of Administrative Services;

(2) The designated representative of the lead local authority, when the division is such lead local authority, shall be the director;

(3) No contract awarded under this subsection shall be operative until the governing authority of each participating local governing authority and local authority and each affected local government has approved the contract;

(4) For any project for which participation or a lead local authority role is determined by the division to be feasible and appropriate, the division may perform management, technical, consultative, training, educational, and other project development and promotion activities, subject to availability of funds from the Georgia Reservoir Fund established by Code Section 50-23-28, approval by the executive director of the authority, and the requirement that the fund be fully compensated by any private owner of the project for such expenditures; and

(5) Any project financed or constructed in whole or in part by the division shall be subject to environmental and development restrictions imposed on projects of the division by law.

(e) In discharging its duties and responsibilities under this Code section, the division:

(1) Shall to the maximum extent feasible expedite the issuance of the permits, licenses, and permissions from the United States of America or any agency or instrumentality thereof; the State of Georgia, its departments, agencies, or authorities; or any county, municipality, consolidated government, or local agency or authority of this state necessary and convenient for the purposes of this article;

(2) May enter into lease, use, or water supply agreements with the owner or operator of any project or water facility;

(3) May lease to an owner or operator of a project any state-owned facilities or property which the division is managing in connection with a project;

(4) May utilize the competitive bidding and competitive sealed proposal procedures adopted by the Department of Administrative Services under Code Section 50-5-67 and regulations promulgated pursuant to the authority thereof; and

(5) May enter into agreements with local governing authorities, local authorities, or an owner or operator or proposed operator of a project, setting fees to be paid to the division or the Department of

Natural Resources for the purpose of enabling the division or the Department of Natural Resources to expedite or enhance the state or federal regulatory process.

(f) The director shall be authorized to delegate such duties and responsibilities under this Code section as he or she deems appropriate from time to time; provided, however, that the final approval of state projects and contracts provided for in this article shall be by action of the director.

(g) Nothing in this Code section shall be construed to delegate the power of eminent domain to any private entity with respect to any project commenced or proposed pursuant to this Code section. The state and any local government may exercise the power of eminent domain in the manner provided by law for the purpose of acquiring any property or interests therein to the extent that such action serves the public purpose of this Code section.

(h) All affected local governments which approve a project shall have agreed, by reason of such approval, to amend and to have amended, consistent with such approval, any service delivery strategy agreement required by Article 2 of Chapter 70 of Title 36 to which they are a party.

(i)(1) With respect to contracts of such state agency or authority, no employee, officer, or member of any state agency or authority or board thereof shall serve as an employee, agent, lobbyist, or board member for any private entity directly or indirectly under contract with or negotiating a contract with any state agency or authority under this article for three years after leaving his or her position as such an employee, officer, or member.

(2) No employee, officer, or member of the General Assembly shall serve as an employee, agent, lobbyist, or board member for any private entity directly or indirectly under contract with or negotiating a contract with any state agency or authority under this article for three years after leaving his or her position as such an employee, officer, or member.

(3) With respect to contracts of such local governing authority or local authority, no employee, officer, or member of any local governing authority or local authority shall serve as an employee, agent, lobbyist, or board member for any private entity directly or indirectly under contract with or negotiating a contract with any state agency or authority under this article for three years after leaving his or her position as such an employee, officer, or member.

History. — Code 1981, § 50-23-28.2, enacted by Ga. L. 2011, p. 52, § 2/SB 122.

50-23-29. Rules and regulations.

The authority may promulgate and adopt rules and regulations to carry out the purposes of this part.

History. — Code 1981, § 50-23-29, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342.

ARTICLE 2

DIVISION OF ENERGY RESOURCES

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 230.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 336. 73 C.J.S., Public Administrative Law and Procedure, § 107 et seq. 81A C.J.S., States, §§ 75, 76, 229, 249, 251.

50-23-30. "Division" defined.

As used in this article, the term "division" shall mean the Division of Energy Resources of the Georgia Environmental Finance Authority.

History. — Code 1981, § 50-23-30, enacted by Ga. L. 1994, p. 1108, § 6; Ga. L. 2010, p. 949, § 1/HB 244.

50-23-31. Creation; executive director.

There is created within the Georgia Environmental Finance Authority a Division of Energy Resources. The executive director of the authority or an employee of the authority designated by the director shall serve as the director of the division and shall have full authority over the operation, personnel, and facilities of the division.

History. — Code 1981, § 50-23-31, enacted by Ga. L. 1994, p. 1108, § 6; Ga. L. 2010, p. 949, § 1/HB 244.

50-23-32. Powers and duties.

(a) The Division of Energy Resources of the Georgia Environmental Finance Authority shall have sole authority and responsibility for the administration of this article.

(b) The division shall have the authority and responsibility to do the following:

(1) Consult with other departments, agencies, or officials of this state or political subdivisions thereof and appropriate private and

professional organizations in matters related to energy. Any other department, educational institution, agency, or official of this state or political subdivision thereof which in any way would affect the administration or enforcement of this article is required to coordinate all such activities with the division to assure orderly and efficient administration and enforcement of this article;

(2) Do all things necessary to cooperate with the United States government and qualify for, accept, and disburse any public or private grant intended for the administration of this article;

(3) Apply for, receive, accept, and administer federal funds and programs made available to the state for the purposes of this article;

(4) Contract for services if such services cannot be satisfactorily performed by employees of the division or by any other state agency;

(5) Enter into agreements to carry out energy related research and planning jointly with other states or the federal government where appropriate;

(6) Inform, educate, and provide materials to other agencies of the state or political subdivisions thereof and to the public on all energy related matters, with particular emphasis on energy consumption trends and their social, environmental, and economic impacts; conservation and energy efficiency; and alternative energy technologies;

(7) Monitor and assess the relationship and impact of international, federal, and regional energy policies on the state's energy policies and programs;

(8) Collect and analyze data relating to past, present, and future consumption levels for all sources of energy and report such findings to the Governor annually. Such reports shall make recommendations on actions which would further the purposes of energy conservation and management;

(9) Prepare and present to the government for approval a standby emergency plan setting forth actions to be taken in the event of an impending serious shortage of energy or a threat to public health, safety, or welfare;

(10) Design and implement a program to encourage energy conservation and efficiency, to include, but not be limited to, public, commercial, industrial, governmental, and residential areas;

(11) Maintain awareness of all energy related research, with particular emphasis on alternative energy resources creating minimal environmental impact, which research could be of importance to the state's welfare for the purposes of providing constructive and supportive action;

(12) Solicit funds made available for the purposes of information, research studies, demonstrations, and projects of professional and civic orientation which are related to energy conservation and efficiency, the development and utilization of alternative energy technologies, and other appropriate energy related areas; and

(13) Design and implement programs to assist local governing authorities and other entities in implementing alternative energy projects.

History. — Code 1981, § 50-23-32, enacted by Ga. L. 1994, p. 1108, § 6; Ga. L. 2010, p. 949, § 1/HB 244.

Administrative rules and regulations. — Local government/non-profit energy conservation grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Grant Program Description for Georgia Environmental Facilities Authority, Chapter 267-3.

50-23-33. Employees.

Reserved. Repealed by Ga. L. 2006, p. 267, § 6/HB 1319, effective July 1, 2006.

Editor's notes. — This Code section was based on Code 1981, § 50-23-33, enacted by Ga. L. 1994, p. 1108, § 6.

50-23-34. Office of Energy Resources: Assets, funds, property, contracts, programs, obligations, interests transferred to authority.

Reserved. Repealed by Ga. L. 2006, p. 267, § 7/HB 1319, effective July 1, 2006.

Editor's notes. — This Code section was based on Code 1981, § 50-23-34, enacted by Ga. L. 1994, p. 1108, § 6.

50-23-35. Rules and regulations authorized.

The authority shall have the authority to promulgate and adopt rules and regulations to carry out the purposes of this article.

History. — Code 1981, § 50-23-35, enacted by Ga. L. 1994, p. 1108, § 6.

CHAPTER 24

DRUG-FREE WORKPLACE

Sec.		Sec.	
50-24-1.	Short title.	50-24-5.	Suspension, termination, or debarment of contractors.
50-24-2.	Definitions.	50-24-6.	Minimum standards established.
50-24-3.	Contractors to provide drug-free workplace.		
50-24-4.	Certification in contract.		

Code Commission notes. — Two 1990 Acts added a new Chapter 24 to Title 50. Pursuant to Code Section 28-9-5, the chapter enacted by Ga. L. 1990, p. 1081 has retained the Chapter 24 designation and the chapter enacted by Ga. L. 1990, p. 1566 has been redesignated as Chapter 25.

RESEARCH REFERENCES

ALR. — Liability for discharge of at-will employee for refusal to submit to drug testing, 79 A.L.R.4th 105.

Private employee's loss of employment because of refusal to submit to drug test as affecting right to unemployment compensation, 86 A.L.R.4th 309.

50-24-1. Short title.

This chapter shall be known and may be cited as the "Drug-free Workplace Act."

History. — Code 1981, § 50-24-1, enacted by Ga. L. 1990, p. 1081, § 1.

50-24-2. Definitions.

As used in this chapter, the term:

(1) "Contractor" means:

(A) Any person engaged in the business of constructing, altering, repairing, dismantling, or demolishing buildings; roads; bridges; viaducts; sewers; water and gas mains; streets; disposal plants; airports; dams; water filters, tanks, towers, and wells; pipelines; and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including, but not limited to, constructing, altering, or repairing property to be held either for sale or rental when the contract involves an expenditure by a state agency of at least $25,000.00; or

(B) Any person supplying goods, materials, services, or supplies pursuant to a contract or lease on behalf of a state agency as

described in Code Section 50-5-64 when the contract involves an expenditure by the state agency of at least $25,000.00.

(2) "Controlled substance" means a controlled substance as defined in Article 2 of Chapter 13 of Title 16.

(3) "Conviction" means a plea of guilty or a finding of guilt, including a plea of nolo contendere and regardless of treatment as a first offender under Article 3 of Chapter 8 of Title 42, or imposition of a sentence, or both, by any judicial body charged with a responsibility to determine violations of the federal or state criminal drug statutes.

(4) "Criminal drug statute" means any criminal statute involving the manufacture, sale, distribution, dispensation, use, or possession of any controlled substance or marijuana.

(5) "Drug-free workplace" means a site for the performance of work done in connection with a specific contract referred to in paragraph (1) of this Code section with a person, the employees of which person are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana in accordance with the requirements of this chapter.

(6) "Employee" means the employee of a contractor directly engaged in the performance of work pursuant to the provisions of the contract referred to in paragraph (1) of this Code section.

(7) "Individual" means a contractor that has no more than one employee, including the contractor.

(8) "Marijuana" means the substance as defined in paragraph (16) of Code Section 16-13-21.

(9) "Person" means a corporation, a partnership, a business trust, an association, a firm, or any other legal entity except an individual.

(10) "Principal representative" means the governing board or the executive head of a state agency who is authorized to enter into a contract with a contractor on behalf of the state agency.

(11) "State agency" means any department, division, board, bureau, commission, or other agency of the state government or any state authority.

(12) "Subcontractor" means a person hired by a contractor on an independent basis rather than as an employee and who performs work for the contractor under a contract as provided under subparagraph (A) of paragraph (1) of this Code section.

History. — Code 1981, § 50-24-2, enacted by Ga. L. 1990, p. 1081, § 1.

50-24-3. Contractors to provide drug-free workplace.

(a) The principal representative of a state agency shall not enter into a contract with any contractor, other than an individual, unless the contractor certifies to the principal representative that:

(1) A drug-free workplace will be provided for the contractor's employees during the performance of the contract; and

(2) Each contractor who hires a subcontractor to work in a drug-free workplace shall secure from that subcontractor the following written certification: "As part of the subcontracting agreement with (contractor's name) , (subcontractor's name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this contract pursuant to paragraph (7) of subsection (b) of Code Section 50-24-3."

(b) A contractor may satisfy the requirement for providing a drug-free workplace for employees by:

(1) Publishing a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establishing a drug-free awareness program to inform employees about:

(A) The dangers of drug abuse in the workplace;

(B) The contractor's policy of maintaining a drug-free workplace;

(C) Any available drug counseling, rehabilitation, and employee assistance program; and

(D) The penalties that may be imposed upon employees for drug abuse violations;

(3) Providing each employee with a copy of the statement provided for in paragraph (1) of this subsection;

(4) Notifying each employee in the statement provided for in paragraph (1) of this subsection that as a condition of employment, the employee shall:

(A) Abide by the terms of the statement; and

(B) Notify the contractor of any criminal drug statute conviction for a violation occurring in the workplace within five days of the conviction;

(5) Notifying the contracting principal representative within ten days after receiving from an employee or a subcontractor a notice of conviction as provided under subparagraph (B) of paragraph (4) of this subsection or after otherwise receiving actual notice of such a conviction;

(6) Making a good faith effort on a continuing basis to provide a drug-free workplace for employees; and

(7) Requiring that such contractor include in any agreement or contract with a subcontractor a provision that such subcontractor will provide a drug-free workplace for his employees by complying with the provisions of paragraphs (1), (2), (3), (4), and (6) of this subsection and by notifying the contractor of any criminal drug statute conviction for a violation occurring in the workplace involving the subcontractor or its employees within five days of receiving notice of the conviction. The contractor will notify the contracting principal representative pursuant to paragraph (5) of this subsection.

History. — Code 1981, § 50-24-3, enacted by Ga. L. 1990, p. 1081, § 1.

50-24-4. Certification in contract.

The principal representative of a state agency shall not enter into a contract with an individual or a person as a contractor unless the contract includes a certification by the individual or person that the individual or person will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the contract.

History. — Code 1981, § 50-24-4, enacted by Ga. L. 1990, p. 1081, § 1.

50-24-5. Suspension, termination, or debarment of contractors.

The principal representative of a state agency may suspend, terminate, or debar the contractor if the state agency determines that:

(1) The contractor or individual has made false certification under subsection (a) of Code Section 50-24-3; or

(2) The contractor has violated such certification by failing to carry out the requirements of Code Section 50-24-3.

History. — Code 1981, § 50-24-5, enacted by Ga. L. 1990, p. 1081, § 1.

50-24-6. Minimum standards established.

This chapter establishes minimum standards for contractors and in no way limits or restrains contractors from implementing additional procedures and policies having the objectives of achieving and maintaining a drug-free workplace.

History. — Code 1981, § 50-24-6, enacted by Ga. L. 1990, p. 1081, § 1.

CHAPTER 25

GEORGIA TECHNOLOGY AUTHORITY

Sec.
50-25-1. Establishment of Georgia Technology Authority.
50-25-2. Membership.
50-25-3. Administration; legal services.
50-25-4. General powers.
50-25-5. Access to records of state departments, agencies, boards, bureaus, commissions, and other authorities.
50-25-5.1. Chief information officer; appointment and removal; compensation; powers and duties.
50-25-6. Georgia Register.
50-25-7. Sale of files of public information; receipt of data in electronic format from public; application of statutory restrictions on confidentiality to authority.
50-25-7.1. Technology empowerment fund; appropriations; initiatives; steering committee.
50-25-7.2. Adherence to technical standards and specifications established by the authority.
50-25-7.3 through 50-25-7.6. [Repealed.]
50-25-7.7. Conflicts of interest; violations; penalties.
50-25-7.8. Contracts for purchases contrary to chapter shall be void; personal liability of official making such purchases; recovery of state funds [Repealed].
Sec.
50-25-7.9. "Person" defined; purchase of articles for personal or individual ownership prohibited; sale of articles for personal or individual ownership prohibited; violation a misdemeanor [Repealed].
50-25-7.10. Annual state information technology report; requirements; standards.
50-25-7.11. Authority of Governor; implementation by executive order.
50-25-7.12. Joint development of budgeting and accounting system [Repealed].
50-25-7.13. Adoption of procedures to ensure compliance with United States copyright laws and applicable licensing restrictions.
50-25-8. Tax exemption.
50-25-9. Jurisdiction of actions brought against authority.
50-25-10. Moneys received by authority deemed to be trust funds.
50-25-11. Chapter as supplemental and additional to other powers.
50-25-12. Ownership of data not affected.
50-25-13. Liberal construction of chapter.
50-25-14. Distribution of legislative information.
50-25-15. Georgia Technology Authority Overview Committee created; membership; organization.
50-25-16. Inquiry and review.

Code Commission notes. — Two 1990 Acts added a new Chapter 24 to Title 50. Pursuant to Code Section 28-9-5, the chapter enacted by Ga. L. 1990, p. 1081 has retained the Chapter 24 designation and the chapter enacted by Ga. L. 1990, p. 1566 has been redesignated as Chapter 25.

Administrative rules and regulations. — Georgia Technology Authority, Official Compilation of the Rules and Regulations of the State of Georgia, Title 665.

Law reviews. — For note on 2000 amendments of O.C.G.A. §§ 50-25-1 to 50-25-4 and 2000 enactment of O.C.G.A. §§ 50-25-5.1 and 50-25-7.1 to 50-25-7.13, see 17 Ga. St. U.L. Rev. 280 (2000).

50-25-1. Establishment of Georgia Technology Authority.

(a) There is established the Georgia Technology Authority as a body corporate and politic, an instrumentality of the state, and a public corporation; and by that name the authority may contract and be contracted with and bring and defend actions. The Georgia Technology Authority shall be the successor in interest to the public corporation created by Ga. L. 1990, p. 1566, as amended from time to time thereafter, and known as the "GeorgiaNet Authority," and all rights, powers, and duties of that public corporation shall be vested in the Georgia Technology Authority, subject, however, to all debts, obligations, liabilities, and duties incurred by that public corporation.

(b) As used in this chapter, the term:

(1) "Agency" means every state department, agency, board, bureau, commission, and authority but shall not include any agency within the judicial or legislative branch of state government, the Georgia Department of Defense, departments headed by elected constitutional officers of the state, or the University System of Georgia and shall also not include any authority statutorily required to effectuate the provisions of Part 4 of Article 9 of Title 11.

(2) "Authority" means the Georgia Technology Authority as established in this chapter.

(3) "Board" means the board of directors for the Georgia Technology Authority.

(4) "Chairperson" means the chairperson of the Georgia Technology Authority.

(5) "Chief information officer" means the chief information officer of the State of Georgia provided for by Code Section 50-25-5.1.

(6) "File" means a group of data consisting of a collection of related records which concern one or more functions of an agency and which is treated as a single unit in an electronic data processing system.

(7) "GeorgiaNet Division" means the former GeorgiaNet Authority.

(8) "Local government" means any county, city, or consolidated government in this state.

(9) "Private sector" means any nongovernment, privately owned entity in this state.

(10) "Public safety radio services" means all radio services of state, county, or municipal governments, as defined in Part 89 of the Rules and Regulations of the Federal Communications Commission.

(11) "Record" means a group of related fields of data used to electronically store data about a subject, such as an employee, customer, vendor, or other entity, or a transaction.

(12) "Technology" or "technology resources" means hardware, software, and communications equipment, including, but not limited to, personal computers, mainframes, wide and local area networks, servers, mobile or portable computers, peripheral equipment, telephones, wireless communications, public safety radio services, facsimile machines, technology facilities including, but not limited to, data centers, dedicated training facilities, and switching facilities, and other relevant hardware and software items as well as personnel tasked with the planning, implementation, and support of technology.

(13) "Technology enterprise management" means methods for managing technology resources for all agencies, considering the priorities of state planners, with an emphasis on making communications and sharing of data among agencies feasible and ensuring opportunities of greater access to state services by the public.

(14) "Technology policy" means processes, methods, and procedures for managing technology, technology resources, and technology procurement.

(15) "Technology portfolio management" means an approach for analyzing and ranking potential technology investments based upon state priorities and a cost benefit analysis to include, but not be limited to, calculated savings, direct and indirect, and revenue generation related to technology expenditures and selecting the most cost-effective investments. The minimization of total ownership costs, i.e., purchase, operation, maintenance, and disposal, of technology resources from acquisition through retirement while maximizing benefits is to be emphasized.

(c) The purpose of the authority shall be to provide for technology enterprise management and technology portfolio management as defined in this chapter, as well as the centralized marketing, provision, sale, and leasing, or execution of license agreements for access online or in volume, of certain public information maintained in electronic format to the public, on such terms and conditions as may be determined to be in the best interest of the state in light of the following factors:

(1) The public interest in providing ready access to public state information for individuals, businesses, and other entities;

(2) The public interest in providing ready access to state information for other governmental entities, so as to enhance the ability of such other governmental entities to carry out their public purposes;

(3) Fair and adequate compensation to the state for costs incurred in generating, maintaining, and providing access to state information;

(4) Cost savings to the state through efficiency in the provision of public information; and

(5) Such other factors as are in the public interest of the state and will promote the public health and welfare.

(d) The authority shall assist political subdivisions and other entities created by the Constitution or laws of this state, or by local governments, by setting forth policy initiatives for guidance in the use of technology to improve services, reduce costs, encourage technological compatibility, and promote economic development throughout the state.

(e) Services related to the marketing, provision, sale, and leasing or licensing of public information as provided in subsection (c) of this Code section shall continue to be marketed under the service mark of GeorgiaNet.

History. — Code 1981, § 50-25-1, enacted by Ga. L. 1990, p. 1566, § 1; Ga. L. 2000, p. 249, § 7; Ga. L. 2002, p. 415, § 50; Ga. L. 2005, p. 117, § 1/HB 312; Ga. L. 2017, p. 467, § 1/SB 117; Ga. L. 2018, p. 1112, § 50/SB 365.

Law reviews. — For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017).

50-25-2. Membership.

(a) The authority shall consist of 11 members as follows: two members appointed by the Lieutenant Governor; two members appointed by the Speaker of the House of Representatives; and seven members appointed by the Governor. The Governor shall designate a member of the authority to serve as chairperson of the authority. All of the aforesaid members shall be individuals employed in the private sector who shall have experience in technology issues concerning large public or private organizations or entities. The initial membership of the authority shall be appointed for terms of office as follows:

(1) The Lieutenant Governor shall appoint one member for a term of one year and one member for a term of three years;

(2) The Speaker of the House shall appoint one member for a term of one year and one member for a term of three years; and

(3) The Governor shall appoint four members for terms of one year and three members for a term of three years.

The terms of all succeeding members shall be for three years. The authority may elect a vice chairperson and a secretary and any other

officers deemed appropriate. In addition to all other members provided for in this subsection, there shall be one nonvoting ex officio member of the authority who shall be appointed by and serve at the pleasure of the Chief Justice of the Supreme Court.

(b) Each member of the authority may be authorized by the authority to receive an expense allowance and reimbursement from funds of the authority in the same manner as provided for in Code Section 45-7-21. Except as specifically provided in this subsection, members of the authority shall receive no compensation for their services.

(c) Seven members of the authority shall constitute a quorum; and the affirmative votes of six members of the authority shall be required for any action to be taken by the authority.

(d) There shall be an executive director of the authority to be titled the chief information officer and to be selected in the manner and to have the powers and duties set forth in Code Section 50-25-5.1.

(e) The authority may make rules and regulations for its own government.

(f) The authority shall have perpetual existence.

History. — Code 1981, § 50-25-2, enacted by Ga. L. 1990, p. 1566, § 1; Ga. L. 1991, p. 425, §§ 1, 2; Ga. L. 2000, p. 249, § 8.

50-25-3. Administration; legal services.

(a) The authority shall be assigned for administrative purposes to the Department of Administrative Services, as provided for in Code Section 50-4-3.

(b) The Attorney General shall provide legal services for the authority, in the same manner provided for in Code Sections 45-15-13 through 45-15-16.

History. — Code 1981, § 50-25-3, enacted by Ga. L. 1990, p. 1566, § 1; Ga. L. 2000, p. 249, § 9.

50-25-4. General powers.

(a) The authority shall have the following powers:

(1) To have a seal and alter the same at its pleasure;

(2) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created;

(3) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(4) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(5) To contract with state agencies or any local government for the use by the authority of any property, facilities, or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the authority; and such state agencies and local governments are authorized to enter into such contracts;

(6) To fix and collect fees and charges for data, media, and incidental services;

(7) To deposit or invest funds held by it in any state depository or in any investment which is authorized for the investment of proceeds of state general obligation bonds; and to use for its corporate purposes or redeposit or reinvest interest earned on such funds;

(8) To establish policies and standards for agencies to submit information technology plans to the authority. Such policies and standards shall include without limitation content, format, and frequency of submission;

(9) To establish technology policies and standards for all agencies, including, but not limited to, the role and responsibilities of chief information officers and chief information security officers within such agencies;

(10) To establish and maintain official employee purchase programs for technology resources facilitated by and through the authority for state employees and public school employees of county or independent boards of education;

(11) To provide oversight and program management for all technology resources for projects exceeding a cumulative investment of $1 million to accomplish goals of technology portfolio management;

(12) To develop such plans and reports as are deemed necessary and useful and to require agencies to submit periodic reports at such frequency and with such content as the board shall define;

(13) To prepare fiscal impact statements relating to necessary modifications and development of technology to support policies required by proposed legislation;

(14) To establish architecture for state technology infrastructure to promote efficient use of resources and to promote economic development;

(15) To provide processes and systems for timely and fiscally prudent management of the state's financial resources to include, without limitation, cash management;

(16) To establish advisory committees from time to time, including, without limitation, a standing advisory committee composed of representatives from agencies which shall make recommendations to the authority concerning such matters as policies, standards, and architecture;

(17) To coordinate with agencies, the legislative and judicial branches of government, and the Board of Regents of the University System of Georgia, regarding technology policy;

(18) To coordinate with local and federal governments to achieve the goals of the authority;

(19) To identify and pursue alternative funding approaches;

(20) To establish technology security policies, standards, and services to be used by all agencies;

(21) To conduct technology audits of all agencies;

(22) To facilitate and encourage the conduct of business on the internet;

(23) To expand and establish policies necessary to ensure the legal authority and integrity of electronic documents;

(24) To provide and approve as part of the state technology plan an implementation plan and subsequent policies and goals designed to increase the use of telecommuting among state employees;

(25) To create a center for innovation to create applications of technology that will yield positive, measurable benefits to the state;

(26) To contract through the Department of Administrative Services for the lease, rental, purchase, or other acquisition of all technology resource related supplies, materials, services, and equipment required by the state government or any of its agencies and designate such contracts as mandatory sources of supply for agency purchases or to authorize any agency to purchase or contract for technology;

(27) To establish and enforce standard specifications which shall apply to all technology and technology resource related supplies, materials, and equipment purchased or to be purchased for the use of the state government or any of its agencies, which specifications shall be based on and consistent with industry accepted open network architecture standards;

(28) To establish specifications and standards for technology resources, which shall apply to all technology to be purchased, licensed, or leased by any agency;

(29) To provide a waiver for any agency as to the use of any policies, standards, specifications, or contracts developed by the authority, when it is determined by the authority that such should not be applicable to such agency or that it will promote the best interests of the state to grant such a waiver;

(30) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(31) To coordinate the establishment and administration of one or more programs to increase economic, educational, and social opportunities for citizens and businesses through the promotion of the deployment of broadband services and other emerging communications technologies throughout the state and to exercise any power granted to the authority in Chapter 40 of this title; and

(32) To do all things necessary or convenient to carry out the powers conferred by this chapter.

(b) The authority shall transfer to the general fund of the state treasury any funds of the authority determined by the authority to be in excess of those needed for the corporate purposes of the authority.

History. — Code 1981, § 50-25-4, enacted by Ga. L. 1990, p. 1566, § 1; Ga. L. 1991, p. 425, § 3; Ga. L. 2000, p. 249, § 10; Ga. L. 2005, p. 117, § 2/HB 312; Ga. L. 2009, p. 133, § 1/HB 436; Ga. L. 2017, p. 467, § 2/SB 117; Ga. L. 2018, p. 629, § 4-3/SB 402; Ga. L. 2021, p. 922, § 50/HB 497.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "internet" for "Internet" in paragraph (a)(22).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2017, a semicolon was substituted for a period at the end of paragraph (a)(29).

Pursuant to Code Section 28-9-5, in 2018, "Chapter 40 of this title" was substituted for "Chapter 39 of this title" at the end of paragraph (a)(31).

Editor's notes. — Ga. L. 2018, p. 629, § 1/SB 402, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Achieving Connectivity Everywhere (ACE) Act.'"

OPINIONS OF THE ATTORNEY GENERAL

Agencies under authority of elected official other than Governor may set own technology policy. — Agencies under the authority, direction, or control of a state-wide elected official other than the Governor may set their own technology policy, but must contract through the Georgia Technology Authority for any technology resource purchase exceeding $100,000. 2001 Op. Att'y Gen. No. 2001-8.

50-25-5. Access to records of state departments, agencies, boards, bureaus, commissions, and other authorities.

All state departments, agencies, boards, bureaus, commissions, and authorities are authorized to make available to the authority access to public records or data which are available in electronic format upon terms mutually agreed to by the authority and any such department, agency, board, bureau, commission, or authority; provided, however, that no department, agency, board, bureau, commission, or authority shall be required to do so. The authority shall reimburse the department, agency, board, bureau, commission, or authority for costs incurred in providing such public records or data. The judicial and legislative branches are authorized to likewise provide such access to the authority.

History. — Code 1981, § 50-25-5, enacted by Ga. L. 1990, p. 1566, § 1.

50-25-5.1. Chief information officer; appointment and removal; compensation; powers and duties.

(a) There is created the position of the chief information officer for the State of Georgia who shall be both appointed and removed by a vote of a majority of the full membership to which the authority is entitled. The authority shall determine the compensation of the chief information officer. The chief information officer shall serve as the executive director of the authority.

(b) Subject to the general policy established by the authority, the chief information officer shall have the following powers and duties in addition to those otherwise enumerated in this chapter:

(1) To supervise, direct, account for, organize, plan, administer, and execute the functions required of the chief information officer by the authority;

(2) To provide assistance to agency heads in evaluating information officer performance for each agency and in selection of candidates for such positions;

(3) To establish performance management standards, approved by the board regarding success of projects, agency technology performance, and authority performance;

(4) To submit an annual budget for approval and adoption by the board;

(5) To review periodic reports submitted by agencies;

(6) To hire officers, agents, and employees, prescribe their duties and qualifications, and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director. The executive director and other employees of the authority shall be considered state employees for purposes of employment and retirement benefits and subject to any laws, rules, or regulations governing eligibility for such benefits. Any officer or employee of the authority who is already a member of the Employees' Retirement System of Georgia by virtue of services with another employer shall be entitled to credit for his or her services and shall not suffer any loss of such credit to which he or she is otherwise entitled. There shall be paid from the funds appropriated or otherwise available for the operation of the Georgia Technology Authority all employer's contributions required under this chapter;

(7) To contract for the services of individuals or organizations not employed full time by the authority who or which are engaged primarily in the rendition of personal services rather than the sale of goods or merchandise, such as, but not limited to, the services of attorneys, accountants, systems engineers, consultants, and advisers, and to allow suitable compensation for such services; and to make provisions for group insurance, retirement, or other employee benefit arrangements, provided that no part-time or contract employees shall participate in group insurance or retirement benefits; and

(8) To perform such other duties as the authority may direct from time to time.

History. — Code 1981, § 50-25-5.1, enacted by Ga. L. 2000, p. 249, § 11; Ga. L. 2009, p. 133, § 2/HB 436; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-109/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

50-25-6. Georgia Register.

(a) As used in this Code section, the term:

(1) "Agency" means:

(A) The Governor in the exercise of all executive powers;

(B) Each other state officer, department, departmental unit, board, bureau, or commission expressly authorized by law to make rules and regulations; and

(C) The General Assembly.

(2) "Meeting" means an open and public meeting of an agency to which Chapter 14 of this title applies but shall not include a special meeting called on less than 24 hours' notice.

(3) "Period" means the time since the closing date of the previous issue of the *Georgia Register*.

(b) The authority shall electronically publish or cause to be published a publication entitled the *Georgia Register* which shall include information made available by the agencies through electronic media related to:

(1) Notice of adoption of all rules filed during the period;

(2) A summary of each rule proposed during the period and a statement of the manner in which a copy of the complete text of the rule may be obtained;

(3) The complete text of all rules adopted during the period;

(4) All agency meeting notices showing the time, place, and date of the meeting, and the text of rules proposed for consideration or a reference where the text of the proposed rules is published, including a statement of the manner in which a copy of the agenda may be obtained;

(5) All executive orders or proclamations issued by the Governor;

(6) A summary of all state contracts or requests for proposals of an amount more than $100,000.00 and a statement of the manner in which a copy of the complete contract or request for proposal may be obtained;

(7) All official and unofficial Attorney General opinions and a summary of each opinion;

(8) The full text of agency emergency rules;

(9) Notice of land acquisitions or transfers with a value of more than $50,000.00, including a statement of the manner in which more detailed information may be obtained;

(10) For each session of the General Assembly:

(A) An abstract of each bill that is introduced;

(B) A synopsis of each bill that is enacted; and

(C) The status of each bill;

(11) The hearing calendar of the Supreme Court; and

(12) The hearing calendar of the Court of Appeals.

(c) No state appropriated funds shall be used for any purpose stated in this Code section.

History. — Code 1981, § 50-25-6, enacted by Ga. L. 1992, p. 1431, § 1; Ga. L. 2006, p. 162, § 1/HB 1307.

Editor's notes. — Ga. L. 1992, p. 1431, § 1, effective July 1, 1992, renumbered former Code Section 50-25-6 as present Code Section 50-25-7, pertaining to the sale of files of public information.

50-25-7. Sale of files of public information; receipt of data in electronic format from public; application of statutory restrictions on confidentiality to authority.

(a) The authority shall have exclusive authority to sell or execute license agreements on behalf of the executive branch of state government for an entire file of public information in any electronic medium or format; provided, however, that nothing contained in this subsection shall preclude the Department of Transportation from exercising its authority under subparagraph (a)(2)(B) of Code Section 32-4-2, nor shall anything contained in this subsection preclude any department, agency, board, bureau, commission, or authority from selling individual records maintained in electronic format or otherwise to the public or other governmental agencies or entities or from selling or otherwise disseminating any data which the authority declines to sell; and the authority may likewise be authorized by the judicial and legislative branches to sell on their behalf entire files of public information.

(b) The authority shall be authorized to receive data in electronic format from members of the public for the purpose of transmitting such data electronically to various departments, agencies, and institutions of the state.

(c) All of the statutory restrictions on the confidentiality or use of any departmental data and all of the penalties for any violation thereof shall apply to the authority and its employees.

History. — Code 1981, § 50-25-6, enacted by Ga. L. 1990, p. 1566, § 1; Ga. L. 1991, p. 425, § 4; Code 1981, § 50-25-7, as redesignated by Ga. L. 1992, p. 1431, § 1; Ga. L. 1994, p. 97, § 50; Ga. L. 2000, p. 1304, § 2.

Editor's notes. — Ga. L. 1992, p. 1431, § 1, effective July 1, 1992, renumbered former Code Section 50-25-7 as present Code Section 50-25-8, pertaining to tax exemptions.

50-25-7.1. Technology empowerment fund; appropriations; initiatives; steering committee.

(a) The authority is authorized and directed to establish a technology empowerment fund to be administered by the authority. The fund shall consist of such moneys appropriated or otherwise available to the authority as the board may determine from time to time to deposit therein. Subject to the appropriations process, the decision-making and priority-setting responsibilities for allocating these funds are vested in the chief information officer and the director of the Office of Planning and Budget.

(b) The chief information officer is authorized to identify and select individual projects, initiatives, and systems to improve service delivery to be funded through the technology empowerment fund. Such projects shall demonstrate, to the satisfaction of the chief information officer, reduced costs through the use of technology. In identification and selection of such projects, initiatives, and systems, the chief information officer shall give priority to those which provide demonstrable cost savings and improved service delivery on a recurring basis through the employment of technology and training. Eligible projects, initiatives, and systems to receive disbursements from the technology empowerment fund may be selected from agency budget requests. Quarterly reports of the operations of the technology empowerment fund shall be required to be made to the board, the Office of Planning and Budget, the Senate Budget and Evaluation Office, and the House Budget and Research Office to ensure proper oversight and accountability.

(c) Each project or initiative developed and supported from the technology empowerment fund shall employ technology that is compatible with the architecture and standards established by the authority and shall be accounted for by a discrete account established for the individual project or initiative item in the operating budget and capital budget.

(d) A steering committee composed of the chairperson of the House Committee on Appropriations or his or her designee from among the membership of the committee, the chairperson of the Senate Appropriations Committee or his or her designee from among the membership of the committee, the director of the Office of Planning and Budget, the House Budget and Research Office, the Senate Budget and Evaluation Office, the state auditor, and a representative from the Governor's office shall advise and consult with the chief information officer regarding initiatives to receive funding from the technology empowerment fund and shall receive quarterly reports from the chief information officer as to the status of funded projects.

History. — Code 1981, § 50-25-7.1, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2008, p. VO1, § 1-21/HB 529; Ga. L. 2014, p. 866, § 50/SB 340.

Editor's notes. — Ga. L. 2008, p. VO1, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

50-25-7.2. Adherence to technical standards and specifications established by the authority.

Nothing exempting any purchase from the competitive bidding laws set forth in Part 1 of Article 3 of Chapter 5 of this title shall exempt any technology resource purchase from the technical standards and specifications established by the authority unless specifically provided by action of the authority; provided, however, that technical standards established by the authority shall not conflict with mandated federal technical standards or requirements associated with the state administration of federally funded programs. The Department of Administrative Services shall not knowingly issue a procurement pursuant to the provisions of Part 1 of Article 3 of Chapter 5 of this title that does not adhere to the technical standards and specifications established by the authority unless specifically authorized to do so by the authority.

History. — Code 1981, § 50-25-7.2, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2005, p. 117, § 3/HB 312.

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Statute applies to agencies under authority of elected official other than Governor. — Agencies under the authority, direction, or control of a state-wide elected official other than the Governor may set the agencies' own technology policy, but must contract through the Georgia Technology Authority for any technology resource purchase exceeding $100,000. 2001 Op. Att'y Gen. No. 2001-8.

50-25-7.3 through 50-25-7.6.

Reserved. Repealed by Ga. L. 2005, p. 117, §§ 4-7/HB 312, effective July 1, 2005.

Editor's notes. — These Code sections were based on Code 1981, §§ 50-25-7.3, 50-25-7.4, 50-25-7.5, 50-25-7.6 enacted by Ga. L. 2000, p. 249, § 12.

50-25-7.7. Conflicts of interest; violations; penalties.

(a) Neither the executive director nor any employee of the authority shall be financially interested or have a personal beneficial interest in an amount greater than 1 percent ownership interest in any firm, corporation, partnership, or association which is involved either directly or indirectly in the purchase of or contract for any materials,

equipment, or supplies, or an ownership interest greater than 1 percent in any such firm, corporation, partnership, or association furnishing any such supplies, materials, or equipment to agencies or the authority. Except as provided in subsection (b) of this Code section, it shall be unlawful for the executive director or any of his or her assistants or any employee of the authority to accept or receive, directly or indirectly, from any person, firm, or corporation to whom any contract may be awarded any money or anything of more than nominal value or any promise, obligation, or contract for future reward or compensation.

(b) Nothing in this Code section shall preclude the executive director or any of his assistants or any employee of the authority from attending seminars, courses, lectures, briefings, or similar functions at any manufacturer's or vendor's facility or at any other place if any such seminar, course, lecture, briefing, or similar function is for the purpose of furnishing the executive director, assistant, or employee with knowledge and information relative to the manufacturer's or vendor's products or services and is one which the executive secretary to the Governor determines would be of benefit to the authority and to the state. In connection with any such seminar, course, lecture, briefing, or similar function, nothing in this Code section shall preclude the executive director, assistant, or employee from receiving meals from a manufacturer or vendor. Nothing in this Code section shall preclude the executive director, assistant, or employee from receiving educational materials and business related items of not more than nominal value from a manufacturer or vendor.

(c) Nothing contained in this Code section shall permit the executive director, assistant, or employee to accept free travel from the manufacturer or vendor outside the State of Georgia or free lodging in or out of the State of Georgia.

(d) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and shall be removed from office.

History. — Code 1981, § 50-25-7.7, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2007, p. 88, § 1/SB 280.

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Fingerprinting of offenders not required. — Violation of O.C.G.A. § 50-25-7.7(a) is not an offense designated as one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

50-25-7.8. Contracts for purchases contrary to chapter shall be void; personal liability of official making such purchases; recovery of state funds.

Reserved. Repealed by Ga. L. 2005, p. 117, § 8/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1981, § 50-25-7.8, enacted by Ga. L. 2000, p. 249, § 12.

50-25-7.9. "Person" defined; purchase of articles for personal or individual ownership prohibited; sale of articles for personal or individual ownership prohibited; violation a misdemeanor.

Reserved. Repealed by Ga. L. 2005, p. 117, § 9/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1981, § 50-25-7.9, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2001, p. 867, § 1.

50-25-7.10. Annual state information technology report; requirements; standards.

(a) The executive director shall publish in print or electronically an annual state information technology report that shall include:

(1) A report on the state's current and planned information technology expenditures, in cooperation with the Office of Planning and Budget and the state accounting officer, that shall include, but not be limited to, line-item detail expenditures on systems development, personal services, and equipment from the previous fiscal year and anticipated expenditures for the upcoming fiscal year;

(2) A prioritization of information technology initiatives to address unmet needs and opportunities for significant efficiencies or improved effectiveness within the state information technology enterprise; and

(3) A prioritized funding schedule for all major projects or initiatives, as well as cost estimates of the fiscal impact of the recommended information technology initiatives.

The state information technology report shall be submitted to the Governor, the General Assembly, and the board on or before October 1 of each year. The authority may adopt an accrual method of accounting. The authority shall not be required to distribute copies of the annual report to members of the General Assembly, but shall notify the members of the availability of the report in the manner in which it deems to be the most effective and efficient.

(b) Agencies shall be required to submit information technology reports to the authority not more than twice annually and with such content as the board shall define. The authority shall establish standards for agencies to submit the reports or updates. Standards shall include, without limitation, content, format, and frequency of updates.

History. — Code 1981, § 50-25-7.10, enacted by Ga. L. 2009, p. 133, § 3/HB 436; Ga. L. 2010, p. 838, § 10/SB 388.

Editor's notes. — This Code section, formerly concerning the annual reporting requirement and the contents of that report, was repealed by Ga. L. 2009, p. 133, § 3, effective April 21, 2009, and was based on Code 1981, § 50-25-7.10, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2005, p. 694, § 15/HB 293; Ga. L. 2005, p. 1036, § 47/SB 49.

50-25-7.11. Authority of Governor; implementation by executive order.

The Governor shall have the authority to transfer the technology resources as provided in this chapter of all state agencies, except those under the authority, direction, or control of the General Assembly or state-wide elected officials other than the Governor, to the authority. This Code section shall be implemented by executive order of the Governor, and the Governor shall have the authority to implement this Code section in whole or in part, in phases or stages, or in any manner or sequence which he or she may deem appropriate. In making such transfer, the Governor shall consult with the head of the agency affected and shall assure that the transfer shall not interrupt such agency's services.

History. — Code 1981, § 50-25-7.11, enacted by Ga. L. 2000, p. 249, § 12.

50-25-7.12. Joint development of budgeting and accounting system.

Reserved. Repealed by Ga. L. 2009, p. 133, § 4/HB 436, effective April 21, 2009.

Editor's notes. — This Code section was based on Code 1981, § 50-25-7.12, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2005, p. 694, § 16/HB 293; Ga. L. 2005, p. 1036, § 48/SB 49.

50-25-7.13. Adoption of procedures to ensure compliance with United States copyright laws and applicable licensing restrictions.

(a) The authority shall adopt procedures to ensure that the authority and agencies do not acquire, reproduce, distribute, or transmit computer software in violation of United States copyright laws and applicable licensing restrictions.

(b) The authority shall establish procedures to ensure that each agency has present on its computers and uses only computer software that complies with United States copyright laws and applicable licensing restrictions. These procedures may include, without limitation:

(1) Preparing agency inventories of the software present on its computers;

(2) Determining what computer software the agency has the authorization to use; and

(3) Developing and maintaining adequate record-keeping systems.

History. — Code 1981, § 50-25-7.13, enacted by Ga. L. 2000, p. 249, § 12.

RESEARCH REFERENCES

ALR. — Copyright protection of computer programs, 180 A.L.R. Fed. 1.

50-25-8. Tax exemption.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and are public purposes and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. The authority shall be required to pay no taxes or assessments upon any property acquired or under its jurisdiction, control, possession, or supervision. The tax exemption provided for in this Code section shall include an exemption from all sales and use tax on property purchased or used by the authority.

History. — Code 1981, § 50-25-7, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-8, as redesignated by Ga. L. 1992, p. 1431, § 1; Ga. L. 2009, p. 153, § 1C/HB 473.

Editor's notes. — Ga. L. 1992, p. 1431, § 1, effective July 1, 1992, redesignated former Code Section 50-25-8 as present Code Section 50-25-9, pertaining to jurisdiction of actions.

50-25-9. Jurisdiction of actions brought against authority.

Any action against the authority shall be brought in the Superior Court of Fulton County, Georgia, and such court shall have exclusive, original jurisdiction of such actions.

History. — Code 1981, § 50-25-8, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-9, as redesignated by Ga. L. 1992, p. 1431, § 1.

Editor's notes. — Ga. L. 1992, p. 1431, § 1, effective July 1, 1992, redesignated former Code Section 50-25-9 as present Code Section 50-25-10, pertaining to moneys received by the authority.

50-25-10. Moneys received by authority deemed to be trust funds.

All moneys received by the authority pursuant to this chapter shall be deemed to be trust funds to be held and applied solely as provided in this chapter.

History. — Code 1981, § 50-25-9, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-10, as redesignated by Ga. L. 1992, p. 1431, § 1.

Editor's notes. — Ga. L. 1992, p. 1431, § 1, effective July 1, 1992, redesignated former Code Section 50-25-10 as present Code Section 50-25-11, pertaining to other powers.

50-25-11. Chapter as supplemental and additional to other powers.

The foregoing Code sections of this chapter shall be deemed to provide an additional and alternative method for the doing of things authorized thereby and shall be regarded as supplemental and additional to powers conferred by the Constitution and laws of the State of Georgia and shall not be regarded as in derogation of any powers now existing.

History. — Code 1981, § 50-25-10, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-11, as redesignated by Ga. L. 1992, p. 1431, § 1.

50-25-12. Ownership of data not affected.

Nothing in this chapter shall be deemed to effect a transfer of ownership of any data from any department, agency, board, bureau, commission, or authority to the authority.

History. — Code 1981, § 50-25-11, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-12, as redesignated by Ga. L. 1992, p. 1431, § 1.

50-25-13. Liberal construction of chapter.

This chapter, being for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof.

History. — Code 1981, § 50-25-12, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-13, as redesignated by Ga. L. 1992, p. 1431, § 1.

50-25-14. Distribution of legislative information.

(a) The authority shall provide for the distribution in electronic format of the legislative information provided to the authority pursuant to Code Section 28-3-24.1. Such information may be made available in a dial-up bulletin board format or in such other formats as may be determined to be appropriate by the authority.

(b) Such legislative information shall be provided free of charge to Internet users, public schools, their students and faculty, and to public libraries and their patrons. When PeachNet becomes available to an individual school or library, such school or library may have the option of connection to PeachNet and may then receive such legislative information from GeorgiaNet through PeachNet free of charge. For this purpose, "free of charge" may include the provision of legislative information without charge. For this purpose, "public schools" may include all schools operated by this state's local public school systems, all units of the University System of Georgia, and all units of the Technical College System of Georgia. For this purpose, "public libraries" may include all city, county, and regional public libraries.

History. — Code 1981, § 50-25-14, enacted by Ga. L. 1995, p. 720, § 2; Ga. L. 1996, p. 1300, § 2; Ga. L. 2008, p. 335, § 10/SB 435.

50-25-15. Georgia Technology Authority Overview Committee created; membership; organization.

(a) The Georgia Technology Authority Overview Committee is created. The committee shall consist of three members of the House of Representatives appointed by the Speaker of the House and three members of the Senate appointed by the President of the Senate. The members shall serve for terms as members of the committee concurrent with their terms of office as members of the General Assembly. Members of the committee shall be appointed during the first 30 days of each regular legislative session which is held immediately following the election of members of the General Assembly; provided, however, that an appointment to fill any vacancy on the committee may be made at any time.

(b) The Speaker of the House of Representatives shall designate one of the members appointed by the Speaker as cochairperson of the committee. The President of the Senate shall designate one of the members appointed by the President of the Senate as cochairperson of the committee. The members designated as cochairpersons shall serve for terms as such officers concurrent with their terms as members of the committee. Other than the cochairpersons provided for in this subsection, the committee shall provide for its own organization.

History. — Code 1981, § 50-25-15, enacted by Ga. L. 2002, p. 974, § 1.

50-25-16. Inquiry and review.

The committee shall periodically inquire into and review the operations, contracts, financing, organization, and structure of the Georgia Technology Authority, as well as periodically review and evaluate the success with which said authority is accomplishing its legislatively created purposes.

History. — Code 1981, § 50-25-16, enacted by Ga. L. 2002, p. 974, § 1.

CHAPTER 26

HOUSING AND FINANCE AUTHORITY

Sec.
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50-26-1. Short title.

This chapter shall be known and may be cited as the "Georgia Housing and Finance Authority Act."

History. — Code 1981, § 50-26-1, enacted by Ga. L. 1991, p. 1653, § 1-2.

50-26-2. Legislative findings and declaration of necessity.

(a) The General Assembly finds that:

(1) There exists an inadequate supply of, and a pressing need for, financing and financial assistance to ensure the provision or preservation of safe, decent, energy efficient, and affordable housing and an

adequate system of housing finance for housing and housing related concerns within this state;

(2) There exists an inadequate supply of, and a pressing need for, financing and financial assistance to enterprises which desire to locate or improve or expand in the state, particularly those enterprises which desire to locate in the more rural areas of the state; and

(3) There exists an inadequate supply of, and a pressing need for, financing and financial assistance for health equipment and facilities and for health care services at lower than prevailing costs and a need to make this financing available to the largest number of hospitals feasible, including, but not limited to, those hospitals which serve disproportionately high numbers of indigent patients.

(b) It is declared to be the public policy of this state to promote the health, welfare, safety, morals, and economic security of its citizens through the retention of existing employment and alleviation of unemployment in all phases of enterprise; housing and health care; the elimination of the shortage of and the preservation of safe, decent, energy efficient, and affordable housing; and the elimination of the shortage of and the preservation of capital for housing finance.

(c) The General Assembly finds that the public policies of the state as set forth in this Code section cannot be fully attained without the use of public financing and financial assistance, either direct or indirect; that such public financing can best be provided by the creation of a state housing and finance authority with comprehensive and extensive powers therein, which powers shall include, but not be limited to, the power to issue bonds or revenue bonds to provide financing for enterprises, for housing, for housing finance, and for health facilities; and that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, and granted.

(d) It is the intent of the General Assembly to create an instrumentality that can facilitate economic development, housing and housing finance, and financing for health facilities and health care services throughout the state through its ability to access global capital markets and thereby provide credit to worthy businesses engaged in enterprises and located in or desiring to locate in this state or to provide housing or housing finance or financing for health facilities and health care services in this state on terms competitive with those available to businesses engaged in enterprises or available to those involved in housing or housing finance or the financing of health facilities that are able to access directly such capital markets.

(e) It is further the intent of the General Assembly that the authority created by this chapter work directly with and assist financial institutions and local development authorities in this state in creating,

offering, delivering, and servicing such additional financing alternatives to businesses engaged in enterprises and to businesses and individuals involved in housing or housing finance or the financing of health facilities and health care services.

History. — Code 1981, § 50-26-2, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, § 1.

Cross references. — Provision that agricultural or farming operations, places, establishments, or facilities shall not become a nuisance as a result of changed conditions in vicinity of such operations, places, establishments, or facilities, § 41-1-7.

Law reviews. — For article, "Financing Affordable Housing in Georgia: The Possibility of a Dedicated Revenue Source," see 13 Ga. St. U.L. Rev. 363 (1997).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1974, p. 975, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Purpose. — Georgia Residential Finance Authority was established by the General Assembly in order to encourage private investment in the building and rehabilitation of low income housing by providing mortgage loans at low interest rates to eligible low and moderate income borrowers. Rich v. State, 237 Ga. 291, 227 S.E.2d 761 (1976) (decided under Ga. L. 1974, p. 975).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 1 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 495. 64 Am. Jur. 2d, Public Securities and Obligations, §§ 98, 99.

50-26-3. Substitution of Georgia Housing and Finance Authority for Georgia Residential Finance Authority.

The authority shall receive all assets of, and the authority shall be responsible for any contracts, leases, agreements, or other obligations of, the Georgia Residential Finance Authority. The authority is substituted as a party to any such contract, agreement, lease, or other obligation and is responsible for performance thereon as if it had been the original party and is entitled to all benefits and rights of enforcement by any other parties to such contracts, agreements, leases, or other obligations.

History. — Code 1981, § 50-26-3, enacted by Ga. L. 1991, p. 1653, § 1-2.

50-26-4. Definitions.

As used in this chapter, the term:

(1) "Authority" means the Georgia Housing and Finance Authority or any subsidiary corporation created by the board of directors of the Georgia Housing and Finance Authority pursuant to this chapter.

(2) "Bonds" or "revenue bonds" means any bonds, revenue bonds, notes, interim certificates, bond or revenue anticipation notes, or other evidences of indebtedness of the authority issued under this chapter, including, without limitation, obligations issued to refund any of the foregoing, notwithstanding that such bonds may be secured by a mortgage or the full faith and credit of a participating provider, health care facility, business, enterprise, or any local government.

(3) "Business" means any lawful activity engaged in for profit or not for profit, whether organized as a corporation; a partnership, either general or limited; a sole proprietorship; or otherwise.

(4) "Cost of project," "cost of any project," or "cost of an enterprise" means, as the context may require, all, including but without limiting the generality of the foregoing, of the following:

(A) All costs of acquisition, by purchase or otherwise, and all costs of installation, modification, repair, reconditioning, renovation, remodeling, extension, rehabilitation, or preservation incurred in connection with any project or part of any project;

(B) All costs of real property, fixtures, equipment, or personal property used in or in connection with or necessary or convenient for any project or any facility or facilities related thereto, including, but not limited to, cost of land, interests in land, options to purchase, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates or the cost of securing any of the foregoing; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in connection with or necessary or convenient for any project or facility;

(C) All financing charges, including, but not limited to, premiums and prepayment penalties; interest accrued or to accrue prior to and up to three years after the acquisition, installation, financing, or commencement of a project and any other cost related to a project up to three years after such acquisition, installation, financing, refinancing, or commencement; any loan or loan guarantee fees; and any fees paid to or which accrue to the authority regardless of the timing of such fees, prior to, during the operation of, or after the acquisition, installation, financing, refinancing, or commencement of a project;

(D) The cost of architectural, engineering, legal, financing, surveying, planning, environmental reports and inspections, account-

ing services, and any and all other necessary technical personnel or other expenses necessary or incident to planning, providing, or determining the need for or the feasibility or practicability of a project or financial assistance to or financing of a project;

(E) All fees for legal, accounting, bond, underwriting, trustee, paying agent, option provider, credit enhancement, and fiscal agent services for bondholders under any bond resolution, trust agreement, indenture, or similar instrument or agreement and all expenses incurred by any of the above;

(F) The cost of plans and specifications for any project;

(G) The cost of title insurance and title examinations with respect to any project;

(H) Administrative costs, expenses, and fees rendered or incurred with respect to any project;

(I) The cost of the establishment of any reserves, including, but not limited to, any sinking fund and debt service reserves;

(J) All costs of servicing any loans made or acquired;

(K) The cost of the authority incurred in connection with providing a project, including reasonable sums to reimburse the authority for time spent by its agents or employees in providing and financing a project; and

(L) The cost paid or incurred for the administration of any program for the purchase or lease of or the making of loans for a project by the authority and any program for the sale or lease of or making of loans for a project to any participating provider, business, enterprise, local government, or any other person.

(5) "Enterprise" means a business engaged in manufacturing, producing, processing, assembling, repairing, extracting, warehousing, handling, or distributing any agricultural, manufactured, mining, or industrial product or any combination of the foregoing; a business engaged in furnishing or facilitating communications, computer services, research, or transportation; a business engaged in construction; and corporate and management offices and services provided in connection with any of the foregoing, in isolation or in any combination that involves, in each case, either the creation of new or additional employment, the retention of existing employment or payroll, or the increase of average payroll for employees of such enterprise; provided, however, that a shopping center, retail store or shop, or other similar undertaking which is solely or predominantly of a commercial retail nature shall not be an enterprise for the purposes of this chapter.

(6) "Facilities" means any real property, personal property, or mixed property of any and every kind.

(6.1) "Health care services" means any medical, health care, or health care related services provided by a health care provider licensed as a hospital by the Department of Community Health under Article 1 of Chapter 7 of Title 31, including, without limitation, health care services for indigent patients whether or not such services are supported directly or indirectly, and in whole or in part, through any payment or reimbursement program of any federal, state, or local governmental entity, agency, instrumentality, or authority.

(6.2) "Health facility" means any nonprofit health care facility which is licensed as a hospital by the Department of Community Health under Article 1 of Chapter 7 of Title 31, owned or operated by a participating provider, and utilized, directly or indirectly, in health care, medical research, or the training or teaching of health care personnel.

(7) "Housing" means a specific work or undertaking, whether acquisition, new construction, or rehabilitation, which is: (A) designed or financed for the primary purpose of providing safe, decent, energy efficient, appropriate, and affordable dwelling accommodations for persons and families of low or moderate income; or (B) designed or financed for special needs populations, including, but without limiting the generality of the foregoing, students, the aged, the infirm, the mentally disabled, the mentally ill, and the physically disabled; such undertakings may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as, but not limited to, site preparation, landscaping, and other nonhousing facilities such as recreational, administrative, health care, commercial, community, and staff facilities as the authority deems incidental, necessary, convenient, or desirable appurtenances; retirement homes, centers, and related facilities; nursing homes and related facilities; residential care facilities for the elderly or disabled; and long-term or life-care facilities for the elderly or disabled; or (C) without regard to income, for those geographic areas in which, in the opinion of the authority, the development, preservation, or improvement of housing is necessary for the purposes of: (i) economic development or expansion; or (ii) retaining in or attracting to such area qualified human resources essential to industrial, business, commercial, and residential operations and development. Such undertakings may be either single-family dwellings or multifamily dwellings, energy improvements thereto, or other improvements thereto and may include cooperatives, condominiums, transitional housing, homeless shelters, single-room occupancy housing, and any other building which provides residential opportunities.

(8) "Housing finance" means the purchase or acquisition of mortgages or participations therein; the making of loans or grants for housing; the administration of federal housing programs; the underwriting, servicing, and administration of mortgages or participations therein; and the allocation and administration of tax credits pertaining to housing.

(9) "Local government" or "local governing authority" means any municipal corporation or county or any state or local authority, board, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of this state.

(10) "Operating capital" means the cost of general operation and administration of a business for a temporary period, not to exceed one year.

(11) "Participating provider" means a nonprofit person, corporation, municipal corporation, public corporation, or political subdivision or other nonprofit entity, public or private, which:

(A) Is a hospital authority or is affiliated with a hospital authority organized and existing under the provisions of Article 4 of Chapter 7 of Title 31; or

(B) Owns or operates, directly or indirectly, or is affiliated with, at least one nonprofit health facility which is licensed as a hospital by the Department of Community Health under Article 1 of Chapter 7 of Title 31

and which contracts under this chapter with the authority for the financing, refinancing, lease, or other acquisition of a project.

(12) "Project" includes:

(A) Housing and facilities used in connection therewith;

(B) Housing finance;

(C) The acquisition, construction, or equipping of a health facility;

(D) Any one or more buildings or structures to be used in the production, manufacturing, processing, assembling, storing, or handling of any agricultural, manufactured, mining, or industrial product or any combination of the foregoing, in every case with all necessary or useful furnishings, machinery, equipment, parking facilities, landscaping, and facilities for outdoor storage, all as determined by the authority, which determination shall be final and not subject to review; and there may be included as part of any such project all improvements necessary to the full utilization thereof, including site preparation, roads and streets, sidewalks,

water supply, outdoor lighting, belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad, automotive, and air transportation, transportation facilities incidental to the project, and the dredging and improving of harbors and waterways, none of which foregoing descriptive words shall be construed to constitute a limitation, provided that none of the improvements described in this sentence shall be the primary purpose of any project;

(E) The acquisition, construction, leasing, or equipping of new industrial facilities or the improvement, modification, acquisition, expansion, modernization, leasing, equipping, or remodeling of existing industrial facilities;

(F) The acquisition, construction, improvement, or modification of any property, real or personal, used as air or water pollution control facilities which the authority has determined is necessary for the operation of the industry or industries which the same is to serve and which is necessary for the public welfare, provided that, for the purposes of this subparagraph, the term "air pollution control facility" means any property used, in whole or in substantial part, to abate or control atmospheric pollution or contamination by removing, altering, disposing of, or storing atmospheric pollutants or contaminants, if such facility is in furtherance of applicable federal, state, or local standards for abatement or control of atmospheric pollutants or contaminants; and provided, further, that, for the purpose of this subparagraph, the term "water pollution control facility" means any property used, in whole or in substantial part, to abate or control water pollution or contamination by removing, altering, disposing, or storing pollutants, contaminants, wastes, or heat, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, holding ponds, lagoons, and appurtenances thereto, if such facility is in the furtherance of applicable federal, state, or local standards for the abatement or control of water pollution or contamination;

(G) The acquisition, construction, improvement, or modification of any property, real or personal, used as or in connection with a sewage disposal facility or a solid waste disposal facility which the authority has determined is necessary for the operation of the industries which the same is to serve and which is necessary for the public welfare, provided that, for the purposes of this subparagraph, the term "sewage disposal facility" means any property used for the collection, storage, treatment, utilization, processing, or final disposal of sewage; for the purposes of this subparagraph, the term "solid waste disposal facility" means any property used for the collection, storage, treatment, utilization, processing, or final dis-

posal of solid waste; for the purposes of this subparagraph, the term "solid waste" means garbage, refuse, or other discarded solid materials, including solid waste materials resulting from industrial and agricultural operations and from community activities but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as salt, dissolved or suspended solids in industrial waste-water effluents, and dissolved materials in irrigation return flows; and for the purposes of this subparagraph, the word "garbage" includes putrescible wastes, including animal and vegetable matters, animal offal and carcasses, and recognizable industrial by-products but excludes sewage and human wastes; and the word "refuse" includes all nonputrescible wastes;

(H) The acquisition, construction, leasing, or financing of:

(i) An office building facility and related real and personal property for use by the authority or by any business or charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state and which shall be adjacent to or used in conjunction with any other existing or proposed project defined in this paragraph, which existing or proposed project is used or intended to be used by the authority or by such business or charitable corporation, association, or similar entity;

(ii) A separate office building facility and related real and personal property for use by the authority or by any business or charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state; or

(iii) Any real or personal property to be used by a charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state;

(I) The acquisition, construction, equipping, improvement, modification, or expansion of any property, real or personal, for use by an enterprise;

(J) The acquisition, construction, installation, modification, renovation, or rehabilitation of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of the development of

trade, commerce, industry, and employment opportunities. A project may be for any industrial, commercial, business, office, parking, public, or other use, provided that a majority of the members of the authority determines, by a duly adopted resolution, that the project and such uses thereof would further the public purpose of this chapter;

(K) The acquisition, construction, improvement, modification, or expansion of a planned community development; and

(L) The financing for the provision of health care services.

(13) "State" means the State of Georgia.

History. — Code 1981, § 50-26-4, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, §§ 2-8; Ga. L. 2009, p. 453, § 1-4/HB 228.

50-26-5. Creation of authority; composition; election and terms of officers; expense allowance; delegation of power; executive director; use of funds; legal services provided by Attorney General.

(a) There is created a body corporate and politic to be known as the Georgia Housing and Finance Authority which shall be deemed to be an instrumentality of the state, and not a state agency, and a public corporation performing an essential governmental function.

(b) The authority is assigned to the Department of Community Affairs for administrative purposes only.

(c) The authority shall consist of the same persons who comprise the Board of Community Affairs. The members are subject to the code of ethics covering members of boards, commissions, and authorities as contained in Code Sections 45-10-3 through 45-10-5 and are subject to removal for violation of the code of ethics as provided in those Code sections. Any vacancy created by any such removal for cause shall be filled by the Governor. Each member shall serve under the same terms and conditions as provided for in Code Section 50-8-4.

(d) The terms of all members of the authority serving immediately prior to July 1, 1996, shall expire effective July 1, 1996.

(e) At each July meeting, the authority shall elect from its membership a chair, a vice chair, a secretary, and such other officers as it may determine from time to time. Officers shall serve for a term of one year beginning with their election and qualification and ending with the election and qualification of their respective successors. No person shall hold the same office for more than one consecutive term, and no member of the authority shall hold more than any one office of the authority.

(f) The members of the authority shall receive the same expense allowance per day as that received by members of the General Assembly, plus actual transportation expenses incurred while traveling by public carrier or the allowance authorized for state officials and employees for the use of a personal automobile, for each day a member is in attendance at a meeting of the authority or a committee meeting of the authority. Notwithstanding the foregoing, no member shall receive an expense allowance or transportation reimbursement if said member is entitled to receive an expense allowance, transportation reimbursement, or per diem allowance for performance of duties as a member of the Board of Community Affairs for work performed on that day.

(g) Except for the authorization of the issuance of bonds, the authority may delegate to the executive director such powers and duties as it may deem proper.

(h) The commissioner of community affairs shall be the executive director of the authority. The executive director shall appoint such directors, deputies, and assistants as may be necessary to manage the operations of the authority and may organize the authority into such divisions, sections, or offices as may be deemed necessary or convenient.

(i) No part of the funds of the authority shall inure to the benefit of or be distributed to its members or officers or other private persons, except that the authority shall be authorized and empowered to pay reasonable compensation for services rendered and to reimburse expenses incurred. In addition, the authority shall be authorized and empowered to make loans and grants, allocate credits, provide financial assistance, and otherwise exercise its other powers in furtherance of its corporate purposes. No such loans or grants or financial assistance shall be made to, no credits shall be allocated to, and no property shall be purchased or leased from or sold, leased, or otherwise disposed of to any member or officer of the authority in his or her individual capacity or by virtue of partnership or ownership of a for profit corporation. This subsection does not preclude loans or grants to, or financial assistance or allocation of credit to, or purchase or lease from or sale, lease, or disposal of property to any subsidiary corporation of the authority.

(j) The Attorney General shall provide legal services for the authority, and, in connection therewith, Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

History. — Code 1981, § 50-26-5, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1996, p. 872, § 9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "community affairs" was substituted for "the Department of Community Affairs" in subsection (h).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1975, pp. 1651, 1655, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Adoption of standard metropolitan statistical areas lawful delegation of power. — By adopting the standard metropolitan statistical areas (SMSA) of the state to determine representation, the General Assembly has not illegally delegated its legislative power to the United States Department of Commerce Office of Management and Budget, which defines SMSA's. Rich v. State, 237 Ga. 291, 227 S.E.2d 761 (1976) (decided under Ga. L. 1975, pp. 1651, 1655).

Public members are proper members of the Georgia Residential Finance Authority, and any and all actions taken by them as members of that body are valid and enforceable. Rich v. State, 237 Ga. 291, 227 S.E.2d 761 (1976) (decided under Ga. L. 1975, pp. 1651, 1655).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1974, p. 1975, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Appointment of commissioner of other department as director. — Board of Directors of the Georgia Residential Finance Authority may not appoint an individual who serves as the commissioner of community affairs as the executive director of the authority while the individual is still an ex-officio member of that board. However, there is no legal prohibition against appointment after the commissioner resigns the position as commissioner and after a successor has been appointed and qualified since the membership on the Authority's Board of Directors will cease. 1980 Op. Att'y Gen. No. 80-13 (decided under Ga. L. 1974, p. 1975).

50-26-6. Limitation on liability.

Neither the members of the authority nor any officer or employee of the authority acting in behalf thereof, while acting within the scope of his or her authority, is subject to any liability resulting from:

(1) The construction, ownership, maintenance, or operation of any project financed with the assistance of the authority; or

(2) Carrying out any of the powers given in this chapter.

History. — Code 1981, § 50-26-6, enacted by Ga. L. 1991, p. 1653, § 1-2.

OPINIONS OF THE ATTORNEY GENERAL

Board members protected from liability. — Within certain parameters and with diligent, good faith supervision of the enterprise, a member of the board of directors acting within the scope of his or her authority in carrying out the authority's stated powers may rely upon O.C.G.A. § 50-26-6 for protection from imposition of personal liability. 1995 Op. Att'y Gen. No. 95-40.

50-26-7. Powers of authority vested in board of directors; quorum; action taken by majority.

(a) The powers of the authority shall be vested in the members of the board of directors in office from time to time; and a majority of members in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the authority.

(b) Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of a majority of present and voting board members.

(c) No vacancy in the membership of the board shall impair the right of the members to exercise all the powers and perform all duties of the board.

History. — Code 1981, § 50-26-7, enacted by Ga. L. 1991, p. 1653, § 1-2.

50-26-8. Powers of authority.

(a) The authority shall have any and all powers necessary or convenient to its usefulness in carrying out and effectuating the purposes and provisions of this chapter which are not in conflict with the Constitution of this state, including, but without limiting the generality of the foregoing, the following powers:

(1) To sue and be sued in contract and in tort and to complain and defend in all courts;

(2) To adopt and alter a corporate seal;

(3) To adopt, amend, and repeal bylaws, rules and regulations, and policies and procedures for the regulation of its affairs and the conduct of its business, the election and duties of officers and employees of the authority, and such other matters as the authority may determine;

(4) To appoint and select officers, agents, and employees, including professional and administrative staff and personnel, financial advisers, consultants, fiscal agents, trustees, and accountants and to fix their compensation and pay their expenses, including the power to contract with the Department of Community Affairs for professional, technical, clerical, and administrative support as may be required;

(5) To procure or to provide insurance against any loss in connection with its programs, property, and other assets;

(6) To borrow money and to issue notes and bonds and other obligations to accomplish its public purposes and to provide for the rights of the lenders or holders thereof;

(7) To pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority, including, but not limited to, real property, fixtures, personal property, intangible property, revenues, income, charges, fees, or other funds and to execute any lease, trust indenture, trust agreement, resolution, agreement for the sale of the authority's bonds, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such bonds, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument; the state, on behalf of itself and each political subdivision, public body corporate and politic, or taxing district therein, waives any right it or such political subdivision, public body corporate and politic, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(8) To purchase notes or participations in notes evidencing loans which are secured by mortgages or security interests and to enter into contracts in that regard;

(9) To extend credit, to make loans, to participate in the making of loans, to enter into commitments for the purchase of mortgages or participations, to acquire and contract to acquire mortgages or participations, to provide credit enhancement, and to provide or procure insurance;

(10) To collect fees and charges in connection with its bonds, loans, commitments, insurance, credit enhancement, and servicing, including, but not limited to, reimbursement of costs of financing;

(11) To sell loans, mortgages, security interests, and other obligations of the authority at public or private sale; to negotiate modifications or alterations in loans, mortgages, security interests, and other obligations of the authority; to foreclose on any mortgage or security interest in default or commence any action to protect or enforce any right conferred upon it by any law, mortgage, security agreement, deed of trust, deed to secure debt, contract, or other agreement; to bid for and purchase property which was the subject of such loan, mortgage, security interest, or other obligation of the authority at any foreclosure or at any other sale; to acquire or take possession of such property; and to exercise any and all rights as provided by law or contract for the benefit or protection of the authority or mortgage holders or holders of the authority's notes, bonds, or other obligations;

(12) To service mortgages and to make and execute contracts for the servicing of mortgages made or acquired by the authority and to pay reasonable compensation for such servicing;

(13) To procure or to make and execute contracts, agreements, and other instruments, including interest rate swap or currency swap agreements, letters of credit, or other credit facilities or agreements, and to take such other actions and do such other things as the authority may deem appropriate to secure the payment of any loan, lease, or purchase payment owed to the authority or any bonds or other obligations issued by the authority, including the power to pay the cost of obtaining any such contracts, agreements, and other instruments;

(14) To receive and use the proceeds of any tax levied by the state or a local government or taxing district of the state enacted for the purposes of providing credit enhancement or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(15) To receive and administer gifts, grants, and devises of money and property of any kind and to administer trusts;

(16) To acquire real and personal property in its own name to promote any of the public purposes of the authority or for the administration and operation of the authority;

(17) To provide and administer grant moneys for any of the public purposes of the authority and to comply with all conditions attached thereto;

(18) To contract for any period, not exceeding 50 years, with the state, any institution, department, agency, or authority of the state, or any local government within the state for the use by the authority of any facilities or services of any such entity or for the use by any such entity of any facilities or services of the authority, provided that such contracts shall deal with such activities and transactions as the authority and any such entity with which the authority contracts are authorized by law to undertake;

(19) To invest any accumulation of its funds, including, but without limiting the generality of the foregoing, funds received from the issuance of bonds and any sinking funds or reserves in any manner as it determines is in its best interests and to purchase its own bonds and notes;

(20) To hold title to any project financed by it, but it shall not be required to do so;

(21) To establish eligibility standards for financing and financial assistance and technical assistance authorized for projects under this chapter;

(22) To sell or otherwise dispose of unneeded or obsolete equipment or property of every nature and every kind;

(23) To lease as lessor any facility or any project for such rentals and upon such terms and conditions as the authority considers advisable and not in conflict with this chapter;

(24) To sell by installment or otherwise to sell by option or contract for sale and to convey all or any part of any item of any project or facility for such price and upon such terms and conditions as the authority considers advisable and which are not in conflict with this chapter;

(25) To manage property, intangible, real, and personal, owned by the authority or under its control by lease or by other means;

(26) To do any and all things necessary, desirable, convenient, or incidental for the accomplishment of the objectives of this chapter and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the public purposes of the authority or the Constitution and laws of this state, including:

(A) The power to retain accounting and other financial services;

(B) The power to purchase all kinds of insurance, including, without limitation, insurance against tort liability and against risks of damage to property;

(C) The power to indemnify and hold harmless any parties contracting with the authority or its agents from damage to persons or property; and

(D) The power to act as self-insurer with respect to any loss or liability and to create insurance reserves;

(27) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and to accomplish any of the purposes of the authority. Any such subsidiary corporation shall be a nonprofit corporation, a public body, a political subdivision of the state, and an instrumentality of the state and shall exercise essential governmental functions. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. The members of the board of directors of the authority shall constitute the members of and shall serve as directors of any subsidiary corporation and such shall not constitute a conflict of interest. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority

or to any successor to the authority or, failing such succession, to the State of Georgia. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents;

(28) To lease any authority owned facilities or property or any state owned facilities or property which the authority is managing under contract with the state; and no such lease agreement shall be deemed to be a contract subject to any law requiring that contracts shall be let only after receipt of competitive bids;

(29) To provide advisory, technical, consultative, training, management, educational, and project assistance services to the state and any institution, department, agency, or authority of the state, to any local government, or to any nonprofit or for profit business, corporation, partnership, association, sole proprietorship, or other entity or enterprise and to enter into contracts with the foregoing to provide such services; and the state, any institution, department, agency, or authority of the state, and any local government are authorized to enter into contracts with the authority for such services, to perform all duties required by the contract, and to pay for such services as may be provided them;

(30) To impose restrictive covenants which shall be deemed to be running with the land to any person, corporation, partnership, or other form of business entity which receives financial assistance from the authority, which form of financial assistance shall include tax credits, bond financing, grants, guarantees of the authority, guarantees of the state, insurance of the authority, and all other forms of financial assistance, regardless of whether the authority enjoys privity of estate or whether the covenant touches and concerns the property burdened; and such restrictive covenants shall be valid for a period of up to the later of 40 years or the termination or satisfaction of such financial assistance, notwithstanding any other provision of law;

(31) To enter into partnership agreements, to sell and purchase partnership interests, and to serve as general or limited partner of a partnership created to further the public purposes of the authority;

(32) To allocate and issue low-income housing credits under Section 42 of the Internal Revenue Code of 1986, as amended, and to take all other actions and impose all other conditions which are required by federal law or which in the opinion of the authority are necessary or convenient to ensure the complete, effective, efficient, and lawful allocation of and utilization of the low-income housing credit program. Such conditions may include barring applicants from partici-

pation in the tax credit program due to abuses of the tax credit program and imposing more stringent conditions for receipt of the credit than are required by Section 42 of the Internal Revenue Code. The authority may establish rounds for the competitive allocation of low-income credits and such applications shall not be available for public inspection until the time period for submission of applications for that competitive round has expired;

(33) To allocate and issue any federal or state tax credits for which the authority is designated as the state allocating agency;

(34) To make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;

(35) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agency;

(36) To finance or facilitate in any manner the provision of health care services in the state, directly or indirectly and through one or more intermediaries, including, without limitation, the state; any institution, department, agency, fund, or authority of the state or created under state law; any political subdivision of the state; or any other public or private business, enterprise, agency, corporation, or authority, or any other entity; provided, however, that the authority shall not be authorized to directly provide health care services to patients; and

(37) The authority shall have the power to contract with the Department of Community Affairs for any purpose necessary or incidental to carrying out or performing the duties, responsibilities, or functions of the authority in exercising the power and management of the authority; provided, however, such contracts shall not delegate the authorization of the issuance of any bonds or other indebtedness of the authority. No part of the funds or assets of the authority shall be distributed to the Department of Community Affairs or any other department, authority, or agency of the state unless otherwise provided by law, except that the authority shall be authorized and empowered to pay reasonable compensation for services rendered and to reimburse expenses incurred and except as may be deemed necessary or desirable by the authority to fulfill the purposes of the authority as set forth in this chapter. Nothing in this paragraph shall be construed as precluding the provision by the Department of Community Affairs or any other department, authority, or agency of the state and the authority of joint or complementary services or programs within the scope of their respective powers.

(b) The powers enumerated in each paragraph of subsection (a) of this Code section are cumulative of and in addition to those powers

enumerated in the other paragraphs of subsection (a) of this Code section and elsewhere in this chapter and no such power limits or restricts any other power of the authority.

(c) This chapter, being for the welfare of this state and being for the welfare of its citizens, shall be liberally construed to effect the purposes specified in this chapter.

(d) No portion of the state ceiling, as defined in Code Section 36-82-182, shall be set aside or reserved, and no separate pool or share shall be created within the state ceiling, for the purpose of reserving for or allocating to the authority a portion of the state ceiling for use by the authority in the financing of, or the provision of financial assistance for, any enterprise. The distribution to the authority by the Department of Community Affairs of any portion of the state ceiling for the purpose of permitting the financing of any enterprise shall be accomplished based upon the merits of each enterprise and shall be accomplished upon the same terms and conditions, without preference or priority of any kind, as shall be applicable to the distribution of any portion of the state ceiling for the benefit of any enterprise proposed to be financed by a local authority.

(e) No personal financial information submitted to the authority in connection with any of its programs shall be subject to public disclosure.

History. — Code 1981, § 50-26-8, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, §§ 9-13; Ga. L. 1996, p. 872, §§ 10, 11.

U.S. Code. — Section 42 of the Internal Revenue Code of 1986, referred to in paragraph (a)(32) of this Code section, is codified at 26 U.S.C. § 42.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1974, pp. 975, 983, which were subsequently repealed but were succeeded by provisions of this Code section, are included in the annotations for this Code section.

Effect of section. — Ga. L. 1974, pp. 975, 983 amply establishes the power of the authority to make rules and regulations. Rich v. State, 237 Ga. 291, 227 S.E.2d 761 (1976) (decided under Ga. L. 1974, pp. 975, 983).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1974, p. 975, which was subsequently repealed but was succeeded by provisions of this Code section, are included in the annotations for this Code section.

Rental agreements for office space. — Georgia Residential Finance Authority may seek, but is not required to seek, assistance and approval of the Department of Administrative Services, Division of Property and Space Management, regarding rental agreements for the authority's office space. 1982 Op. Att'y Gen. No. 82-24 (decided under Ga. L. 1974, p. 975).

Mandatory federal waiting period for former board of directors seeking financial participation. — Federal HOME Regulations, 24 C.F.R.

§ 92.356(b)(1993), prohibit a former member of the board of directors of the Georgia Housing and Finance Authority from participating in or benefitting from financial programs of the authority for a period of one year and further prohibit such participation in HOME programs of other participating jurisdictions. 1994 Op. Att'y Gen. No. 94-12.

Real property acquisitions for multifamily affordable housing. — Real property acquisitions from the Resolution Trust Corporation for multifamily affordable housing constitute a permissible project within the powers of the Georgia Housing and Finance Authority. 1994 Op. Att'y Gen. No. 94-19.

Limitation on power of Georgia Housing and Finance Authority. — Georgia Housing and Finance Authority does not have statutory power to provide marketing, fund management, and underwriting services to a private, nonprofit lending entity. 1995 Op. Att'y Gen. No. 95-24.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 511, 512.

C.J.S. — 64 C.J.S., Municipal Corporations, §§ 557 et seq., 1541, 1542, 1571. 64A C.J.S., Municipal Corporations, §§ 1573 et seq., 1609.

50-26-9. Power to issue bonds and incur indebtedness; exemption from taxation.

(a) The authority may issue bonds for the purpose of facilitating economic development; for the improvement of public health, safety, and welfare; and for other public purposes through the provision of financing and financial assistance for projects, including, without limitation, health care services, either directly or indirectly through a financial institution; a lender; the state; any institution, department, agency, fund, or authority of the state or created under any state law; any political subdivision of the state; or any other public agency, public or private business, enterprise, agency, corporation, authority, or any other entity.

(b) The authority shall have the power to borrow money and to issue bonds, regardless of whether the interest payable by the authority incident to such loans or bonds or income derived by the holders of the evidence of such indebtedness or bonds is, for purposes of federal taxation, includable in the taxable income of the recipients of such payments or is otherwise not exempt from the imposition of such taxation on the recipient.

(c) No bonds, notes, or other obligations of, and no indebtedness incurred by, the authority shall constitute an indebtedness or obligation or a pledge of the faith and credit of the State of Georgia or its agencies; nor shall any act of the authority in any manner constitute or result in the creation of an indebtedness of the state or its agencies or a cause of action against the state or its agencies; provided, however, that the state, to the extent permitted by its Constitution, may guarantee

payment of such bonds, notes, or other obligations as guaranteed revenue debt.

(d) It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purpose are in all respects for the benefit of the people of this state and are a public purpose and the authority will be performing an essential government function in the exercise of the powers conferred upon it by this chapter. The state covenants with the holders of the bonds that the authority shall not be required to pay any taxes or assessments upon any of the property acquired or leased by the authority or under the jurisdiction, control, possession, or supervision of the authority or upon the activities of the authority in the financing of the activities financed by the authority or upon any principal, interest, premium, fees, charges, or other income received by the authority and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The exemption from taxation is declared to specifically extend to any subsidiary corporation created by the board of directors of the authority but shall not extend to tenants or lessees of the authority unless otherwise exempt from taxation. The exemption from taxation shall include exemptions from sales and use taxes on property purchased by the authority or for use by the authority.

(e) The state does pledge to and agree with the holders of any bonds issued by the authority pursuant to this chapter that the state will not alter or limit the rights vested in the authority to fulfill the terms of any agreement made with or for the benefit of the holders of bonds or in any way impair the rights and remedies of bondholders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders are fully met and discharged or funds for the payment of such are fully provided. The authority is authorized to include this pledge and agreement of the state in any agreement with bondholders.

History. — Code 1981, § 50-26-9, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, § 14; Ga. L. 1996, p. 872, § 12.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1975, pp. 975, 983, which were subsequently repealed but were succeeded by provisions of this Code section, are included in the annotations for this Code section.

Debt not state obligation or pledge of credit. — Debt of an authority or agency of the state does not obligate the state or pledge the credit of the state as is required to be made explicit by the authority on the face of the bonds the authority issues. Rich v. State, 237 Ga. 291, 227 S.E.2d 761 (1976) (decided under Ga. L. 1974, pp. 975, 983).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1981, pp. 184, 1036 and former O.C.G.A. § 8-3-180 et seq., which were subsequently repealed but were succeeded by provisions of this Code section, are included in the annotations for this Code section.

Transfer of funds to family farm fund. — Authority could transfer funds from general fund to family farm fund through April 30, 1981, only. 1981 Op. Att'y Gen. No. 81-30 (decided under Ga. L. 1981, pp. 184, 1036).

Authority may issue bonds which are subject to federal taxation, but the authority has no power under either Part One or Part Two of the authority's enabling legislation (Ga. L. 1974, p. 975 and Ga. L. 1983, p. 1228) to issue bonds which are subject to state taxation. 1988 Op. Att'y Gen. No. 88-17 (decided under former O.C.G.A. § 8-3-180 et seq.).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 495, 579. 64 Am. Jur. 2d, Public Securities and Obligations, §§ 11 et seq., 50, 55, 73 et seq.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2036, 2118 et seq., 2125 et seq.

50-26-10. Obligations not subject to "Georgia Uniform Securities Act of 2008"; payment of operating costs; authority's revenue; bond anticipation notes; terms of bond; replacement of bond; validation; interest rates.

(a) The offer, sale, or issuance of bonds, notes, or other obligations by the authority shall not be subject to regulation under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008." No notice, proceeding, or publication except those required in this chapter is necessary to the performance of any act authorized in this chapter; nor is any such act subject to referendum.

(b) The authority shall fix such rates, fees, and charges for loans and for use of its services and facilities as is sufficient in the aggregate (when added to any other grants or funds available to the authority) to provide funds for the payment of the interest on and principal of all bonds payable from said revenues and to meet all other encumbrances upon such revenues as provided by any agreement executed by the authority in connection with the exercise of its powers under this chapter and for the payment of all operating costs and expenses which shall be incurred by the authority, including provisions for appropriate reserves, except for funds appropriated to the State of Georgia Guaranteed Revenue Debt Common Reserve Fund with respect to any bonds issued by the authority as guaranteed revenue debt; provided, however, that such costs and expenses shall include any reimbursement to the State of Georgia Guaranteed Revenue Debt Common Reserve Fund because of any payments made from such fund for any guaranteed revenue debt issued by the authority.

(c) The use and disposition of the authority's revenue is subject to the provisions of the resolutions authorizing the issuance of any bonds payable therefrom or of the trust agreement or indenture, if any, securing the same. The authority may designate any of its bonds as general obligations or may limit the source of repayment pursuant to the resolution authorizing the issuance of the bonds.

(d) The making of any loan commitment or loan, and the issuance, in anticipation of the collection of the revenues from such loan or loans, of bonds to provide funds therefor, may be authorized under this chapter by resolution of the authority. Unless otherwise provided therein, such resolution shall take effect immediately and need not be published or posted. The authority, in determining the amount of such bonds, may include all costs and estimated costs of the issuance of the bonds; all fiscal, legal, and trustee expenses; and all costs of the project. Such bonds may also be issued to pay off, refund, or refinance any outstanding bonds or other obligations of any nature, whether or not such bonds or other obligations are then subject to redemption; and the authority may provide for such arrangements as it may determine for the payment and security of the bonds being issued or for the payment and security of the bonds or other obligations to be paid off, refunded, or refinanced.

(e) Bonds may be issued under this chapter in one or more series; may bear such date or dates; may mature at such time or times, not exceeding 40 years from their respective dates; may bear interest at such rate or rates, payable at such time or times; may be payable in such medium of payment at such place or places; may be in such denomination or denominations; may be in such form, either coupon or registered or book entry; may be issued in such specific amounts; may carry such registration, conversion, and exchangeability privileges; may be declared or become due before the maturity date thereof; may provide such call or redemption privileges; may have such rank or priority; may be the subject of a put or agreement to repurchase by the authority or others; may be resold by the authority, once acquired, without the acquisition being considered the extinguishment of the bonds; may be issued for a project or for more than one project, whether or not such project is identified at the time of bond issuance; and may contain such other terms, covenants, assignments, and conditions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide. The authority may sell such bonds in such manner, at such price or prices, and on such terms and conditions as the authority determines.

(f) The bonds must be signed by the chair or vice chair of the authority; the corporate seal of the authority must be impressed, imprinted, or otherwise reproduced on the bonds; and the bonds must

be attested by the signature of the secretary or assistant secretary of the authority. The signatures of the officers of the authority and the seal of the authority on any bond issued by the authority may be facsimile if the instrument is authenticated or countersigned by a trustee other than the authority itself or an officer or employee of the authority. All bonds issued under authority of this chapter bearing signatures or facsimiles of signatures of officers of the authority in office on the date of the signing thereof are valid and binding, notwithstanding that before the delivery thereof and payment therefor such officers whose signatures appear thereon have ceased to be officers of the authority. Pending the preparation of the definitive bonds, interim certificates, in such form and with such provisions as the authority may determine, may be issued to the purchasers of bonds to be issued under this chapter.

(g) The provisions of this chapter and of any bond resolution, indenture, or trust agreement entered into pursuant to this chapter are a contract with every holder of the bonds; and the duties of the authority under this chapter and under any such bond resolution, indenture, or trust agreement are enforceable by any bondholder by mandamus or other appropriate action or proceeding at law or in equity.

(h) The authority may provide for the replacement of any bond which becomes mutilated, lost, or destroyed in the manner provided by the resolution, indenture, or trust agreement.

(i)(1) The authority shall not have outstanding at any one time bonds and notes for its single-family residential housing program in an aggregate amount exceeding $3 billion, excluding bonds and notes issued to refund outstanding bonds and notes.

(2) The authority shall not have outstanding at any one time bonds and notes for financing of enterprises, other than enterprises contained in a health facility and other than housing, exceeding $140 million and shall not issue any such bonds or notes after June 30, 1995; provided, however, that such limitations shall not apply with respect to bonds and notes issued to refund outstanding bonds and notes.

(3) The authority shall not have outstanding at any one time bonds and notes for the financing of health care services exceeding $30 million; provided, however, that such limitations shall not apply with respect to bonds and notes issued to refinance outstanding bonds and notes.

(4) Any limitations with respect to interest rates or any maximum interest rate or rates found in Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law," the usury laws of this state, or any other laws of this state do not apply to bonds of the authority.

(j) All bonds issued by the authority under this chapter shall be issued and shall be validated by the Superior Court of Fulton County, Georgia, under and in accordance with the procedures set forth in Code Sections 36-82-73 through 36-82-83, which comprise a portion of the "Revenue Bond Law," as now or hereafter in effect, except as provided in this chapter. Notes and other obligations of the authority may be, but are not required to be, so validated.

(k) All bonds must bear a certificate of validation signed by the clerk of the Superior Court of Fulton County, Georgia. Such signature may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry is original evidence of the fact of judgment and shall be received as original evidence in any court in this state.

(l) The authority shall reimburse the district attorney for his or her actual costs, if any, associated with the bond validation proceedings. The fees payable to the clerk of the Superior Court of Fulton County for validation and confirmation shall be as follows for each bond, regardless of the denomination of such bond: $1.00 for each bond for the first 100 bonds; 25¢ for each of the next 400 bonds; and 10¢ for each bond over 500.

(m) In lieu of specifying the rate or rates of interest which bonds to be issued by the authority are to bear, the notice to the district attorney or the Attorney General; the notice to the public of the time, place, and date of the validation hearing; and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest (which may be fixed or may fluctuate or otherwise change from time to time) specified in such notices and the petition and complaint or may state that, if the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate (which may be fixed or may fluctuate or otherwise change from time to time) so specified; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint.

(n) Prior to issuance, all bonds shall be subject to the approval of the Georgia State Financing and Investment Commission.

(o) Any other law to the contrary notwithstanding, this chapter shall govern all civil claims, proceedings, and actions respecting debt of the authority evidenced by bonds.

History. — Code 1981, § 50-26-10, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, §§ 15, 16; Ga. L. 2008, p. 381, § 10/SB 358; Ga. L. 2016, p. 379, § 1/HB 773.

OPINIONS OF THE ATTORNEY GENERAL

Power of authority to continue loans pursuant to federal program. — Authority's power to continue to make loans pursuant to the United States Department of Agriculture's Farmers Home Administration Intermediary Relending Program until reaching the monetary limit of the existing promissory note is not affected by the "sunset" provision of O.C.G.A. § 50-26-10(i)(2). 1995 Op. Att'y Gen. No. 95-30.

50-26-11. Bonds as securities.

The bonds authorized by this chapter are securities in which:

(1) All public officers and bodies of this state;

(2) All local governments of this state;

(3) All insurance companies and associations and other persons carrying on an insurance business;

(4) All banks, bankers, trust companies, saving banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business;

(5) All administrators, guardians, executors, trustees, and other fiduciaries; and

(6) All other persons whomsoever who are authorized to invest in bonds or other obligations of this state

may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are also securities which may be deposited with and shall be received by all public officers and bodies of this state and local governments for any purpose for which deposit of the bonds or other obligations of this state is authorized.

History. — Code 1981, § 50-26-11, enacted by Ga. L. 1991, p. 1653, § 1-2.

50-26-12. Payment of bond proceeds; pledges of proceeds for payment of bond.

(a) All or any part of the gross or net revenues and earnings derived from any particular loan or loans and any and all revenues and earnings received by the authority, regardless of whether such revenues and earnings were produced by a particular loan or loans for which bonds have been issued, may be pledged by the authority to the

payment of the principal of and interest on bonds of the authority as may be provided in any resolution authorizing the issuance of such bonds or in any indenture or trust agreement pertaining to such bonds.

(b) Such funds so pledged, from whatever source received, may include funds received from one or more of all sources and may be set aside at regular intervals into sinking funds for which provision may be made in any such resolution or indenture or trust agreement, which sinking funds may be pledged to and charged with the payment of:

(1) The interest on such bonds as such interest becomes due;

(2) The principal of the bonds as the same mature;

(3) The necessary charges of any trustee, paying agent, or registrar for such bonds;

(4) Any premium on bonds retired on call or purchase; and

(5) Reimbursement of a credit enhancement provider who has paid principal of or premium or interest on any bond.

(c) The use and disposition of any sinking fund may be subject to regulations for which provision may be made in the resolution authorizing the issuance of the bonds or in the trust instrument or indenture securing the payment of the same.

History. — Code 1981, § 50-26-12, enacted by Ga. L. 1991, p. 1653, § 1-2.

50-26-13. Power to secure issuance of bonds by trust agreement or indenture; contents of trust agreement or indenture.

(a) Any issue of bonds may be secured by a trust agreement or indenture made by the authority with a corporate trustee, which may be any trust company or bank having the power of a trust company inside or outside this state. Such trust agreement or indenture may pledge or assign all revenue, receipts, and earnings to be received by the authority from any source and any proceeds which may derive from the disposition of any real or personal property of the authority or proceeds of insurance carried thereon.

(b) The resolution providing for the issuance of bonds and such trust agreement or indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders, including the right of appointment of a receiver on default in the payment of any principal or interest obligation and the right of any receiver or trustee to enforce collection of any rates, fees, and charges pertaining to any loan, any overdue principal and interest on any loan, any overdue principal of and interest on all bonds in the issue, all costs of collection,

and all other costs reasonably necessary to accomplish the collection of such sums in the event of any default of the authority.

(c) Such resolution, trust agreement, or indenture may include covenants setting forth the duties to the authority regarding the custody, safeguarding, and application of all funds of the authority, including any proceeds derived from the disposition of any real or personal property of the authority or proceeds of insurance carried thereon. In addition, such resolution, trust agreement, or indenture may include covenants providing for the operation, maintenance, repair, and insurance of any facility or capital improvements constructed or acquired with loan proceeds.

(d) All expenses incurred in carrying out any trust agreement or indenture under this Code section may be treated as a part of the cost of financing and administering the loans that will be funded or acquired with the proceeds of the bonds governed by such trust agreement or indenture.

History. — Code 1981, § 50-26-13, enacted by Ga. L. 1991, p. 1653, § 1-2.

50-26-14. Moneys received deemed trust funds; pledge of assets, funds, and properties for payment of bonds.

(a) All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or other obligations, as grants or other contributions, or as revenues and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The authority shall, in the resolution providing for the issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and the earnings and revenues to be received to any officer who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes expressed in this chapter, subject to such regulations as this chapter and such resolution or trust indenture may provide.

(b) The authority may pledge for the payment of its bonds such assets, funds, and properties as the resolution providing for the issuance of its bonds may provide. Any such pledge made by the authority is valid and binding from the time when the pledge is made; the moneys or properties so pledged and thereafter received by the authority are immediately subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge is valid and binding as against all parties having claims of any kind against the authority, irrespective of whether such parties have notice thereof. No resolution or any other instrument by which a pledge is created need be recorded.

History. — Code 1981, § 50-26-14, enacted by Ga. L. 1991, p. 1653, § 1-2.

50-26-15. Annual and periodic audits and reports required.

(a) The state auditor shall make an annual audit of the books, accounts, and records of the authority with respect to its receipts, disbursements, contracts, mortgages, leases, assignments, loans, and all other matters relating to its financial operations. The state auditor shall place the audit report on file in his or her office, make the report available for inspection by the general public, and shall submit a copy of the report to the General Assembly. The state auditor shall not be required to distribute copies of the audit to the members of the General Assembly but shall notify the members of the availability of the audit in the manner which he or she deems to be most effective and efficient.

(b) In addition to the annual audit report, the authority shall render to the state auditor every six months a report setting forth in detail a complete analysis of the activities, indebtedness, receipts, and financial affairs of the authority.

History. — Code 1981, § 50-26-15, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 2005, p. 1036, § 49/SB 49.

50-26-16. Termination of authority.

The authority and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as the authority shall have bonds or other obligations outstanding, unless adequate provision has been made for the payment thereof. On termination of the existence of the authority, all its rights and properties shall pass to and be vested in the State of Georgia.

History. — Code 1981, § 50-26-16, enacted by Ga. L. 1991, p. 1653, § 1-2.

50-26-17. Powers as to real property; reverse equity mortgages; sale of qualified mortgage bonds; administration of alternate funds; authority to issue.

(a) The authority may directly acquire, manage, develop, and dispose of real property and improvements thereon as it deems necessary or desirable to provide adequate housing within the state.

(b) The authority may issue bonds for reverse equity mortgages to enable the elderly to maintain a decent and appropriate residence while providing necessary cash for living expenses.

(c) With respect to the sale of new qualified mortgage bonds, at the time of original issuance of such bonds, at least one-third of the total proceeds available for mortgage loans shall be set aside to finance housing units in the metropolitan statistical areas of this state and at least one-third of the total proceeds available for mortgage loans shall be set aside to finance housing units outside of the metropolitan statistical areas of this state. The time period for the geographic set aside shall be four months from the date of issuance of the bonds. For the purpose of this geographic distribution requirement, no county with a population of less than 50,000 shall be considered as being within a metropolitan statistical area of this state. No geographic distribution requirement shall apply to multifamily housing units financed by the authority. No geographic distribution requirement shall apply to refunding bonds or recycled proceeds or to qualified mortgage bonds issued to spur economic and housing development in a discrete geographic area.

(d) The authority may receive and administer any and all federal funds, state funds, or funds, grants, or gifts from other sources which are intended to promote the availability or affordability of housing and housing finance within the state.

(e) The authority is the sole and exclusive issuer of mortgage credit certificates in and for the state, notwithstanding any contrary provision of law; provided, however, that any urban residential finance authority is permitted to issue mortgage credit certificates but only if the urban residential finance authority adopts purchase price and income limits consistent with those adopted by the Georgia Housing and Finance Authority for the mortgage credit certificate program.

(f) Code Section 44-14-5 shall not be applicable to mortgage loans purchased, made, or otherwise financed by the authority.

History. — Code 1981, § 50-26-17, enacted by Ga. L. 1991, p. 1653, § 1-2.

50-26-18. Facilitating economic development for enterprises.

Without limiting the generality of the findings and intent of the General Assembly or any provision of this chapter, the authority shall facilitate economic development for enterprises throughout the state by means that shall include, without limitation, the issuance of bonds, with or without such credit enhancement as the authority may deem appropriate; the collection of and accumulation of fees and other revenues; the establishment of debt service reserves and sinking funds; and the use of the proceeds from such bonds, funds, and reserves to make loans to enterprises, either directly to such enterprises or indirectly through a financial institution, a political subdivision, or

otherwise; to acquire loans made by others to such enterprises; to establish revolving or other funds from which short-term or long-term loans can be made to such businesses; to guarantee the payment of loans or other obligations of such enterprises; and to do all things deemed by the authority to be necessary, convenient, and desirable for and incident to the efficient and proper development and operation of such types of undertakings.

History. — Code 1981, § 50-26-18, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, § 17.

OPINIONS OF THE ATTORNEY GENERAL

Forgiveness of loans made by the Georgia Housing and Finance Authority under the Economic Development Incentive Loan Program violates state law. 1995 Op. Att'y Gen. No. 95-22.

50-26-19. Financing acquisition, construction, and equipping of health care facilities.

(a) The authority may initiate a program of financing the acquisition, construction, and equipping of health care facilities in the state. In furtherance of this objective, the authority may also:

(1) Establish eligibility standards for participating providers, provided that such standards shall encourage maximum feasible participation for participating providers serving disproportionately high numbers of indigent patients;

(2) Contract with any entity securing the payment of bonds to authorize the entity to approve the participating providers that can finance or refinance a project with proceeds from the bond issue secured by that entity;

(3) Lease to a participating provider specific projects upon terms and conditions that the authority considers proper, charge and collect rents therefor, terminate any such lease upon the failure of the lessee to comply with any of its obligations under the lease or otherwise as the lease provides, and include in any such lease provisions that the lessee has the option to renew the term of the lease for such periods and at such rents as may be determined by the authority or to purchase any or all of the projects to which the lease applies;

(4) Loan to a participating provider under any installment purchase contract or loan agreement money to finance, reimburse, or refinance the cost of specific projects and take back a secured or unsecured promissory note evidencing such a loan and security interest in the project financed or refinanced with such loan upon such terms and conditions as the authority considers proper;

(5) Sell or otherwise dispose of any unneeded or obsolete projects under terms and conditions as determined by the authority;

(6) Maintain, repair, replace, and otherwise improve or cause to be maintained, repaired, replaced, and otherwise improved a project owned by the authority;

(7) Obtain or aid in obtaining property insurance on all projects owned or financed by the authority or accept payment if a project is damaged or destroyed; and

(8) Enter into any agreement, contract, or other instrument with respect to any insurance, guarantee, letter of credit, or other form of credit enhancement, accepting payment in such manner and form as provided therein if a participating provider defaults and assign any such insurance, guarantee, letter of credit, or other form of credit enhancement as security for bonds issued by the authority.

(b) Before exercising any of the powers conferred by subsection (a) of this Code section, the authority may:

(1) Require that the lease, installment purchase contract, or loan agreement involved be insured by a loan insurer, guaranteed by a loan guarantor, or secured by a letter of credit or other form of credit enhancement; and

(2) Require any other type of security from the participating providers that it considers reasonable and necessary.

(c) The authority may not finance a project for any participating provider unless the Department of Community Health, or any successor thereof, has issued a certificate of need or comparable certification of approval to the participating provider for the project to be financed by the authority if the acquisition of such project by the participating provider would require a certificate of need or comparable certification of approval under Chapter 6 of Title 31.

History. — Code 1981, § 50-26-19, enacted by Ga. L. 1993, p. 738, § 18; Ga. L. 1999, p. 296, § 22.

50-26-20. Competitive bidding on contracts not required.

A project financed under this chapter is not subject to any statutory requirement of competitive bidding or other restriction imposed on the procedure for award of contracts or the lease, sale, or other disposition of property with regard to any action taken under authority of this chapter.

History. — Code 1981, § 50-26-20, enacted by Ga. L. 1993, p. 738, § 18.

50-26-21. Transfer of assets and obligations of Hospital Financing Authority to authority.

The authority shall receive all assets of and the authority shall be responsible for any contracts, leases, agreements, or other obligations of the Hospital Financing Authority created by Article 10 of Chapter 7 of Title 31. The authority is substituted as a party to any such contract, agreement, lease, or other obligation and is responsible for performance thereon as if it had been the original party and is entitled to all benefits and rights of enforcement by any other parties to such contracts, agreements, leases, or other obligations.

History. — Code 1981, § 50-26-21, enacted by Ga. L. 1993, p. 738, § 18.

50-26-22. Transfer of personnel to Department of Community Affairs.

Effective July 1, 1996, without diminishing the powers of the authority pursuant to Code Section 50-26-8, all personnel positions authorized by the authority in fiscal year 1996 shall be transferred to the Department of Community Affairs. All employees of the authority on June 30, 1996, whose positions are transferred by the authority to the Department of Community Affairs shall become employees of the Department of Community Affairs and shall become employees in the unclassified service as defined by Code Section 45-20-2.

History. — Code 1981, § 50-26-22, enacted by Ga. L. 1996, p. 872, § 13; Ga. L. 1997, p. 143, § 50; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-110/HB 642.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "and" was inserted following "Affairs" near the end of this Code section.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

CHAPTER 27

LOTTERY FOR EDUCATION

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Law reviews. — For article, "Prohibitive Failure: The Demise of the Ban on Sports Betting," see 35 Ga. St. U. L. Rev. 329 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Use of funds for home school students. — Georgia Lottery for Education Act, O.C.G.A. T. 50, C. 27, does not prohibit the use of lottery funds for scholarships for home school students; however, the HOPE scholarship program rules and regulations exclude such students from eligibility. 1996 Op. Att'y Gen. No. U96-19.

RESEARCH REFERENCES

ALR. — State lotteries: actions by ticketholders or other claimants against state or contractor for state, 48 A.L.R.6th 243.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 1993, p. 1037, effective April 13, 1993, designated Code Sections 50-27-1 through 50-27-34 as Article 1 of this chapter.

Ga. L. 1998, p. 1686, § 1 offered a proposal to Article 1, Section II, Paragraph VIII of the Georgia Constitution which was ratified at the 1998 November general election and which appropriated lottery proceeds for educational programs and purposes.

Administrative rules and regulations. — Grant descriptions, Official Compilation of the Rules and Regulations of the State of Georgia, Bright from the Start Georgia Department of Early Care and Learning, Chapter 591-2-1.

50-27-1. Short title.

This chapter shall be known and may be cited as the "Georgia Lottery for Education Act."

History. — Code 1981, § 50-27-1, enacted by Ga. L. 1992, p. 3173, § 2.

Law reviews. — For article, "State Government: Lottery for Education," see 30 Ga. St. U. L. Rev. 257 (2013).

JUDICIAL DECISIONS

Sovereign immunity barred claims against Georgia Lottery Corporation. — Trial court erred in denying the Georgia Lottery Corporation's motion to dismiss the appellee's claim under Georgia's Uniform Deceptive Trade Practices Act (UDTPA), O.C.G.A. § 10-1-370 et seq., as the appellee's UDTPA claim for injunctive relief against the Georgia Lottery Corporation was barred by sovereign immunity because the UDTPA did not expressly waive the state's sovereign immunity; did not specifically create a cause of action against the state; and exempted conduct in compliance with a statute administered by a state agency, and the Georgia Lottery Corporation was a state agency created by statute to administer the lottery. Ga. Lottery Corp. v. Patel, 353 Ga. App. 320, 836 S.E.2d 634 (2019).

50-27-2. Legislative findings and declarations.

It is found and declared by the General Assembly:

(1) That net proceeds of lottery games conducted pursuant to this chapter shall be used to support improvements and enhancements for educational purposes and programs and that such net proceeds shall be used to supplement, not supplant, existing resources for educational purposes and programs;

(2) That lottery games are an entrepreneurial enterprise and that the state shall create a public body, corporate and politic, known as the Georgia Lottery Corporation, with comprehensive and extensive powers as generally exercised by corporations engaged in entrepreneurial pursuits;

(3) That lottery games shall be operated and managed in a manner which provides continuing entertainment to the public, maximizes revenues, and ensures that the lottery is operated with integrity and dignity and free of political influence; and

(4) That the Georgia Lottery Corporation shall be accountable to the General Assembly and to the public through a system of audits and reports.

History. — Code 1981, § 50-27-2, enacted by Ga. L. 1992, p. 3173, § 2.

JUDICIAL DECISIONS

Georgia Lottery Corporation entitled to assert sovereign immunity. — Georgia Lottery Corporation (GLC) is entitled to assert sovereign immunity as a bar to a suit under Ga. Const. 1983, Art. I, Sec. II, Para. IX, and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because under the Georgia Lottery for Education Act, O.C.G.A. § 50-27-1 et seq., the purpose, function, and management of the GLC are indelibly intertwined with the state in a manner that qualifies the GLC for the protection of sovereign immunity as a state instrumentality; thus, the GLC must be classified as an instrumentality of the state to which sovereign immunity applies. Kyle v. Ga. Lottery Corp., 290 Ga. 87, 718 S.E.2d 801 (2011).

Tampering. — Defendant's act of leaning over a store counter, tearing lottery tickets from the ticket's dispenser without paying for the tickets, and scratching the tickets to see if the defendant had won a prize fell within the plain meaning of the term "tampering" in O.C.G.A. § 50-27-27, in that the defendant's act forever changed the odds of winning for paying customers and directly influenced the potential winning of lottery prizes by future customers. If the defendant's activity did not constitute "tampering" within the meaning of § 50-27-27, the express intent of the Georgia General Assembly in § 50-27-2 that state lottery revenues be maximized and that the lottery be operated with integrity and dignity would be frustrated. Doe v. State, 290 Ga. 667, 725 S.E.2d 234 (2012).

50-27-3. Definitions.

As used in this chapter, the term:

(1) "Administrative expenses" means operating expenses, excluding amounts set aside for prizes, regardless of whether such prizes are claimed and excluding amounts held as a fidelity fund pursuant to Code Section 50-27-19.

(2) "Assignee" means any person or third party other than the winner to whom any portion of a prize or any right of any person to a prize awarded payable by the corporation in installment payments may be transferred or assigned pursuant to an appropriate judicial order as provided in Code Section 50-27-24.1.

(3) "Assignment" means the transfer of any portion of a prize or any right of any person to a prize awarded payable by the corporation in installment payments to any person or third party pursuant to an appropriate judicial order as provided in Code Section 50-27-24.1.

(4) "Assignor" means any person receiving installment payments seeking to assign or transfer any portion of a prize or any right of any person to a prize awarded to an assignee or any person or third party pursuant to an appropriate judicial order as provided in Code Section 50-27-24.1.

(5) "Board" means the board of directors of the Georgia Lottery Corporation.

(6) "Capital outlay projects" means the acquisition, construction, installation, modification, renovation, repair, extension, renewal, replacement, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, computers, software, laboratories, furniture, textbooks, and reference material or other property of any nature whatsoever used on, in, or in connection with educational facilities.

(7) "Casino gambling" means a location or business for the purpose of conducting illegal gambling activities, but excluding the sale and purchase of lottery tickets or shares as authorized by this chapter.

(8) "Chief executive officer" means the chief executive officer of the Georgia Lottery Corporation.

(9) "Corporation" means the Georgia Lottery Corporation.

(10) "Educational facilities" means land, structures, and buildings owned or operated by and through the board of regents, the State Board of Education, the Technical College System of Georgia, or by any city, county, or independent school system within this state; provided, however, that a public road or highway leading to an educational facility shall not be considered an educational facility.

(11) "Educational purposes and programs" means capital outlay projects for educational facilities; tuition grants, scholarships, or loans to citizens of this state to enable such citizens to attend colleges and universities located within this state, regardless of whether such colleges and universities are owned or operated by the board of regents or to attend institutions operated under the authority of the Technical College System of Georgia; costs of providing to teachers at accredited public institutions who teach levels K-12, personnel at public postsecondary technical institutes under the authority of the Technical College System of Georgia, and professors and instructors within the University System of Georgia the necessary training in the use and application of computers and advanced electronic instructional technology to implement interactive learning environments in the classroom and to access the state-wide distance learning network; costs associated with repairing and maintaining advanced electronic instructional technology; voluntary pre-kindergarten; and an education shortfall reserve.

(12) "Interested party" means any individual or entity that has notified the corporation of his or her interest in the prize or is a party to a civil matter adverse to the assignor, including actions for alimony and child support.

(13) "Lottery," "lotteries," "lottery game," or "lottery games" means any game of chance approved by the board and operated pursuant to this chapter, including, but not limited to, instant tickets, on-line games, and games using mechanical or electronic devices but excluding pari-mutuel betting and casino gambling as defined in this Code section.

(14) "Major procurement contract" means any gaming product or service costing in excess of $75,000.00, including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets, and other products and services unique to the Georgia lottery, but not including materials, supplies, equipment, and services common to the ordinary operations of a corporation.

(15) "Member" or "members" means a director or directors of the board of directors of the Georgia Lottery Corporation.

(16) "Member of a minority" means an individual who is a member of a race which comprises less than 50 percent of the total population of the state.

(17) "Minority business" means any business which is owned by:

(A) An individual who is a member of a minority who reports as his or her personal income for Georgia income tax purposes the income of such business;

(B) A partnership in which a majority of the ownership interest is owned by one or more members of a minority who report as their personal income for Georgia income tax purposes more than 50 percent of the income of the partnership; or

(C) A corporation organized under the laws of this state in which a majority of the common stock is owned by one or more members of a minority who report as their personal income for Georgia income tax purposes more than 50 percent of the distributed earnings of the corporation.

(18) "Net proceeds" means all revenue derived from the sale of lottery tickets or shares and all other moneys derived from the lottery less operating expenses.

(19) "Operating expenses" means all costs of doing business, including, but not limited to, prizes, commissions, and other compensation paid to retailers, advertising and marketing costs, personnel costs, capital costs, depreciation of property and equipment, funds for compulsive gambling education and treatment, amounts held in or paid from a fidelity fund pursuant to Code Section 50-27-19, and other operating costs.

(20) "Pari-mutuel betting" means a method or system of wagering on actual races involving horses or dogs at tracks which involves the distribution of winnings by pools. Such term shall not mean lottery games which may be predicated on a horse racing or dog racing scheme that does not involve actual track events. Such term shall not mean traditional lottery games which may involve the distribution of winnings by pools.

(21) "Person" means any individual, corporation, partnership, unincorporated association, or other legal entity.

(22) "Retailer" means a person who sells lottery tickets or shares on behalf of the corporation pursuant to a contract.

(23) "Share" means any intangible evidence of participation in a lottery game.

(24) "Ticket" means any tangible evidence issued by the lottery to provide participation in a lottery game.

(25) "Vendor" means a person who provides or proposes to provide goods or services to the corporation pursuant to a major procurement contract, but does not include an employee of the corporation, a retailer, or a state agency or instrumentality thereof. Such term does not include any corporation whose shares are publicly traded and which is the parent company of the contracting party in a major procurement contract.

History. — Code 1981, § 50-27-3, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1996, p. 1603, § 5; Ga. L. 2008, p. 335, § 10/SB 435; Ga. L. 2008, p. 370, § 1/HB 515.

JUDICIAL DECISIONS

"Casino gambling." — Certain games involving the purchase of lottery tickets did not fall within the definition of improper "casino gambling"; therefore, the creation and operation of the games was a lawful exercise of the authority of the Georgia Lottery Corporation. Jackson v. Georgia Lottery Corp., 228 Ga. App. 239, 491 S.E.2d 408 (1997).

"Retailer." — When Chapter 7 debtor executed a retail lottery contract with the state as an officer of a corporation that had not yet been formed, the corporation was a retailer within the meaning of O.C.G.A. § 50-27-3(18) because the corporation adopted the contract after its incorporation. Ga. Lottery Corp. v. Ingram (In re Ingram), No. 06-11313-WHD, 2008 Bankr. LEXIS 1036 (Bankr. N.D. Ga. Feb. 29, 2008).

50-27-4. Georgia Lottery Corporation created; venue.

There is created a body corporate and politic to be known as the Georgia Lottery Corporation which shall be deemed to be an instrumentality of the state, and not a state agency, and a public corporation. Venue for the corporation shall be in Fulton County.

History. — Code 1981, § 50-27-4, enacted by Ga. L. 1992, p. 3173, § 2.

JUDICIAL DECISIONS

Georgia Lottery Corporation is not a state "agency" entitled to the defense of sovereign immunity under the facts and law of an action brought to have certain lottery games declared illegal and unconstitutional. Jackson v. Georgia Lottery Corp., 228 Ga. App. 239, 491 S.E.2d 408 (1997).

Because O.C.G.A. § 50-27-4 provided that the Georgia Lottery Corporation (GLC) was not an agency of the state, a superior court order reviewing a decision of the GLC did not fall within the ambit of O.C.G.A. § 5-6-35(a)(1), requiring an application for discretionary review of agency decisions; rather, a licensee of coin-operated amusement machines (COAM) could appeal directly under O.C.G.A. § 5-6-34(a). Amusement Leasing, Inc. v. Ga. Lottery Corp., 352 Ga. App. 243, 834 S.E.2d 330 (2019).

Georgia Lottery Corporation entitled to assert sovereign immunity. — Georgia Lottery Corporation (GLC) is en-

titled to assert sovereign immunity as a bar to a suit under Ga. Const. 1983, Art. I, Sec. II, Para. IX, and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because under the Georgia Lottery for Education Act, O.C.G.A. § 50-27-1 et seq., the purpose, function, and management of the GLC are indelibly intertwined with the state in a manner that qualifies the GLC for the protection of sovereign immunity as a state instrumentality; thus, the GLC must be classified as an instrumentality of the state to which sovereign immunity applies. Kyle v. Ga. Lottery Corp., 290 Ga. 87, 718 S.E.2d 801 (2011).

Cited in Kyle v. Ga. Lottery Corp., 304 Ga. App. 635, 698 S.E.2d 12 (2010); Ga. Lottery Corp. v. Tabletop Media, LLC, 346 Ga. App. 498, 816 S.E.2d 438 (2018).

50-27-5. Membership of board of directors; appointment; terms; filling of vacancies; conflict of interests; reimbursement for expenses; officers; quorum.

(a) The corporation shall be governed by a board of directors composed of seven members to be appointed by the Governor. Members shall be appointed with a view toward equitable geographic representation.

(b) Members shall be residents of the State of Georgia, shall be prominent persons in their businesses or professions, and shall not have been convicted of any felony offense. The Governor should consider appointing to the board an attorney, an accountant, and a person having expertise in marketing.

(c) Members shall serve terms of five years, except that of the initial members appointed, three shall be appointed for initial terms of two years, two shall be appointed for initial terms of four years, and two shall be appointed for initial terms of five years. Any vacancy occurring on the board shall be filled by the Governor by appointment for the unexpired term.

(d) All members appointed by the Governor shall be confirmed by the Senate. Members appointed when the General Assembly is not in regular session shall serve only until the Senate has confirmed the appointment at the next regular or special session of the General Assembly. If the Senate refuses to confirm an appointment, the member shall vacate his office on the date the confirmation fails.

(e) Members of the board shall not have any direct or indirect interest in an undertaking that puts their personal interest in conflict with that of the corporation, including, but not limited to, an interest in a major procurement contract or a participating retailer.

(f) Upon approval by the chairperson, members of the board shall be reimbursed for actual and reasonable expenses incurred for each day's service spent in the performance of the duties of the corporation.

(g) The members shall elect from their membership a chairperson and vice chairperson. The members shall also elect a secretary and

treasurer who can be the chief executive officer of the corporation. Such officers shall serve for such terms as shall be prescribed by the bylaws of the corporation or until their respective successors are elected and qualified. No member of the board shall hold more than any one office of the corporation, except that the same person may serve as secretary and treasurer.

(h) The board of directors may delegate to any one or more of its members, to the chief executive officer, or to any agent or employee of the corporation such powers and duties as it may deem proper.

(i) A majority of members in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the corporation.

(j) Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of a majority of present and voting board members.

(k) No vacancy in the membership of the board shall impair the right of the members to exercise all the powers and perform all the duties of the board.

History. — Code 1981, § 50-27-5, enacted by Ga. L. 1992, p. 3173, § 2.

JUDICIAL DECISIONS

Cited in Kyle v. Ga. Lottery Corp., 290 Ga. 87, 718 S.E.2d 801 (2011).

50-27-6. Lottery Retailer Advisory Board.

(a) The chairperson of the board of directors shall appoint a Lottery Retailer Advisory Board to be composed of ten lottery retailers representing the broadest possible spectrum of geographical, racial, and business characteristics of lottery retailers. The function of the advisory board shall be to advise the board of directors on retail aspects of the lottery and to present the concerns of lottery retailers throughout the state.

(b) Members appointed to the Lottery Retailer Advisory Board shall serve terms of two years; provided, however, that five of the initial appointees shall serve initial terms of one year.

(c) The advisory board shall establish its own rules and internal operating procedures. Members of the advisory board shall serve without compensation or reimbursement of expenses. The advisory board may report to the board of directors or to the oversight committee in writing at any time. The board of directors may invite the advisory

board to make an oral presentation to the board of directors at regular meetings of the board.

History. — Code 1981, § 50-27-6, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-7. General duties of board of directors.

The board of directors shall provide the chief executive officer with private-sector perspectives of a large marketing enterprise. The board shall:

(1) Approve, disapprove, amend, or modify the budget recommended by the chief executive officer for the operation of the corporation;

(2) Approve, disapprove, amend, or modify the terms of major lottery procurements recommended by the chief executive officer;

(3) Hear appeals of hearings required by this chapter;

(4) Adopt regulations, policies, and procedures relating to the conduct of lottery games and as specified in Code Section 50-27-9; and

(5) Perform such other functions as specified by this chapter.

History. — Code 1981, § 50-27-7, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-8. Appointment of chief executive officer; compensation.

The board of directors shall appoint and shall provide for the compensation of a chief executive officer who shall be an employee of the corporation and who shall direct the day-to-day operations and management of the corporation and shall be vested with such powers and duties as specified by the board and by law. The chief executive officer shall serve at the pleasure of the board.

History. — Code 1981, § 50-27-8, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-9. General powers of corporation.

(a) The corporation shall have any and all powers necessary or convenient to its usefulness in carrying out and effectuating the purposes and provisions of this chapter which are not in conflict with the Constitution of this state and which are generally exercised by corporations engaged in entrepreneurial pursuits, including, but without limiting the generality of the foregoing, the following powers:

(1) To sue and be sued in contract and in tort and to complain and defend in all courts;

(2) To adopt and alter a seal;

(3) To adopt, amend, and repeal bylaws, regulations, and policies and procedures for the regulation of its affairs and the conduct of its business; to elect and prescribe the duties of officers and employees of the corporation; and to perform such other matters as the corporation may determine. In the adoption of bylaws, regulations, policies, and procedures or in the exercise of any regulatory power, the corporation shall be exempt from the requirements of Chapter 13 of this title, the "Georgia Administrative Procedure Act";

(4) To procure or to provide insurance;

(5) To hold copyrights, trademarks, and service marks and enforce its rights with respect thereto;

(6) To initiate, supervise, and administer the operation of the lottery in accordance with the provisions of this chapter and regulations, policies, and procedures adopted pursuant thereto;

(7) To enter into written agreements with one or more other states or sovereigns for the operation, participation in marketing, and promotion of a joint lottery or joint lottery games;

(8) To conduct such market research as is necessary or appropriate, which may include an analysis of the demographic characteristics of the players of each lottery game and an analysis of advertising, promotion, public relations, incentives, and other aspects of communication;

(9) To acquire or lease real property and make improvements thereon and acquire by lease or by purchase personal property, including, but not limited to, computers; mechanical, electronic, and on-line equipment and terminals; and intangible property, including, but not limited to, computer programs, systems, and software;

(10) To enter into contracts to incur debt in its own name and enter into financing agreements with the state, agencies or instrumentalities of the state, or with any commercial bank or credit provider; provided, however, that any such debt must be approved by the Georgia State Financing and Investment Commission;

(11) To be authorized to administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence relative to any investigation or proceeding conducted by the corporation;

(12) To appoint and select officers, agents, and employees, including professional and administrative staff and personnel and hearing

officers to conduct hearings required by this chapter, and to fix their compensation, pay their expenses, and provide a benefit program, including, but not limited to, a retirement plan and a group insurance plan;

(13) To select and contract with vendors and retailers;

(14) To enter into contracts or agreements with state or local law enforcement agencies, including the Department of Revenue, for the performance of law enforcement, background investigations, security checks, and auditing and enforcement of license requirements required by Article 3 of this chapter;

(15) To enter into contracts of any and all types on such terms and conditions as the corporation may determine;

(16) To establish and maintain banking relationships, including, but not limited to, establishment of checking and savings accounts and lines of credit;

(17) To advertise and promote the lottery and lottery games;

(18) To act as a retailer, to conduct promotions which involve the dispensing of lottery tickets or shares, and to establish and operate a sales facility to sell lottery tickets or shares and any related merchandise; and

(19) To adopt and amend such regulations, policies, and procedures as necessary to carry out and implement its powers and duties, organize and operate the corporation, regulate the conduct of lottery games in general, and any other matters necessary or desirable for the efficient and effective operation of the lottery or the convenience of the public. The promulgation of any such regulations, policies, and procedures shall be exempt from the requirements of Chapter 13 of this title, the "Georgia Administrative Procedure Act."

(b) The powers enumerated in subsection (a) of this Code section are cumulative of and in addition to those powers enumerated elsewhere in this chapter, and no such powers limit or restrict any other powers of the corporation.

History. — Code 1981, § 50-27-9, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 2013, p. 37, § 2-4/HB 487.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following "policies" in the second sentence in paragraph (a)(19).

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use

of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

Power of Georgia Lottery Corproation to contract. — Georgia Lottery Corporation (GLC) had the authority to enter into a contract with the ticket buyer under O.C.G.A. § 50-27-9(a)(15), which authorized the GLC to enter into contracts, and the lottery ticket was an express written contract. Ga. Lottery Corp. v. Patel, 349 Ga. App. 529, 826 S.E.2d 385 (2019).

Cited in Amusement Leasing, Inc. v. Ga. Lottery Corp., 352 Ga. App. 243, 834 S.E.2d 330 (2019).

50-27-10. Adoption by board of procedures regulating conduct of lottery games.

The board may adopt regulations, policies, and procedures regulating the conduct of lottery games in general, including, but not limited to, regulations, policies, and procedures specifying:

(1) The type of games to be conducted, including, but not limited to, instant lotteries, on-line games, and other games traditional to the lottery. Such games may include the selling of tickets or shares or the use of electronic or mechanical devices;

(2) The sale price of tickets or shares and the manner of sale; provided, however, that all sales shall be for cash only and payment by checks, credit cards, charge cards, or any form of deferred payment is prohibited;

(3) The number and amount of prizes;

(4) The method and location of selecting or validating winning tickets or shares;

(5) The manner and time of payment of prizes, which may include lump sum payments or installments over a period of years;

(6) The manner of payment of prizes to the holders of winning tickets or shares, including without limitation provision for payment of prizes not exceeding $600.00 after deducting the price of the ticket or share and after performing validation procedures appropriate to the game and as specified by the board. The board may provide for a limited number of retailers who can pay prizes of up to $5,000.00 after performing validation procedures appropriate to the game and as specified by the board without regard to where such ticket or share was purchased;

(7) The frequency of games and drawings or selection of winning tickets or shares;

(8) The means of conducting drawings;

(9)(A) The method to be used in selling tickets or shares, which may include the use of electronic or mechanical devices, but such devices may be placed only in locations on the premises of the lottery retailer which are within the view of such retailer or an employee of such retailer. All electronic or mechanical devices shall bear a conspicuous label prohibiting the use of such device by persons under 18 years of age.

(B) A lottery retailer who knowingly allows a person under 18 years of age to purchase a lottery ticket or share from an electronic or mechanical device shall be subject to the penalties provided in Code Section 50-27-26;

(10) The manner and amount of compensation to lottery retailers; and

(11) Any and all other matters necessary, desirable, or convenient toward ensuring the efficient and effective operation of lottery games, the continued entertainment and convenience of the public, and the integrity of the lottery.

History. — Code 1981, § 50-27-10, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1994, p. 1372, § 1.

50-27-11. Duties of chief executive officer.

(a) The chief executive officer of the corporation shall direct and supervise all administrative and technical activities in accordance with the provisions of this chapter and with the regulations, policies, and procedures adopted by the board. It shall be the duty of the chief executive officer to:

(1) Facilitate the initiation and supervise and administer the operation of the lottery games;

(2) Employ and direct such personnel as deemed necessary;

(3) Employ by contract and compensate such persons and firms as deemed necessary;

(4) Promote or provide for promotion of the lottery and any functions related to the corporation;

(5) Prepare a budget for the approval of the board;

(6) Require bond from such retailers and vendors in such amounts as required by the board;

(7) Report quarterly to the state auditor, the state accounting officer, and the board a full and complete statement of lottery revenues and expenses for the preceding quarter; and

(8) Perform other duties generally associated with a chief executive officer of a corporation of an entrepreneurial nature.

(b) The chief executive officer may for good cause suspend, revoke, or refuse to renew any contract entered into in accordance with the provisions of this chapter or the regulations, policies, and procedures of the board.

(c) The chief executive officer or his designee may conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations or to determine the qualifications of or compliance by vendors and retailers.

History. — Code 1981, § 50-27-11, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 2005, p. 694, § 17/HB 293.

50-27-12. Employees; compensation; restrictions; background investigations; bonding.

(a) The corporation shall establish and maintain a personnel program for its employees and fix the compensation and terms of compensation of its employees, including, but not limited to, production incentive payments; provided, however, that production incentive payments, bonuses, or any other consideration in addition to an employee's base compensation shall not exceed 25 percent of such employee's base compensation. In total, bonuses shall not exceed 1 percent of the net increase over the prior year's deposit into the Lottery for Education Account. No bonuses may be awarded in years in which there is not a net increase over the prior year's deposit into the Lottery for Education Account.

(b) No employee of the corporation shall have a financial interest in any vendor doing business or proposing to do business with the corporation.

(c) No employee of the corporation with decision-making authority shall participate in any decision involving a retailer with whom the employee has a financial interest.

(d) No employee of the corporation who leaves the employment of the corporation may represent any vendor or lottery retailer before the corporation for a period of two years following termination of employment with the corporation.

(e) Background investigation shall be conducted on each applicant who has reached the final selection process prior to employment by the

corporation at the level of division director and above and at any level within any division of security and as otherwise required by the board. The corporation shall be authorized to pay for the actual cost of such investigations and may contract with the Georgia Bureau of Investigation for the performance of such investigations. The results of such a background investigation shall not be considered a record open to the public pursuant to Article 4 of Chapter 18 of this title.

(f) No person who has been convicted of a felony or bookmaking or other forms of illegal gambling or of a crime involving moral turpitude shall be employed by the corporation.

(g) The corporation shall bond corporation employees with access to corporation funds or lottery revenue in such an amount as provided by the board and may bond other employees as deemed necessary.

History. — Code 1981, § 50-27-12, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 2011, p. 1, § 14/HB 326.

Editor's notes. — Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment by this Act shall be applicable to postsecondary students beginning in the fall of 2011.

Law reviews. — For article, "Education: Postsecondary Education," see 28 Ga. St. U.L. Rev. 193 (2011).

For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

50-27-13. Disposition of lottery proceeds; budget report by Governor; appropriations by General Assembly; shortfall reserve subaccount.

(a)(1) All lottery proceeds shall be the property of the corporation.

(2) From its lottery proceeds the corporation shall pay the operating expenses of the corporation. As nearly as practical, at least 45 percent of the amount of money from the actual sale of lottery tickets or shares shall be made available as prize money; provided, however, that this paragraph shall be deemed not to create any lien, entitlement, cause of action, or other private right, and any rights of holders of tickets or shares shall be determined by the corporation in setting the terms of its lottery or lotteries.

(3) As nearly as practical, for each fiscal year, net proceeds shall equal at least 35 percent of the lottery proceeds. However, for the first two full fiscal years and any partial first fiscal year of the corporation, net proceeds need only equal 30 percent of the proceeds as nearly as practical.

(b)(1) On or before the fifteenth day of each quarter, the corporation shall transfer to the general fund of the state treasury, for credit to the Lottery for Education Account for the preceding quarter, the

amount of all net proceeds during the preceding quarter. The state treasurer shall separately account for net proceeds by establishing and maintaining a Lottery for Education Account within the state treasury.

(2) Upon their deposit into the state treasury, any moneys representing a deposit of net proceeds shall then become the unencumbered property of the State of Georgia and the corporation shall have no power to agree or undertake otherwise. Such moneys shall be invested by the state treasurer in accordance with state investment practices. All earnings attributable to such investments shall likewise be the unencumbered property of the state and shall accrue to the credit of the Lottery for Education Account.

(3) A shortfall reserve shall be maintained within the Lottery for Education Account in an amount equal to at least 50 percent of net proceeds deposited into such account for the preceding fiscal year. If the net proceeds paid into the Lottery for Education Account in any year are not sufficient to meet the amount appropriated for education purposes, the shortfall reserve may be drawn upon to meet the deficiency. In the event the shortfall reserve is drawn upon and falls below 50 percent of net proceeds deposited into such account for the preceding fiscal year, the shortfall reserve shall be replenished to the level required by this paragraph in the next fiscal year and the lottery-funded programs shall be reviewed and adjusted accordingly.

(c)(1) In the budget report to the General Assembly, as a separate budget category entitled "lottery proceeds," the Governor shall estimate the amount of net proceeds and treasury earnings thereon to be credited to the Lottery for Education Account during the fiscal year and the amount of unappropriated surplus estimated to be accrued in the account at the beginning of the fiscal year. The sum of estimated net proceeds, treasury earnings thereon, and unappropriated surplus shall be designated lottery proceeds.

(2) In the budget report the Governor shall further make specific recommendations as to the education programs and purposes for which appropriations should be made from the Lottery for Education Account. The General Assembly shall appropriate from the Lottery for Education Account by specific reference to it, or by reference to "lottery proceeds." All appropriations of lottery proceeds to any particular budget unit shall be made together in a separate part entitled, identified, administered, and accounted for separately as a distinct budget unit for lottery proceeds. Such appropriations shall otherwise be made in the manner required by law for appropriations.

(3) It is the intent of the General Assembly that appropriations from the Lottery for Education Account shall be for educational purposes and projects only.

(4) If, for any educational purpose or program, less is appropriated in or during the fiscal year than is authorized, the excess shall be available for appropriation the following fiscal year and shall not retain its character as funds for the particular purpose.

(d) Appropriations for educational purposes and programs from the account not committed during the fiscal year shall lapse to the general fund and shall be credited to the Lottery for Education Account.

(e) Except as qualified by this chapter, appropriations from the Lottery for Education Fund shall be subject to Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act."

(f) In compliance with the requirement of the Constitution that there shall be a separate accounting of lottery proceeds, no deficiency in the Lottery for Education Account shall be replenished by book entries reducing any nonlottery reserve of general funds, including specifically but without limitation the revenue shortfall reserve or the midyear adjustment reserve; such programs must be adjusted or discontinued according to available lottery proceeds unless the General Assembly by general law establishes eligibility requirements and appropriates specific funds within the general appropriations Act; nor shall any nonlottery surplus in the general fund be reduced. No surplus in the Lottery for Education Account shall be reduced to correct any nonlottery deficiencies in sums available for general appropriations, and no surplus in the Lottery for Education Account shall be included in any surplus calculated for setting aside any nonlottery reserve or midyear adjustment reserve. In calculating net revenue collections for the revenue shortfall reserve and midyear adjustment reserve, the state accounting officer shall not include the net proceeds.

History. — Code 1981, § 50-27-13, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 425, § 1; Ga. L. 1994, p. 470, § 1; Ga. L. 1994, p. 1662, § 1; Ga. L. 2004, p. 922, § 10; Ga. L. 2005, p. 694, § 18/HB 293; Ga. L. 2009, p. 313, § 1/HB 157; Ga. L. 2010, p. 863, §§ 3, 4/SB 296; Ga. L. 2011, p. 1, § 15/HB 326.

Editor's notes. — Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment by that Act shall be applicable to postsecondary students beginning in the fall of 2011.

Law reviews. — For article on the 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 107 (2004).

JUDICIAL DECISIONS

Cited in Kyle v. Ga. Lottery Corp., 290 Ga. 87, 718 S.E.2d 801 (2011).

50-27-14. Participation by minority businesses.

It is the intent of the General Assembly that the corporation encourage participation by minority businesses. Accordingly, the board of

directors shall adopt a plan which achieves to the greatest extent possible a level of participation by minority businesses taking into account the total number of all retailers and vendors, including any subcontractors. The corporation is authorized and directed to undertake training programs and other educational activities to enable such minority businesses to compete for contracts on an equal basis. The board shall monitor the results of minority business participation and shall report the results of minority business participation to the Governor at least on an annual basis.

History. — Code 1981, § 50-27-14, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-15. Investigation of vendors; disclosure requirements; restrictions on entry into procurement contracts.

(a) The corporation shall investigate the financial responsibility, security, and integrity of any lottery system vendor who is a finalist in submitting a bid, proposal, or offer as part of a major procurement. At the time of submitting such bid, proposal, or offer to the corporation, the corporation may require the following items:

(1) A disclosure of the vendor's name and address and, as applicable, the names and addresses of the following:

(A) If the vendor is a corporation, the officers, directors, and each stockholder in such corporation; provided, however, that in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially 5 percent or more of such securities need be disclosed;

(B) If the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust;

(C) If the vendor is an association, the members, officers, and directors; and

(D) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers;

(2) A disclosure of all the states and jurisdictions in which the vendor does business and the nature of the business for each such state or jurisdiction;

(3) A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the goods or services involved for each such state or jurisdiction;

(4) A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been

denied, has pending, or has had revoked a lottery or gaming license of any kind or had fines or penalties assessed to his license, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license or contract has been revoked or has not been renewed or any lottery or gaming license or application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive such a license shall be disclosed;

(5) A disclosure of the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the vendor for any felony or any other criminal offense other than a traffic violation;

(6) A disclosure of the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the vendor; and

(7) Such additional disclosures and information as the corporation may determine to be appropriate for the procurement involved.

If at least 25 percent of the cost of a vendor's contract is subcontracted, the vendor shall disclose all of the information required by this Code section for the subcontractor as if the subcontractor were itself a vendor.

(b) A lottery procurement contract shall not be entered into with any lottery system vendor who has not complied with the disclosure requirements described in subsection (a) of this Code section, and any contract with such a vendor is voidable at the option of the corporation. Any contract with a vendor who does not comply with such requirements for periodically updating such disclosures during the tenure of contract as may be specified in such contract may be terminated by the corporation. The provisions of this Code section shall be construed broadly and liberally to achieve the ends of full disclosure of all information necessary to allow for a full and complete evaluation by the corporation of the competence, integrity, background, and character of vendors for major procurements.

(c) A major procurement contract shall not be entered into with any vendor who has been found guilty of a felony related to the security or integrity of the lottery in this or any other jurisdiction.

(d) A major procurement contract shall not be entered into with any vendor if such vendor has an ownership interest in an entity that had supplied consultation services under contract to the corporation regarding the request for proposals pertaining to those particular goods or services.

(e) No lottery system vendor nor any applicant for a major procurement contract may pay, give, or make any economic opportunity, gift,

loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding $100.00 in any calendar year, to the chief executive officer, any board member, or any employee of the corporation or to a member of the immediate family residing in the same household as any such person.

History. — Code 1981, § 50-27-15, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-16. Bonding requirements for vendors; qualifications of vendors; competitive bid requirement.

(a)(1) Each vendor shall, at the execution of the contract with the corporation, post a performance bond or letter of credit from a bank or credit provider acceptable to the corporation in an amount as deemed necessary by the corporation for that particular bid or contract. In lieu of the bond, a vendor may, to assure the faithful performance of its obligations, deposit and maintain with the corporation securities that are interest bearing or accruing and that are rated in one of the three highest classifications by an established nationally recognized investment rating service. Securities eligible under this Code section are limited to:

(A) Certificates of deposit issued by solvent banks or savings associations approved by the corporation and which are organized and existing under the laws of this state or under the laws of the United States;

(B) United States bonds, notes, and bills for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest; and

(C) Corporate bonds approved by the corporation. The corporation which issued the bonds shall not be an affiliate or subsidiary of the depositor.

Such securities shall be held in trust and shall have at all times a market value at least equal to the full amount estimated to be paid annually to the lottery vendor under contract.

(2) Because of certain economic considerations, minority businesses may not be able financially to comply with the bonding, deposit of securities, or letter of credit requirements of paragraph (1) of this subsection. Notwithstanding any other provisions of this subsection, in order to assure minority participation in major procurement contracts to the most feasible and practicable extent possible, the chief executive officer is authorized and directed to waive the bonding, deposit of securities, and letter of credit requirements of paragraph (1) of this subsection for a period of five years

from the time that a minority business enters into a major procurement contract for any minority business which substantiates financial hardship pursuant to the policies and procedures established by the board.

(b) Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state. All contracts under this Code section shall be governed by the laws of this state.

(c) No contract shall be let with any vendor in which a public official, as defined by Code Section 45-10-20, has an ownership interest of 10 percent or more.

(d) All major procurement contracts must be competitively bid pursuant to policies and procedures approved by the board unless there is only one qualified vendor and that vendor has an exclusive right to offer the service or product.

History. — Code 1981, § 50-27-16, enacted by Ga. L. 1992, p. 3173, § 2.

RESEARCH REFERENCES

ALR. — State lotteries: actions by ticketholders or other claimants against state or contractor for state, 48 A.L.R.6th 243.

50-27-17. State-wide network of retailers; commissions; certificate of authority; qualifications of retailers; fees for outlets; review of activities; gifts or gratuities.

(a) The General Assembly recognizes that to conduct a successful lottery, the corporation must develop and maintain a state-wide network of lottery retailers that will serve the public convenience and promote the sale of tickets or shares and the playing of lottery games while ensuring the integrity of the lottery operations, games, and activities.

(b) The corporation must make every effort to provide small retailers a chance to participate in the sales of lottery tickets or shares.

(c) The corporation shall provide for compensation to lottery retailers in the form of commissions in an amount of 6 percent of gross sales and may provide for other forms of incentive compensation beginning on July 1, 2016; provided, however, that other forms of incentive compensation may be provided beginning on July 1, 2014, if the Lottery for Education Account deposits exceed $1 billion in the previous fiscal year or may be provided prior to July 1, 2016, as authorized by the Governor.

(d) The corporation shall issue a certificate of authority to each person with whom it contracts as a retailer for purposes of display.

Every lottery retailer shall post and keep conspicuously displayed in a location on the premises accessible to the public its certificate of authority. No certificate shall be assignable or transferable.

(e) The board shall develop a list of objective criteria upon which the qualification of lottery retailers shall be based. Separate criteria shall be developed to govern the selection of retailers of instant tickets and on-line retailers. In developing these criteria, the board shall consider such factors as the applicant's financial responsibility, security of the applicant's place of business or activity, accessibility to the public, integrity, and reputation. The board shall not consider political affiliation, activities, or monetary contributions to political organizations or candidates for any public office. The criteria shall include but not be limited to the following:

(1) The applicant shall be current in filing all applicable tax returns to the State of Georgia and in payment of all taxes, interest, and penalties owed to the State of Georgia, excluding items under formal appeal pursuant to applicable statutes. The Department of Revenue is authorized and directed to provide this information to the corporation;

(2) No person, partnership, unincorporated association, corporation, or other business entity shall be selected as a lottery retailer who:

(A) Has been convicted of a criminal offense related to the security or integrity of the lottery in this or any other jurisdiction;

(B) Has been convicted of any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction or convicted of any crime punishable by more than one year of imprisonment or a fine of more than $1,000.00 or both unless the person's civil rights have been restored and at least five years have elapsed from the date of the completion of the sentence without a subsequent conviction of a crime described in this subparagraph;

(C) Has been found to have violated the provisions of this chapter or any regulation, policy, or procedure of the corporation unless either ten years have passed since the violation or the board finds the violation both minor and unintentional in nature;

(D) Is a vendor or any employee or agent of any vendor doing business with the corporation;

(E) Resides in the same household as an officer of the corporation;

(F) Has made a statement of material fact to the corporation knowing such statement to be false; or

(G) Is engaged exclusively in the business of selling lottery tickets or shares; provided, however, that this subsection shall not preclude the corporation from selling or giving away lottery tickets or shares for promotional purposes;

(3) Persons applying to become lottery retailers shall be charged a uniform application fee for each lottery outlet. Retailers who participate in on-line games shall be charged a uniform application fee for each on-line outlet;

(4) Any lottery retailer contract executed pursuant to this Code section may, for good cause, be suspended, revoked, or terminated by the chief executive officer or his designee if the retailer is found to have violated any provision of this chapter or objective criteria established by the board. Review of such activities shall be in accordance with the procedures outlined in this chapter and shall not be subject to Chapter 13 of this title, the "Georgia Administrative Procedure Act"; and

(5) All lottery retailer contracts may be renewable annually in the discretion of the corporation unless sooner canceled or terminated.

(f) No lottery retailer or applicant to be a lottery retailer shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding $100.00 in any calendar year, to the chief executive officer, any board member, or any employee of the corporation or to a member of the immediate family residing in the same household as any such person.

History. — Code 1981, § 50-27-17, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1994, p. 599, § 1; Ga. L. 2011, p. 1, § 16/HB 326.

Editor's notes. — Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment by that Act shall be applicable to postsecondary students beginning in the fall of 2011.

Law reviews. — For article, "Education: Postsecondary Education," see 28 Ga. St. U.L. Rev. 193 (2011).

50-27-18. Retailer contracts not transferable or assignable; restriction on contracts and sales.

(a) No lottery retailer contract shall be transferable or assignable. No lottery retailer shall contract with any person for lottery goods or services except with the approval of the board.

(b) Lottery tickets and shares shall only be sold by the retailer stated on the lottery retailer certificate.

History. — Code 1981, § 50-27-18, enacted by Ga. L. 1992, p. 3173, § 2.

JUDICIAL DECISIONS

Bankruptcy by lottery retailer. — When a Chapter 7 debtor executed a retail lottery contract with the state as an officer of a corporation that had not yet been formed, subsequent adoption of the pre-incorporation contract by the corporation was not equivalent of assignment or transfer and would not be prohibited by O.C.G.A. § 50-27-18. Ga. Lottery Corp. v. Ingram (In re Ingram), No. 06-11313-WHD, 2008 Bankr. LEXIS 1036 (Bankr. N.D. Ga. Feb. 29, 2008).

50-27-19. Fidelity fund for retailers; assessments.

(a) The corporation may establish a fidelity fund separate from all other funds and shall assess each retailer a one-time fee not to exceed $100.00 per sales location. The corporation is authorized to invest the funds or place such funds in one or more interest-bearing accounts. Moneys deposited to the fund may be used to cover losses the corporation experiences due to nonfeasance, misfeasance, or malfeasance of a lottery retailer. In addition, the funds may be used to purchase blanket bonds covering the Georgia Lottery Corporation against losses from all retailers. At the end of each fiscal year, the corporation shall pay to the general lottery fund any amount in the fidelity fund which exceeds $500,000.00, and such funds shall be commingled with and treated as net proceeds from the lottery.

(b) A reserve account may be established as a general operating expense to cover amounts deemed uncollectable. The corporation shall establish procedures for minimizing any losses that may be experienced for the foregoing reasons and shall exercise and exhaust all available options in such procedures prior to amounts being written off to this account.

(c) The corporation may require any retailer to post an appropriate bond, as determined by the corporation, using an insurance company acceptable to the corporation. The amount should not exceed the applicable district sales average of lottery tickets for two billing periods.

(d)(1) In its discretion, the corporation may allow a retailer to deposit and maintain with the corporation securities that are interest bearing or accruing. Securities eligible under this paragraph shall be limited to:

(A) Certificates of deposit issued by solvent banks or savings associations organized and existing under the laws of this state or under the laws of the United States;

(B) United States bonds, notes, and bills for which the full faith and credit of the United States is pledged for the payment of principal and interest;

(C) Federal agency securities by an agency or instrumentality of the United States government.

(2) Such securities shall be held in trust in the name of the Georgia Lottery Corporation.

History. — Code 1981, § 50-27-19, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1995, p. 635, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "uncollectable" was substituted for "uncollectible" in subsection (b); in paragraph (d)(1), "interest bearing" was substituted for "interest-bearing" in the introductory language, semicolons were substituted for periods at the end of subparagraphs (d)(1)(A) and (d)(1)(B), and "Federal agency securities" was substituted for "Federal Agency Securities" in subparagraph (d)(1)(C).

50-27-20. Cancellation, suspension, revocation, or termination of retail contracts.

(a) Any retail contract executed by the corporation pursuant to this chapter shall specify the reasons for which a contract may be canceled, suspended, revoked, or terminated by the corporation, which reasons shall include but not be limited to:

(1) Commission of a violation of this chapter, a regulation, or a policy or procedure of the corporation;

(2) Failure to accurately or timely account for lottery tickets, lottery games, revenues, or prizes as required by the corporation;

(3) Commission of any fraud, deceit, or misrepresentation;

(4) Insufficient sales;

(5) Conduct prejudicial to public confidence in the lottery;

(6) The retailer filing for or being placed in bankruptcy or receivership;

(7) Any material change as determined in the sole discretion of the corporation in any matter considered by the corporation in executing the contract with the retailer; or

(8) Failure to meet any of the objective criteria established by the corporation pursuant to this chapter.

(b) If, in the discretion of the chief executive officer or his designee cancellation, denial, revocation, suspension, or rejection of renewal of a lottery retailer contract is in the best interest of the lottery, the public welfare, or the State of Georgia, the chief executive officer or his designee may cancel, suspend, revoke, or terminate, after notice and a right to a hearing, any contract issued pursuant to this chapter. Such contract may, however, be temporarily suspended by the chief executive officer or his designee without prior notice pending any prosecution, hearing, or investigation, whether by a third party or by the chief executive officer. A contract may be suspended, revoked, or terminated

by the chief executive officer or his designee for any one or more of the reasons enumerated in this Code section. Any hearing held shall be conducted by the chief executive officer or his designee. A party to the contract aggrieved by the decision of the chief executive officer or his designee may appeal the adverse decision to the board. Such appeal shall be pursuant to the regulations, policies, and procedures set by the board and is not subject to Chapter 13 of this title, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 50-27-20, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-21. Preservation of lottery proceeds by retailers; accounting procedures; preference accorded proceeds of insolvent retailers.

(a) All proceeds from the sale of the lottery tickets or shares shall constitute a trust fund until paid to the corporation either directly or through the corporation's authorized collection representative. A lottery retailer and officers of a lottery retailer's business shall have a fiduciary duty to preserve and account for lottery proceeds and lottery retailers shall be personally liable for all proceeds. Proceeds shall include unsold instant tickets received by a lottery retailer and cash proceeds of the sale of any lottery products, net of allowable sales commissions and credit for lottery prizes sold to or paid to winners by lottery retailers. Sales proceeds and unused instant tickets shall be delivered to the corporation or its authorized collection representative upon demand.

(b) The corporation shall require retailers to place all lottery proceeds due the corporation in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid over to the corporation. At the time of such deposit, lottery proceeds shall be deemed to be the property of the corporation. The corporation may require a retailer to establish a single separate electronic funds transfer account where available for the purpose of receiving moneys from ticket or share sales, making payments to the corporation, and receiving payments for the corporation. Unless otherwise authorized in writing by the corporation, each lottery retailer shall establish a separate bank account for lottery proceeds which shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.

(c) Whenever any person who receives proceeds from the sale of lottery tickets or shares in the capacity of a lottery retailer becomes insolvent, the proceeds due the corporation from such person shall have preference over all debts or demands.

(d) Whenever any person who receives proceeds from the sale of lottery tickets or shares in the capacity of a lottery retailer dies insolvent, the proceeds due the corporation from such person's estate shall have preference over all debts or demands except the provision of year's support for such person's family.

History. — Code 1981, § 50-27-21, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 2020, p. 377, § 2-27/HB 865.

The 2020 amendment, effective January 1, 2021, in subsection (c), deleted "or dies insolvent" following "insolvent" and deleted "or his estate" following "such person"; and added subsection (d).

JUDICIAL DECISIONS

Property held in trust. — Because policies and procedures of the Georgia Lottery Corporation define "Confirmed" Instant Tickets as absolute proof that the retailer has received the tickets, in addition to tickets sold, all tickets "Confirmed" constitute property held in trust. Suwannee Swifty Stores, Inc. v. Ga. Lottery Corp. (In re Suwannee Swifty Stores), 266 B.R. 544 (Bankr. M.D. Ga. 2001).

Funds which a bankruptcy debtor transferred post-petition to the Georgia Lottery Corporation were property of the statutory trust; although the debtor transferred these funds from the debtor's commingled general operating accounts, these payments were voluntary payments and the payments were conclusively presumed to be sufficiently connected to the trust. Suwannee Swifty Stores, Inc. v. Ga. Lottery Corp. (In re Suwannee Swifty Stores), 266 B.R. 544 (Bankr. M.D. Ga. 2001).

Georgia Lottery Corporation was entitled to summary judgment on the corporations claim that the debt owed by a bankruptcy debtor, a lottery retailer, for proceeds from the sale of lottery tickets was nondischargeable under 11 U.S.C. § 523(a)(4) because O.C.G.A. § 50-27-21, enacted prior to the parties' contractual relationship, created a technical trust in favor of the creditor in the proceeds; the retailer contract created a fiduciary relationship before the creation of the debt, whereby the debtor had a duty to preserve and account for lottery proceeds, and the debtor committed a defalcation in a fiduciary capacity when the debtor failed to remit a large amount of money to the creditor. Ga. Lottery Corp. v. McKibben (In re McKibben), No. 04-40788-MGD, 2005 Bankr. LEXIS 297 (Bankr. N.D. Ga. Jan. 5, 2005).

Georgia Lottery for Education Act, O.C.G.A. § 50-27-21(a), created a statutory trust in favor of the Georgia Lottery Corporation over proceeds from sale of lottery tickets; that statutory trust was an express trust and therefore imposed a fiduciary duty upon the retailer and the retailer's Chapter 7 debtor/officers within the meaning of 11 U.S.C. § 523(a)(4). Ga. Lottery Corp. v. Ingram (In re Ingram), No. 06-11313-WHD, 2008 Bankr. LEXIS 1036 (Bankr. N.D. Ga. Feb. 29, 2008).

Lotteries. — Bank converted state lottery funds when those funds were deposited in the retailer's segregated lottery account and the bank later put a hold on the funds at the retailer's request and prevented the state lottery from accessing the funds. Once the funds were deposited into the lottery account, neither the bank nor the retailer had authority to restrict the state lottery's access to those funds. Ga. Lottery Corp. v. First Nat'l Bank, 253 Ga. App. 784, 560 S.E.2d 345 (2002).

Fiduciary duty. — In a Chapter 7 bankruptcy proceeding, a debtor's failure to remit lottery proceeds from the debtor's retail store to the Georgia Lottery Corporation satisfied the defalcation while acting in a fiduciary capacity exception to discharge provision under § 523(a)(4) of the Bankruptcy Code, 11 U.S.C. § 523(a)(4). Georgia Lottery Corp. v. Thompson (In re Thompson), 296 B.R. 563 (Bankr. M.D. Ga. 2003).

Contract with the creditor, and O.C.G.A. § 50-27-21(a), imposed a fiduciary duty on a debtor to deposit the proceeds of lottery ticket sales on a daily

basis in a trust account; the debtor's failure to comply with the terms of the contract amounted to defalcation and the debt was nondischargeable under 11 U.S.C. § 523(a)(4). Ga. Lottery Corp. v. Lien Sun (In re Liguan Sun), No. 02-99973, 2004 Bankr. LEXIS 2266 (Bankr. N.D. Ga. Sept. 27, 2004).

State lottery corporation was entitled to entry of judgment as a matter of law on the corporation's claim against a bankrupt debtor, the sole owner of a retailer that sold lottery tickets, because: O.C.G.A. § 50-27-21(a) expressly imposed a fiduciary duty on the debtor as the sole officer of the retailer, the requirement of an express trust pre-dating the debt existed, and the debtor committed an act of defalcation by using lottery funds to cover expenses of the retailer. Ga. Lottery Corp. v. Farhan (In re Farhan), No. R03-42699-PWB, 2004 Bankr. LEXIS 2267 (Bankr. N.D. Ga. Sept. 30, 2004).

Failure by debtor, the president of a lottery retailer, to remit lottery sale proceeds to the state lottery corporation constituted a defalcation while performing the debtor's fiduciary duty, as imposed under O.C.G.A. § 50-27-21(a), entitling the corporation to summary judgment in the corporation's action, which alleged that the debt was nondischargeable under 11 U.S.C. § 523(a)(4). Ga. Lottery Corp. v. Akhawala (In re Akhawala), 2004 Bankr. LEXIS 1960 (Bankr. N.D. Ga. Oct. 18, 2004) (Unpublished).

O.C.G.A. § 50-27-21, which pertains to lottery ticket retail sellers, imposes fiduciary duties on the retailers sufficient to create a technical trust for purposes of nondischargeability under 11 U.S.C. § 523(a)(4) because: (1) the statute establishes a trust relationship at the time a lottery retailer enters into a retailer contract; (2) any debt arising out of that relationship is not created until the retailer later fails to account for lottery proceeds; (3) the statute specifically sets forth fiduciary duties to account for lottery proceeds, to maintain lottery proceeds in a separate account, and to make daily deposits in the trust account; (4) the delineation of these duties, along with the express language of the statute, impose a trust relationship over lottery proceeds; and (5) the trust res, the lottery proceeds, is separately identifiable. Ga. Lottery Corp. v. Premji (In re Premji), No. 05-80931, 2006 Bankr. LEXIS 2571 (Bankr. N.D. Ga. Sept. 14, 2006).

Debt owed by a Chapter 7 debtor, who was the sole owner of a lottery retailer, to a state lottery creditor was not dischargeable under 11 U.S.C. § 523(a)(4) because: (1) O.C.G.A. § 50-27-21 and the retailer contracts that the debtor had signed imposed fiduciary duties on the debtor and were sufficient to create a technical trust with regard to the lottery proceeds; and (2) the debtor's failure to properly account for sales proceeds, and the debtor's improper withdrawal of funds from the lottery sales proceeds trust fund account that the debtor was required to set up and maintain, constituted "defalcation" for purposes of nondischargeability under 11 U.S.C. § 523(a)(4). Ga. Lottery Corp. v. Premji (In re Premji), No. 05-80931, 2006 Bankr. LEXIS 2571 (Bankr. N.D. Ga. Sept. 14, 2006).

After Chapter 7 debtors, officers of a retail business that sold lottery tickets, were responsible for depositing funds from sales of lottery tickets into a segregated account maintained by their corporation for purpose of remitting lottery proceeds to the state, and failed to do so, the debtors committed defalcation within the meaning of 11 U.S.C. § 523(a)(4) because the debtors had the obligation to account for and produce either the full amount of funds derived from the sale of lottery tickets or unsold tickets. Ga. Lottery Corp. v. Ingram (In re Ingram), No. 06-11313-WHD, 2008 Bankr. LEXIS 1036 (Bankr. N.D. Ga. Feb. 29, 2008).

When a debtor's company failed to deposit sufficient funds into an account for lottery ticket sales proceeds, the debt owed to a lottery corporation was nondischargeable under 11 U.S.C. § 523(a)(4) because the debtor owed fiduciary duties to the lottery corporation and the debt was the result of the debtor's failure to properly perform those duties. Ga. Lottery Corp. v. Jackson (In re Jackson), 429 B.R. 365 (Bankr. N.D. Ga. 2010).

Adversary proceedings which the Georgia Lottery Corporation filed against Chapter 7 debtors who were authorized to

sell lottery tickets, which alleged that the debtors failed to remit $6,022 the debtors collected from the sale of lottery tickets, sufficiently alleged that the debtors owed a debt to the corporation that was nondischargeable under 11 U.S.C. § 523(a)(4) because the debt resulted from the debtors' defalcation while acting in a fiduciary capacity. The Georgia Lottery for Education Act, O.C.G.A. § 50-27-21, which governed Georgia Lottery retailers, set forth all the elements of a technical trust because it created a trust fund, identified the trust res, and outlined a lottery retailer's fiduciary duty to preserve and account for lottery proceeds. Ga. Lottery Corp. v. Koshy (In re Koshy), No. 10-06329, 2010 Bankr. LEXIS 3588 (Bankr. N.D. Ga. Sept. 24, 2010).

Defendant, a 51 percent owner of a company that contracted to serve as a Georgia lottery retailer, was a fiduciary under the Georgia Lottery for Education Act because the provisions state that a lottery retailer and officers of a lottery retailer's business shall have a fiduciary duty to preserve and account for lottery proceeds and lottery retailers shall be personally liable for all proceeds, O.C.G.A. § 50-27-21(a). Neither debtor's lack of daily supervision at the store nor the debtor's lack of supervision on the specific dates provided a convincing legal defense or absolved debtor's fiduciary duty. Furthermore, in this 11 U.S.C. § 523(a)(4) matter, the debtor's unsupported allegations that the lottery proceeds were stolen were insufficient to raise any issue of fact and the owner owed a personal fiduciary duty to the creditor. Ga. Lottery Corp. v. Kunkle (In re Kunkle), 462 B.R. 914 (Bankr. N.D. Ga. 2011).

Chapter 7 debtor's breach of the debtor's fiduciary duties under Georgia law as the officer of a lottery retailer was grounds for denying a discharge of an amount due as a defalcation while acting in a fiduciary capacity. However, summary judgment was only granted in favor of the creditor with respect to the first week for which the debtor failed to account for and remit proceeds, based on the debtor's allegation that the debtor was locked out of the debtor's business property by the debtor's landlord and was thus unable to deposit the lottery proceeds or access the remaining lottery tickets left on the premises in subsequent weeks. Ga. Lottery Corp. v. Carter (In re Carter), No. 14-5212, 2015 Bankr. LEXIS 910 (Bankr. N.D. Ga. Mar. 4, 2015).

Georgia Lottery Statute, O.C.G.A. § 50-27-1 et seq., and a retailer contract created an express or technical trust as required for application of a nondischargeability provision in the Bankruptcy Code and, thus, imposed a fiduciary duty on the debtor as an officer of a Georgia lottery retailer to not only account for the proceeds of the lottery sales and preserve the proceeds for collection by the Georgia Lottery Corporation, but also to exercise control and supervision over the debtor's employees and to be fully responsible and liable for the employee's conduct as the conduct related to the sale of lottery tickets. Ga. Lottery Corp. v. Owens (In re Owens), 599 B.R. 388 (Bankr. N.D. Ga. 2019).

50-27-22. Computation of rental payments of retailers.

If a lottery retailer's rental payments for the business premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales and such computation of retail sales is not explicitly defined to include sales of tickets or shares in a state operated or state managed lottery, only the compensation received by the lottery retailer from the corporation may be considered the amount of the lottery retail sale for purposes of computing the rental payment.

History. — Code 1981, § 50-27-22, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-23. Restrictions on sale of tickets or shares; price; gifts and promotions.

(a) No person shall sell a ticket or share at a price other than established by the corporation unless authorized in writing by the chief executive officer. No person other than a duly certified lottery retailer shall sell lottery tickets, but this subsection shall not be construed to prevent a person who may lawfully purchase tickets or shares from making a gift of lottery tickets or shares to another. Nothing in this chapter shall be construed to prohibit the corporation from designating certain of its agents and employees to sell or give lottery tickets or shares directly to the public.

(b) Lottery tickets or shares may be given by merchants as a means of promoting goods or services to customers or prospective customers subject to prior approval by the corporation.

(c) No lottery retailer shall sell a lottery ticket or share except from the locations listed in his contract and as evidenced by his certificate of authorization unless the corporation authorizes in writing any temporary location not listed in his contract.

(d) No lottery tickets or shares shall be sold to persons under 18 years of age, but this Code section does not prohibit the purchase of a lottery ticket or share by a person 18 years of age or older for the purpose of making a gift to any person of any age. In such case, the corporation shall direct payment of proceeds of any lottery prize to an adult member of the person's family or a legal representative of the person on behalf of such person. The person named as custodian shall have the same powers and duties as prescribed for a custodian pursuant to Article 5 of Chapter 5 of Title 44.

History. — Code 1981, § 50-27-23, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-24. Prize proceeds subject to state income tax; attachments, garnishments, or executions; validation of winning tickets; prohibited purchases; money-dispensing machines; unclaimed prize money.

(a) Proceeds of any lottery prize shall be subject to the Georgia state income tax.

(b) Except as otherwise provided in Article 2 of this chapter, attachments, garnishments, or executions authorized and issued pursuant to law shall be withheld if timely served upon the corporation. This subsection shall not apply to a retailer.

(c) The corporation shall adopt regulations, policies, and procedures to establish a system of verifying the validity of tickets or shares claimed to win prizes and to effect payment of such prizes, except that:

(1) Except as provided in Code Section 50-27-24.1, no prize, any portion of a prize, or any right of any person to a prize awarded shall be assignable. Any prize or any portion of a prize remaining unpaid at the death of a prize winner shall be paid to the estate of the deceased prize winner or to the trustee of a trust established by the deceased prize winner as settlor if a copy of the trust document or instrument has been filed with the corporation along with a notarized letter of direction from the settlor and no written notice of revocation has been received by the corporation prior to the settlor's death. Following a settlor's death and prior to any payment to such a successor trustee, the corporation shall obtain from the trustee a written agreement to indemnify and hold the corporation harmless with respect to any claims that may be asserted against the corporation arising from payment to or through the trust. Notwithstanding any other provisions of this Code section, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled;

(2) No prize shall be paid arising from claimed tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received, or not recorded by the corporation within applicable deadlines; lacking in captions that conform and agree with the play symbols as appropriate to the particular lottery game involved; or not in compliance with such additional specific regulations and public or confidential validation and security tests of the corporation appropriate to the particular lottery game involved;

(3) No particular prize in any lottery game shall be paid more than once, and in the event of a determination that more than one claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them of an equal share in the prize; and

(4) A holder of a winning cash ticket or share from a lottery game shall claim a cash prize within 180 days, or for a multistate or multisovereign lottery game within 180 days, after the drawing in which the cash prize was won. In any Georgia lottery game in which the player may determine instantly if he has won or lost, he shall claim a cash prize within 90 days, or for a multistate lottery game within 180 days, after the end of the lottery game. If a valid claim is not made for a cash prize within the applicable period, the cash prize shall constitute an unclaimed prize for purposes of this Code section.

(d) No prize shall be paid upon a ticket or share purchased or sold in violation of this chapter. Any such prize shall constitute an unclaimed prize for purposes of this Code section.

(e) The corporation is discharged of all liability upon payment of a prize.

(f) No ticket or share shall be purchased by and no prize shall be paid to any member of the board of directors; any officer or employee of the corporation; or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of any such person. No ticket or share shall be purchased by and no prize shall be paid to any officer, employee, agent, or subcontractor of any vendor or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of any such person if such officer, employee, agent, or subcontractor has access to confidential information which may compromise the integrity of the lottery.

(g) No lottery game utilizing an electronic or mechanical machine may use a machine which dispenses coins or currency.

(h) Unclaimed prize money shall not constitute net lottery proceeds. A portion of unclaimed prize money, not to exceed $200,000.00 annually, shall be directed to the Department of Behavioral Health and Developmental Disabilities for the treatment of compulsive gambling disorder and educational programs related to such disorder. In addition, unclaimed prize money may be added to the pool from which future prizes are to be awarded or used for special prize promotions.

History. — Code 1981, § 50-27-24, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1993, p. 1037, § 1; Ga. L. 2008, p. 370, § 2/HB 515; Ga. L. 2009, p. 453, § 3-2/HB 228.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "indemnify" was substituted for "idemnify" in paragraph (c)(1), and "this Code section" was substituted for "Code Section 50-27-24" in paragraph (c)(4).

Administrative rules and regulations. — Returns and collections, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, Subject 560-7-8.

JUDICIAL DECISIONS

Tickets produced in error. — Applying O.C.G.A. § 50-27-24(c)(2), the law prohibits the Georgia Lottery Commission from paying a cash prize based on a printing error that happened to resemble the winning symbol. Georgia Lottery Corp. v. Sumner, 242 Ga. App. 758, 529 S.E.2d 925 (2000).

50-27-24.1. Payment of prize to person other than winner; assignment of prize rights; hearing; findings justifying approval of voluntary assignment; other requirements.

(a) Under an appropriate judicial order, any prize or any portion of a prize or any right of any person to a prize awarded payable by the

corporation in installment payments may be paid to any person other than the winner.

(b) The right of a person to a prize payable by the corporation in installment payments may be voluntarily assigned as a whole or in part if the assignment is made to a person designated in accordance with an order of the superior court in the county where the corporation is located. In the case of a voluntary assignment for consideration made under a judicial order, the assignee shall withhold from the purchase price to be paid to the assignor federal and state income taxes in a manner and amount consistent with the procedures of the corporation and pay such withheld taxes to the proper taxing authority in a timely manner and maintain and file all required records, forms, and reports.

(c) On the filing by the assignor or the assignee in the superior court of a petition seeking approval of a voluntary assignment, the filing party shall schedule a hearing on such petition and serve notice of the hearing on all interested parties. The court shall conduct an evidentiary hearing. If the court finds that:

(1) The assignment is in writing, is executed by the assignor, and is by its terms subject to the laws of the state;

(2) The assignor has provided a sworn affidavit attesting that he or she is of sound mind, is in full command of his or her faculties, and is not acting under duress;

(3) The assignor has been advised about the assignment by an independent attorney who is not related to and not compensated by the assignee or an affiliate of the assignee;

(4) The assignor understands that he or she will not receive the prize payments or parts of payments during the years assigned;

(5) The assignor understands and agrees that the corporation, directors, and officials and employees of the corporation are not liable or responsible for making any of the assigned payments;

(6) The assignee has provided the assignor with a one-page disclosure statement in boldface type not less than 14 points in size, setting forth:

(A) The payments being assigned by the amount and payment date;

(B) The purchase price;

(C) The rate of discount to present value assuming daily compounding and funding on the contract date;

(D) An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees,

administrative fees, notary fees, and other commissions, fees, costs, expenses, and charges, and a good faith estimate of all legal fees and court costs payable by the assignor or deductible from the gross amount otherwise payable to the assignor;

(E) The net amount payable to the assignor after deduction of all commissions, fees, costs, expenses, and charges described in subparagraph (D) of this paragraph; and

(F) The amount of any penalty and the amount of any liquidated damages, inclusive of penalties, payable by the assignor in the event of any breach of the transfer agreement by the assignor;

(7) The interest rate or discount rate, as applicable, associated with the assignment does not indicate overreaching or exploitation, does not exceed current usury rates, and does not violate any laws of usury of this state; and

(8) The contract of assignment expressly states that the assignor has three business days after signing the contract to cancel the assignment,

the court shall issue an order approving a voluntary assignment and directing the corporation to make prize payments as a whole or in part to the assignee.

(d) Written notice of the petition and proposed assignment and any court hearing concerning the petition and proposed assignment shall be given to the corporation's counsel at least ten days before a court hearing. The corporation need not appear in or be named as party to an action that seeks judicial approval of an assignment but may intervene as of right in the action. A certified copy of a court order approving a voluntary assignment shall be given to the corporation not later than ten days before the date on which the payment is to be made. Written notice of the petition and proposed assignment and any court hearing concerning the petition and proposed assignment shall be served by certified mail to the last known address of any interested party. The interested party need not appear in or be named as party to an action that seeks judicial approval of an assignment but may intervene as of right in the action.

(e) The corporation, not later than ten days after receiving a certified copy of a court order approving a voluntary assignment, shall send the assignor and the assignee written confirmation of the court approved assignment and the intent of the corporation to rely on the assignment in making payments to the assignee named in the order free from any attachments, garnishments, or executions.

(f) A voluntary assignment may not include or cover payments or parts of payments to the assignor to the extent that such payments are

subject to attachments, garnishments, or executions authorized and issued pursuant to law as provided in subsection (b) of Code Section 50-27-24. Each court order issued under this subsection shall provide that any obligations of the assignor created by subsection (b) of Code Section 50-27-24 shall be satisfied out of the proceeds to be received by the assignor.

(g) A voluntary assignment may not include portions of payments that are subject to offset on account of a defaulted or delinquent child support obligation, nonwage garnishment, or criminal restitution obligation or on account of a debt owed to a state agency. Each court order issued under subsection (c) of this Code section shall provide that any delinquent child support or criminal restitution obligations of the assignor and any debts owed to a state agency by the assignor, as of the date of the court order, shall be set off by the corporation first against remaining payments or portions thereof due the prize winner and then against payments due the assignee.

(h) The corporation, the directors, officials, and employees of the corporation are not liable under this Code section after payment of an assigned prize is made. The assignor and assignee shall hold harmless and indemnify the corporation, the directors, and the state, and its employees and agents, from all claims, suits, actions, complaints, or liabilities related to the assignment.

(i) The corporation may establish a reasonable fee to defray administrative expenses associated with assignments made under this Code section, including a processing fee imposed by a private annuity provider. The amount of the fee shall reflect the direct and indirect costs of processing assignments.

(j) The assignee shall notify the corporation of its business location and mailing address for payment purposes and of any change in location or address during the entire course of the assignment.

(k) A court order or a combination of court orders under this Code section may not require the corporation to divide a single prize payment among more than three different persons. This Code section does not prohibit the substitution of assignees as long as there are not more than three assignees at any one time for any one prize payment. Any subsequent assignee is bound as the original assignee by the provisions of this Code section and the terms and conditions of the contract of assignment.

(l) If the federal Internal Revenue Service or a court of competent jurisdiction issues a determination letter, revenue ruling, or other public document declaring that the voluntary assignment of prizes will affect the federal income tax treatment of lottery prize winners who do not assign their prizes, then within 15 days after the corporation

receives the letter, ruling, or other document, the director of the corporation shall file a copy of it with the Attorney General and a court may not issue an order authorizing a voluntary assignment under this Code section.

(m) The provisions of this Code section shall prevail over any inconsistent provision in Code Section 11-9-109.

(n) Any agreement or option to sell, assign, pledge, hypothecate, transfer, or encumber a lottery prize, or any portion thereof, prior to May 12, 2008, shall be void in its entirety.

History. — Code 1981, § 50-27-24.1, enacted by Ga. L. 2008, p. 370, § 4/HB 515.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "May 12, 2008" was substituted for "the effective date of this Code section" in subsection (n).

50-27-25. Confidentiality of information; investigations; supervision and inspections; reports of suspected violations; assistance in investigation of violations; confidentiality.

(a) Except as authorized in this chapter, the corporation is subject to the provisions of Article 4 of Chapter 18 of this title and Chapter 14 of this title. The corporation is specifically authorized to determine which information relating to the operation of the lottery is confidential. Such information includes trade secrets; security measures, systems, or procedures; security reports; information concerning bids or other contractual data, the disclosure of which would impair the efforts of the corporation to contract for goods or services on favorable terms; employee personnel information unrelated to compensation, duties, qualifications, or responsibilities; and information obtained pursuant to investigations which is otherwise confidential. Information deemed confidential pursuant to this Code section is exempt from the provisions of Article 4 of Chapter 18 of this title. Meetings or portions of meetings devoted to discussing information deemed confidential pursuant to this Code section are exempt from Chapter 14 of this title.

(b) The corporation shall perform full criminal background investigations prior to the execution of any vendor contract.

(c) The corporation or its authorized agent shall:

(1) Conduct criminal background investigations and credit investigations on all potential retailers;

(2) Supervise ticket or share validation and lottery drawings;

(3) Inspect at times determined solely by the corporation the facilities of any vendor or lottery retailer in order to determine the

integrity of the vendor's product or the operations of the retailer in order to determine whether the vendor or the retailer is in compliance with its contract;

(4) Report any suspected violations of this chapter to the appropriate district attorney or the Attorney General and to any law enforcement agencies having jurisdiction over the violation; and

(5) Upon request, provide assistance to any district attorney, the Attorney General, or a law enforcement agency investigating a violation of this chapter.

(d) The corporation shall keep all information regarding the winner of awards of $250,000.00 or greater confidential upon the prize winner making a written request that his or her information be kept confidential.

History. — Code 1981, § 50-27-25, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 2018, p. 730, § 1/SB 331.

RESEARCH REFERENCES

ALR. — State lotteries: actions by ticketholders or other claimants against state or contractor for state, 48 A.L.R.6th 243.

50-27-26. Sales to minors; penalty; affirmative defense.

Any person who knowingly sells a lottery ticket or share to a person under 18 years of age or permits a person under 18 years of age to play any lottery games shall be guilty of a misdemeanor and shall be fined not less than $100.00 nor more than $500.00 for the first offense and for each subsequent offense not less than $200.00 nor more than $1,000.00. It shall be an affirmative defense to a charge of a violation under this Code section that the retailer reasonably and in good faith relied upon representation of proof of age in making the sale.

History. — Code 1981, § 50-27-26, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1994, p. 1372, § 2.

50-27-27. Penalty for falsely making, altering, forging, uttering, passing, or counterfeiting ticket; penalty for attempting to influence winning of prize.

(a) Any person who, with intent to defraud, falsely makes, alters, forges, utters, passes, or counterfeits a state lottery ticket shall be punished by a fine not to exceed $50,000.00 or imprisonment for not longer than five years or both.

(b) Any person who influences or attempts to influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials shall be punished by a fine not to exceed $50,000.00 or by imprisonment for not longer than five years or both.

History. — Code 1981, § 50-27-27, enacted by Ga. L. 1992, p. 3173, § 2.

Law reviews. — For article, "State Government: Lottery for Education," see 30 Ga. St. U. L. Rev. 257 (2013).

JUDICIAL DECISIONS

Defendant's knowing presentation of two stolen winning lottery tickets for redemption was a violation of O.C.G.A. § 50-27-27(b) of the Georgia Lottery for Education Act, which forbade influencing the winning of a prize through the use of fraud and deception. Defendant's presentation of the tickets, not the receipt of a lottery prize, was the completed criminal act. Riddle v. State, 301 Ga. App. 138, 687 S.E.2d 165 (2009).

Indictment sufficient. — Trial court did not err in convicting the defendant of attempting to influence the winning of a prize by tampering with lottery equipment in violation of the Georgia Lottery for Education Act, O.C.G.A. § 50-27-27(b), because the indictment informed the defendant that the defendant was accused of attempting to influence the winning of Georgia Lottery prizes by tampering with lottery materials, and the defendant was apprised of what the defendant had to be prepared to defend against at trial, the defendant was not harmed by the erroneous reference to "falsely uttering" a lottery ticket, which was proscribed under § 50-27-27(a). Doe v. State, 306 Ga. App. 348, 702 S.E.2d 669 (2010), aff'd, 290 Ga. 667, 725 S.E.2d 234 (2012).

Actions for purpose of influencing winning or prize.. — Georgia Lottery for Education Act, O.C.G.A. § 50-27-27(b), applied to the defendant's conduct because the defendant's actions were for the purpose of influencing the winning of a prize offered by the Georgia Lottery Corporation; the defendant took lottery tickets in order to win lottery prizes personally, even though such conduct deprived other customers of the opportunity to lawfully purchase those tickets, and the defendant's action of leaning over the counter that stored the tickets, rolling the tickets off the plastic wheels on which the tickets were housed, ripping the tickets off the rolls, and taking the tickets for the defendant's own use constituted tampering with lottery materials in violation of O.C.G.A. § 16-10-94(a). Doe v. State, 306 Ga. App. 348, 702 S.E.2d 669 (2010), aff'd, 290 Ga. 667, 725 S.E.2d 234 (2012).

Tampering. — Defendant's act of leaning over a store counter, tearing lottery tickets from the tickets' dispenser without paying for the tickets, and scratching the tickets to see if the defendant had won a prize fell within the plain meaning of the term "tampering" in O.C.G.A. § 50-27-27, in that the defendant's act forever changed the odds of winning for paying customers and directly influenced the potential winning of lottery prizes by future customers. If the defendant's activity did not constitute "tampering" within the meaning of § 50-27-27, the express intent of the Georgia General Assembly in § 50-27-2 that state lottery revenues be maximized and that the lottery be operated with integrity and dignity would be frustrated. Doe v. State, 290 Ga. 667, 725 S.E.2d 234 (2012).

Jury instructions. — Trial court did not err in failing to instruct the jury that the state was required to prove that the offense of attempting to influence the winning of a prize by tampering with lottery equipment in violation of the Georgia Lottery for Education Act, O.C.G.A. § 50-27-27(b), was committed in the same manner as set forth in the indictment because no confusion could have resulted from reading the indictment as written since the trial court instructed the jury: (i)

no person would be convicted of any crime unless and until each element of the crime as charged was proven beyond a reasonable doubt; and (ii) the burden of proof rested upon the state to prove every material allegation of the indictment and every essential element of the crime charged beyond a reasonable doubt; in addition, the trial court did not err in charging the jury as a result of having read the indictment, including the erroneous reference to "falsely uttering" a lottery ticket because the body of the indictment clearly defined and described the offense the defendant was charged with having committed. Doe v. State, 306 Ga. App. 348, 702 S.E.2d 669 (2010), aff'd, 290 Ga. 667, 725 S.E.2d 234 (2012).

50-27-28. Penalty for making false statements or false entries in books or records.

No person shall knowingly or intentionally make a material false statement in any application for a license or proposal to conduct lottery activities or make a material false entry in any book or record which is compiled or maintained or submitted to the board pursuant to the provisions of this chapter. Any person who violates the provisions of this Code section shall be punished by a fine not to exceed $25,000.00 or the dollar amount of the false entry or statement, whichever is greater, or by imprisonment for not longer than five years or both.

History. — Code 1981, § 50-27-28, enacted by Ga. L. 1992, p. 3173, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising under O.C.G.A. § 50-27-28 are designated as offenses for which those charged are to be fingerprinted. 2017 Op. Att'y Gen. No. 17-1.

50-27-29. Agreements with agencies of other jurisdictions; restriction on release of records, documents, and information.

(a) The corporation may enter into intelligence sharing, reciprocal use, or restricted use agreements with the federal government, law enforcement agencies, lottery regulation agencies, and gaming enforcement agencies of other jurisdictions which provide for and regulate the use of information provided and received pursuant to the agreement.

(b) Records, documents, and information in the possession of the corporation received pursuant to an intelligence-sharing, reciprocal use, or restricted use agreement entered into by the corporation with a federal department or agency, any law enforcement agency, or the lottery regulation or gaming enforcement agency of any jurisdiction shall be considered investigative records of a law enforcement agency and are not subject to Article 4 of Chapter 18 of this title and shall not be released under any condition without the permission of the person or agency providing the record or information.

History. — Code 1981, § 50-27-29, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-30. Bidding requirements and procedures for contracts.

(a) The corporation shall enter into its contracts for major procurements after competitive bidding. The requirement for competitive bidding does not apply in the case of a single vendor having exclusive rights to offer a particular service or product. Procedures adopted by the board shall be designed to allow the selection of proposals that provide the greatest long-term benefit to the state, the greatest integrity for the corporation, and the best service and products for the public.

(b) In any bidding process, the corporation may administer its own bidding and procurement or may utilize the services of the Department of Administrative Services or other state agency or subdivision thereof.

History. — Code 1981, § 50-27-30, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-31. Appeals from actions of board.

(a) Any retailer, vendor, or applicant for a retailer or vendor contract aggrieved by an action of the board may appeal that decision to the Superior Court of Fulton County.

(b) The Superior Court of Fulton County shall hear appeals from decisions of the board and based upon the record of the proceedings before the board may reverse the decision of the board only if the appellant proves the decision to be:

(1) Clearly erroneous;

(2) Arbitrary and capricious;

(3) Procured by fraud;

(4) A result of substantial misconduct by the board; or

(5) Contrary to the United States Constitution or the Constitution of Georgia or the provisions of this chapter.

(c) The superior court may remand an appeal to the board to conduct further hearings.

(d) Any person who appeals the award of a major procurement contract for the supply of a lottery ticket system, share system, or an on-line or other mechanical or electronic system shall be liable for all costs of appeal and defense in the event the appeal is denied or the contract award upheld. Cost of appeal and defense shall specifically include but not be limited to court costs, bond, legal fees, and loss of

income to the corporation resulting from institution of the appeal if, upon the motion of the corporation, the court finds the appeal to have been frivolous.

History. — Code 1981, § 50-27-31, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-32. Corporation authorized to borrow money; validation of debt; restriction on use of money in state general fund; purchase or release of goods and services.

(a) The corporation may borrow, or accept and expend, in accordance with the provisions of this chapter, such moneys as may be received from any source, including income from the corporation's operations, for effectuating its corporate purposes, including the payment of the initial expenses of initiation, administration, and operation of the corporation and the lottery.

(b) Any debt of the corporation may be validated pursuant to the provisions of subsection (e) of Code Section 50-17-25, and the provisions of such subsection relating to the State Financing and Investment Commission shall be deemed to apply to the corporation.

(c) The corporation shall be self-sustaining and self-funded. Moneys in the state general fund shall not be used or obligated to pay the expenses of the corporation or prizes of the lottery, and no claim for the payment of an expense of the lottery or prizes of the lottery may be made against any moneys other than moneys credited to the corporation operating account.

(d) The corporation may purchase, lease, or lease-purchase such goods or services as are necessary for effectuating the purposes of this chapter. The corporation may make procurements which integrate functions such as lottery game design, lottery ticket distribution to retailers, supply of goods and services, and advertising. In all procurement decisions, the corporation shall take into account the particularly sensitive nature of the state lottery and shall act to promote and ensure security, honesty, fairness, and integrity in the operation and administration of the lottery and the objectives of raising net proceeds for the benefit of educational programs and purposes.

History. — Code 1981, § 50-27-32, enacted by Ga. L. 1992, p. 3173, § 2.

50-27-33. Reports by corporation; audits; budget; fiscal year.

To ensure the financial integrity of the lottery, the corporation through its board of directors shall:

(1) Submit quarterly and annual reports to the Governor, state auditor, the state accounting officer, and the oversight committee created by Code Section 50-27-34, disclosing the total lottery revenues, prize disbursements, operating expenses, and administrative expenses of the corporation during the reporting period. The annual report shall additionally describe the organizational structure of the corporation and summarize the functions performed by each organizational division within the corporation;

(2) Adopt a system of internal audits;

(3) Maintain weekly or more frequent records of lottery transactions, including the distribution of tickets or shares to retailers, revenues received, claims for prizes, prizes paid, prizes forfeited, and other financial transactions of the corporation;

(4) Contract with a certified public accountant or firm for an annual financial audit of the corporation. The certified public accountant or firm shall have no financial interest in any vendor with whom the corporation is under contract. The certified public accountant or firm shall present an audit report not later than four months after the end of the fiscal year. The certified public accountant or firm shall evaluate the internal auditing controls in effect during the audit period. The cost of this annual financial audit shall be an operating expense of the corporation. The state auditor may at any time conduct an audit of any phase of the operations of the Georgia Lottery Corporation at the expense of the state and shall receive a copy of the annual independent financial audit. A copy of any audit performed by the certified public accountant or firm or the state auditor shall be transmitted to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives, the state auditor, the state accounting officer, and the oversight committee chairperson;

(5) Submit to the Office of Planning and Budget, the state auditor, and the state accounting officer by June 30 of each year a copy of the annual operating budget for the corporation for the next fiscal year. This annual operating budget shall be approved by the board and be on such forms as prescribed by the Office of Planning and Budget;

(6) For informational purposes only, submit to the Office of Planning and Budget on September 1 of each year a proposed operating budget for the corporation for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the net proceeds to be deposited into the Lottery for Education Account during the succeeding fiscal year. This budget shall be on such forms as prescribed by the Office of Planning and Budget; and

(7) Adopt the same fiscal year as that used by state government.

History. — Code 1981, § 50-27-33, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 2005, p. 694, § 19/HB 293.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, the subsection "(a)" designation was deleted from the beginning of the introductory language.

50-27-34. Legislative oversight committee.

(a) There is created as a joint committee of the General Assembly, the Georgia Lottery Corporation Legislative Oversight Committee, to be composed of the members of the House Committee on Regulated Industries and the Senate Economic Development Committee. The chairpersons of such committees shall serve as cochairpersons of the oversight committee. The oversight committee shall periodically inquire into and review the operations of the Georgia Lottery Corporation, as well as periodically review and evaluate the success with which the authority is accomplishing its statutory duties and functions as provided in this chapter. The oversight committee may conduct any independent audit or investigation of the authority it deems necessary.

(b) The Georgia Lottery Corporation shall provide the oversight committee not later than December 1 of each year with a complete report of the level of participation of minority businesses in all retail and major procurement contracts awarded by the corporation.

History. — Code 1981, § 50-27-34, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 2004, p. 593, § 1; Ga. L. 2009, p. 303, § 5/HB 117.

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

ARTICLE 2

SETOFF OF DEBT COLLECTION AGAINST LOTTERY PRIZES

50-27-50. Purpose.

The purpose of this article is to establish a policy and to provide a system whereby all claimant agencies of this state in conjunction with the corporation shall cooperate in identifying debtors who owe money to the state through its various claimant agencies or to persons on whose behalf the state and its claimant agencies act and who qualify for prizes under Article 1 of this chapter from the corporation. It is also the purpose of this article to establish procedures for setting off against any such prize the sum of any debt owed to the state or to persons on whose behalf the state and its claimant agencies act. It is the intent of the General Assembly that this article be liberally construed to effectuate these purposes.

History. — Code 1981, § 50-27-50, enacted by Ga. L. 1993, p. 1037, § 2.

50-27-51. Definitions.

As used in this article, the term:

(1) "Claimant agency" means any state agency, department, board, bureau, commission, or authority to which an individual owes a debt or which acts on behalf of an individual to collect a debt.

(2) "Debt" means any liquidated sum due and owing any claimant agency, which sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum, or any sum which is due and owing any person and is enforceable by the state or any of its agencies or departments.

(3) "Debtor" means any individual owing money to or having a delinquent account with any claimant agency, which obligation has not been adjudicated as satisfied by court order, set aside by court order, or discharged in bankruptcy.

(4) "Prize" means the proceeds of any lottery prize awarded under Article 1 of this chapter.

History. — Code 1981, § 50-27-51, enacted by Ga. L. 1993, p. 1037, § 2.

50-27-52. Collection remedy in addition to other remedies.

The collection remedy authorized by this article is in addition to and not in substitution for any other remedy available by law.

History. — Code 1981, § 50-27-52, enacted by Ga. L. 1993, p. 1037, § 2.

50-27-53. Debts owed to state agencies lien against lottery winnings; prizes paid out by retailers or noncorporate entities; time period involved; rules and regulations; immunity; costs.

(a) Any claimant agency may submit to the corporation a list of the names of all persons owing debts in excess of $100.00 to such claimant agency or to persons on whose behalf the claimant agency is acting. The full amount of the debt shall be collectable from any lottery winnings without regard to limitations on the amounts that may be collectable in increments through garnishment or other proceedings. Such list shall constitute a valid lien upon and claim of lien against the lottery winnings of any debtor named in such list. The list shall contain the names of the debtors, their social security numbers if available, and any

other information which would assist the corporation in identifying the debtors named in the list.

(b) The corporation is authorized and directed to withhold any winnings subject to the lien created by this Code section and send notice to the winner by certified mail or statutory overnight delivery, return receipt requested, of such action and the reason the winnings were withheld. However, if the winner appears and claims winnings in person, the corporation shall notify the winner at that time by hand delivery of such action. If the debtor does not protest the withholding of such funds in writing within 30 days of such notice, the corporation shall pay the funds over to the claimant agency. If the debtor protests the withholding of such funds within 30 days of such notice, the corporation shall file an action in interpleader in the superior court of the county in which the debtor resides, pay the disputed sum into the registry of the court, and give notice to the claimant agency and debtor of the initiation of such action.

(c) The liens created by this Code section shall rank among themselves as follows:

(1) Taxes due the state;

(2) Delinquent child support; and

(3) All other judgments and liens in order of the date entered or perfected.

(d) The corporation shall not be required to deduct claimed debts from prizes paid out by retailers or entities other than the corporation.

(e) Any list of debt provided pursuant to this article shall be provided periodically as the corporation shall provide by rules and regulations and the corporation shall not be obligated to retain such lists or deduct debts appearing on such lists beyond the period determined by such rules and regulations.

(f) The corporation is authorized to prescribe forms and promulgate rules and regulations which it deems necessary to carry out the provisions of this article.

(g) The corporation and any claimant agency shall incur no civil or criminal liability for good faith adherence to the provisions of this Code section.

(h) The claimant agency shall pay the corporation for all costs incurred by the corporation in setting off debts in the manner provided in this article.

History. — Code 1981, § 50-27-53, enacted by Ga. L. 1993, p. 1037, § 2; Ga. L. 2000, p. 1589, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

50-27-54. Information provided to claimant agency; confidentiality.

(a) Notwithstanding Code Section 50-27-29, which prohibits disclosure by the corporation of the contents of prize winner records or information, and notwithstanding any other confidentiality statute, the corporation may provide to a claimant agency all information necessary to accomplish and effectuate the intent of this article.

(b) The information obtained by a claimant agency from the corporation in accordance with this article shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices. Any employee or prior employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized disclosure of confidential information by an agent or employee of the corporation.

History. — Code 1981, § 50-27-54, enacted by Ga. L. 1993, p. 1037, § 2.

50-27-55. Article applicable to prizes of $5,000.00 or more.

The provisions of this article shall only apply to prizes of $5,000.00 or more and shall not apply to any retailers authorized by the board to pay prizes of up to $5,000.00 after deducting the price of the ticket or share; excepting that a claim for delinquent child support filed by the entity within the Department of Human Services authorized to enforce support orders shall apply to all prizes of $2,500.00 or more.

History. — Code 1981, § 50-27-55, enacted by Ga. L. 1993, p. 1037, § 2; Ga. L. 2006, p. 850, § 1/SB 419; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2017, p. 646, § 2-6/SB 137.

Editor's notes. — Ga. L. 2006, p. 850, § 2/SB 419, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2006, and shall apply to prizes awarded on or after that date."

ARTICLE 3

BONA FIDE COIN OPERATED AMUSEMENT MACHINES

Editor's notes. — Ga. L. 2013, p. 37, § 1-1/HB 487, effective April 10, 2013, redesignated former Chapter 17 of Title 48 as Article 3 of Chapter 27 of Title 50.

Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited."

Part 1

General Provisions

50-27-70. Legislative findings; definitions.

(a) The General Assembly finds that the ability to operate a bona fide coin operated amusement machine business in this state constitutes a privilege and not a right. Further, in order to prevent the unregulated operation of the bona fide coin operated amusement machine business, the General Assembly is enacting the procedural enhancements of this article which will aid in the enforcement of the tax obligations that arise from the operation of bona fide coin operated amusement machine businesses as well as prevent unauthorized cash payouts. The General Assembly finds that the bona fide coin operated amusement machine business can be conducted in a manner to safeguard the fiscal soundness of the state, enhance public welfare, and support the need to educate Georgia's children through the HOPE scholarship program and pre-kindergarten funding authorized by Article I, Section II, Paragraph VIII of the Constitution.

(b) As used in this article, the term:

(1) "Applicant" or "licensee" means an owner, including an owner's officers, directors, shareholders, individuals, members of any association or other entity not specified, and, when applicable in context, the business entity itself.

(2)(A) "Bona fide coin operated amusement machine" means every machine of any kind or character used by the public to provide amusement or entertainment whose operation requires the payment of or the insertion of a coin, bill, other money, token, ticket, card, or similar object and the result of whose operation depends in whole or in part upon the skill of the player, whether or not it affords an award to a successful player pursuant to subsections (b) through (g) of Code Section 16-12-35, and which can be legally shipped interstate according to federal law. Examples of bona fide

coin operated amusement machines include, but are expressly not limited to, the following:

(i) Pinball machines;

(ii) Console machines;

(iii) Video games;

(iv) Crane machines;

(v) Claw machines;

(vi) Pusher machines;

(vii) Bowling machines;

(viii) Novelty arcade games;

(ix) Foosball or table soccer machines;

(x) Miniature racetrack, football, or golf machines;

(xi) Target or shooting gallery machines;

(xii) Basketball machines;

(xiii) Shuffleboard games;

(xiv) Kiddie ride games;

(xv) Skeeball machines;

(xvi) Air hockey machines;

(xvii) Roll down machines;

(xviii) Trivia machines;

(xix) Laser games;

(xx) Simulator games;

(xxi) Virtual reality machines;

(xxii) Maze games;

(xxiii) Racing games;

(xxiv) Coin operated pool tables or coin operated billiard tables as defined in paragraph (3) of Code Section 43-8-1; and

(xxv) Any other similar amusement machine which can be legally operated in Georgia.

The term also means a machine of any kind or character used by the public to provide music whose operation requires the payment of or the insertion of a coin, bill, other money, token, ticket, card, or

similar object such as jukeboxes or other similar types of music machines.

(B) The term "bona fide coin operated amusement machine" does not include the following:

(i) Coin operated washing machines or dryers;

(ii) Vending machines which for payment of money dispense products or services;

(iii) Gas and electric meters;

(iv) Pay telephones;

(v) Pay toilets;

(vi) Cigarette vending machines;

(vii) Coin operated scales;

(viii) Coin operated gumball machines;

(ix) Coin operated parking meters;

(x) Coin operated television sets which provide cable or network programming;

(xi) Coin operated massage beds; and

(xii) Machines which are not legally permitted to be operated in Georgia.

(3) "Class A machine" means a bona fide coin operated amusement machine that is not a Class B machine, does not allow a successful player to carry over points won on one play to a subsequent play or plays, and:

(A) Provides no reward to a successful player;

(B) Rewards a successful player only with free replays or additional time to play;

(C) Rewards a successful player with noncash merchandise, prizes, toys, gift certificates, or novelties in compliance with the provisions of subsection (c) or paragraph (1) of subsection (d) of Code Section 16-12-35, and does not reward a successful player with any item prohibited as a reward in subsection (i) of Code Section 16-12-35 or any reward redeemable as an item prohibited as a reward in subsection (i) of Code Section 16-12-35;

(D) Rewards a successful player with points, tokens, tickets, or other evidence of winnings that may be exchanged only for items listed in subparagraph (C) of this paragraph; or

(E) Rewards a successful player with any combination of items listed in subparagraphs (B), (C), and (D) of this paragraph.

(4) "Class B machine" means a bona fide coin operated amusement machine that allows a successful player to accrue points on the machine and carry over points won on one play to a subsequent play or plays in accordance with paragraph (2) of subsection (d) of Code Section 16-12-35 and:

(A) Rewards a successful player in compliance with the provisions of paragraphs (1) and (2) of subsection (d) of Code Section 16-12-35; and

(B) Does not reward a successful player with any item prohibited as a reward in subsection (i) of Code Section 16-12-35 or any reward redeemable as an item prohibited as a reward in subsection (i) of Code Section 16-12-35.

(5) "Distributor" means a person, individual, partnership, corporation, limited liability company, or any other business entity that buys, sells, or distributes Class B machines to or from operators.

(6) "Location license" means the initial and annually renewed license which every location owner or location operator must purchase and display in the location where one or more bona fide coin operated amusement machines are available for commercial use by the public for play in order to operate legally any such machine in this state.

(7) "Location license fee" means the fee paid to obtain the location license.

(8) "Location owner or location operator" means an owner or operator of a business where one or more bona fide coin operated amusement machines are available for commercial use and play by the public.

(9) "Manufacturer" means a person, individual, partnership, corporation, limited liability company, or any other business entity that supplies and sells major components or parts, including software, hardware, or both, to Class B machine distributors or operators.

(10) "Master license" means the certificate which every owner of a bona fide coin operated amusement machine must purchase and display in the owner's or operator's place of business where the machine is located for commercial use by the public for play in order to legally operate the machine in the state.

(10.1) "Master licensee" means any person that has lawfully applied for and received a master license.

(11) "Net receipts" means the entire amount of moneys received from the public for play of an amusement machine, minus the amount of expenses for noncash redemption of winnings from the amusement machine, and minus the amount of moneys refunded to the public for bona fide malfunctions of the amusement machine.

(12) "Operator" means any person, individual, firm, company, association, corporation, or other business entity that exhibits, displays, or permits to be exhibited or displayed, in a place of business other than his own, any bona fide coin operated amusement machine in this state.

(13) "Owner" means any person, individual, firm, company, association, corporation, or other business entity owning any bona fide coin operated amusement machine in this state.

(14) "Permit fee" means the annual per machine charge which every owner of a bona fide coin operated amusement machine in commercial use must purchase and display in either the owner's or operator's place of business in order to legally operate the machine in the state.

(15) "Person" means an individual, any corporate entity or form authorized by law including any of its subsidiaries or affiliates, or any officer, director, board member, or employee of any corporate entity or form authorized by law.

(16) "Single play" or "one play" means the completion of a sequence of a game, or replay of a game, where the player receives a score and from the score the player can secure free replays, merchandise, points, tokens, vouchers, tickets, cards, or other evidence of winnings as set forth in subsection (c) or (d) of Code Section 16-12-35. A player may, but is not required to, exchange a score for rewards permitted by subparagraphs (d)(1)(A) through (d)(1)(D) of Code Section 16-12-35 after each play.

(17) "Slot machine or any simulation or variation thereof" means any contrivance which, for a consideration, affords the player an opportunity to obtain money or other thing of value, the award of which is determined solely by chance, whether or not a prize is automatically paid by the contrivance.

(18) "Sticker" means the decal issued for every bona fide coin operated amusement machine to show proof of payment of the permit fee.

(19) "Successful player" means an individual who wins on one or more plays of a bona fide coin operated amusement machine.

(20) "Temporary location permit" means the permit which every location owner or location operator must purchase and display in the

location where one or more bona fide coin operated amusement machines are available for commercial use by the public for play in order to operate legally the machine or machines in this state for seven days or less. Such temporary location permits shall be subject to the same regulations and conditions as location licenses.

History. — Code 1981, § 48-17-1, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1995, p. 10, § 48; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 563, § 2; Ga. L. 1999, p. 1223, § 1; Ga. L. 2001, Ex. Sess., p. 312, § 3; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2010, p. 9, § 1-88/HB 1055; Ga. L. 2010, p. 470, § 1/SB 454; Ga. L. 2012, p. 1136, § 3/SB 431; Code 1981, § 50-27-70, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 866, § 50/SB 340; Ga. L. 2015, p. 39, § 1/SB 190.

Code Commission notes. — The amendment of this Code section by Ga. L. 2010, p. 9, § 1-88, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 470, § 1. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Editor's notes. — Ga. L. 2001, Ex. Sess., p. 312, § 4, not codified by the General Assembly, provides that: "This Act is not intended to, and should not be construed to, affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be prohibited by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall not be permitted by this Act."

Ga. L. 2001, Ex. Sess., p. 312, § 5, not codified by the General Assembly, provides that: "During the period beginning January 1, 2002, and ending June 30, 2002, it shall not be unlawful to possess in this state a machine or device described in subparagraph (B), (C), or (D) of paragraph (2) of Code Section 16-12-20, if: (1) Such machine is not in use; (2) Such machine is in transit to a storage facility or in a storage facility, which said storage facility is a secured facility and no part of same is accessible by anyone other than employees of said facility or employees of the owner of said machine; and (3) Such machine is not located in a place which is open to the public and is not located in a private club."

Ga. L. 2012, p. 1136, § 4/SB 431, not codified by the General Assembly, provides in part that this Code section shall apply to conduct that occurs on and after May 2, 2012. It is not the intention of this Act to abate any prosecution undertaken for conduct occurring under the law in effect prior to such date, and any offense committed before May 2, 2012, shall be prosecuted and punished under the statutes in effect at the time the offense was committed.

Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

Ga. L. 2013, p. 141, § 54(f)/HB79, not codified by the General Assembly, provides that: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another

Act enacted at the 2013 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to paragraphs (8) and (9) of this Code section by Ga. L. 2013, p. 141, § 48/HB 79 was not given effect in this Code section.

Law reviews. — For annual survey on administrative law, see 71 Mercer L. Rev. 1 (2019).

JUDICIAL DECISIONS

Statute did not void preexisting contracts. — In a suit for tortious interference with contractual relations, the trial court erred by granting partial summary judgment against the owners of coin-operated amusement machines because O.C.G.A. § 50-27-70, et seq., did not void preexisting contracts and it was error to interpret the statute otherwise. All Star, Inc. v. Ga. Atlanta Amusements, LLC, 332 Ga. App. 1, 770 S.E.2d 22 (2015).

State statutes preempted city's ordinance. — Conviction and fine against a convenience store operator for violating a city ordinance that prohibited certain retailers of packaged alcoholic beverages from allowing coin operated amusement machines (COAM) on the same premises was reversed because the state's COAM Laws, O.C.G.A. §§ 16-12-35 and 50-27-70, et seq., preempted the city's ordinance at least insofar as the ordinance applied to COAM as defined by the state statutes. Gebrekidan v. City of Clarkston, 298 Ga. 651, 784 S.E.2d 373 (2016).

Conversion of amusement machine into gambling machine. — Judgment approving forfeiture was affirmed because by giving players cash and lottery tickets as rewards for winning games on the amusement machines, the gas station employees effectively converted the machines into gambling devices under O.C.G.A. § 16-12-32(b)(4), which clearly violated the gambling laws of Georgia prohibiting cash payouts for winning games on machines when the winnings are determined by chance even if the games involve an element of skill. Patel v. State of Ga., 341 Ga. App. 419, 801 S.E.2d 551 (2017).

Tablet was not coin-operated amusement machine. — Tablet used by restaurant customers was not a coin-operated amusement machine (COAM) under O.C.G.A. § 50-27-70(2)(A); although the premium component of the tablets required payment, and that component depended on the skill of the player, the tablets could be used without payment for other purposes, including ordering and paying for food. Ga. Lottery Corp. v. Tabletop Media, LLC, 346 Ga. App. 498, 816 S.E.2d 438 (2018), cert. denied, No. S18C1520, 2019 Ga. LEXIS 175 (Ga. 2019).

Cited in Ultra Group of Companies, Inc. v. Alli, 352 Ga. App. 71, 833 S.E.2d 751 (2019); Amusement Leasing, Inc. v. Ga. Lottery Corp., 352 Ga. App. 243, 834 S.E.2d 330 (2019).

50-27-71. License fees; issuance of license; display of license; control number; duplicate certificates; application for license or renewal; penalty for noncompliance.

(a) Every manufacturer, distributor, and owner, except an owner holding a bona fide coin operated amusement machine solely for personal use or resale, who offers a bona fide coin operated amusement machine for sale to a distributor or to an owner and who offers others the opportunity to play for a charge, whether directly or indirectly, any bona fide coin operated amusement machine shall pay annual master license fees to the corporation as follows:

(1) For Class A machines:

(A) For five or fewer machines, the owner shall pay a master license fee of $500.00.

In the event such owner acquires a sixth or greater number of machines during a calendar year which requires a certificate for lawful operation under this article so that the total number of machines owned does not exceed 60 machines or more, such owner shall pay an additional master license fee of $1,500.00;

(B) For six or more machines but not more than 60 machines, the owner shall pay a master license fee of $2,000.00. In the event such owner acquires a sixty-first or greater number of machines during a calendar year which requires a certificate for lawful operation under this article, such owner shall pay an additional master license fee of $1,500.00; or

(C) For 61 or more machines, the owner shall pay a master license fee of $3,500.00;

(2) For any number of Class B machines, the owner shall pay a master license fee of $5,000.00;

(3) For any distributor, the distributor shall pay a distributor license fee of $5,000.00; and

(4) For any manufacturer, the manufacturer shall pay a manufacturer license fee of $5,000.00.

The cost of the license shall be paid to the corporation by company check, cash, cashier's check, money order, or any other method approved by the chief executive officer. Upon such payment, the corporation shall issue a master license certificate to the owner. The license fees levied by this Code section shall be collected by the corporation on an annual basis, and the board may establish procedures for license collection and set due dates for these license payments. No refund or credit of the license charge levied by this Code section may be allowed to any owner who ceases the manufacture, distribution, or operation of bona fide coin operated amusement machines prior to the end of any license or permit period.

(a.1) Every location owner or location operator shall pay an annual location license fee for each bona fide coin operated amusement machine offered to the public for play. The annual location license fee shall be $25.00 for each Class A machine and $125.00 for each Class B machine. The annual location license fee levied by this Code section shall be collected by the corporation, and the board may establish procedures for location license fee collection and set due dates for payment of such fees. The location license fee shall be paid to the corporation by company check, cash, cashier's check, money order, or any other method approved by the chief executive officer. Upon pay-

ment, the corporation shall issue a location license certificate that shall state the number of bona fide coin operated amusement machines permitted for each class without further description or identification of specific machines. No refund or credit of the location license fee shall be allowed to any location owner or location operator who ceases to offer bona fide coin operated amusement machines to the public for commercial use prior the end of any license period.

(a.2) The corporation may refuse to issue or renew a location owner or location operator license or may revoke or suspend a location owner or location operator license issued under this article if:

(1) The licensee or applicant has intentionally violated a provision of this chapter or a regulation promulgated under this chapter;

(2) The licensee or applicant has intentionally failed to provide requested information or answer a question, intentionally made a false statement in or in connection with his or her application or renewal, or omitted any material or requested information;

(3) The licensee or applicant used coercion to accomplish a purpose or to engage in conduct regulated by the corporation;

(4) Failure to revoke or suspend the license would be contrary to the intent and purpose of this article;

(5) The licensee or applicant has engaged in unfair methods of competition and unfair or deceptive acts or practices as provided in Code Section 50-27-87.1; or

(6) Any applicant, or any person, firm, corporation, legal entity, or organization having any interest in any operation for which an application has been submitted, fails to meet any obligations imposed by the tax laws or other laws or regulations of this state.

(b) A copy of an owner's master license and the location owner's or location operator's location license shall be prominently displayed at all locations where the owner and location owner or location operator have bona fide coin operated amusement machines available for commercial use and for play by the public to evidence the payment of the fees levied under this Code section. A manufacturer's license and distributor's license, as well as invoices for the sales of any Class B machines to any person or entity licensed by this chapter, shall be available for inspection at their places of business and upon request from the corporation.

(c) Each manufacturer, distributor, and master license and each location license shall list the name and address of the manufacturer, distributor, owner, location owner, or location operator, as applicable.

(d) The corporation may provide a duplicate license issued pursuant to this Code section if the original license has been lost, stolen, or

destroyed. The fee for a duplicate original license is $100.00. If the original license is lost, stolen, or destroyed, a sworn, written statement must be submitted explaining the circumstances by which the license was lost, stolen, or destroyed and including the number of the lost, stolen, or destroyed license, if applicable, before a duplicate original license can be issued. A license for which a duplicate license has been issued is void.

(e) A license or permit issued under this Code section:

(1) Is effective for a single business entity;

(2) Vests no property or right in the holder of the license or permit except to conduct the licensed or permitted business during the period the license or permit is in effect;

(3) Except as provided in paragraph (5) of this subsection, is nontransferable, nonassignable by and between owners or location owners and location operators, and not subject to execution;

(4) Expires upon the death of an individual holder of a license or permit or upon the dissolution of any other holder of a license or permit; and

(5) As it relates to a master licensee, upon the sale of a master licensee's business in its entirety, the buyer shall pay to the corporation a transfer fee for the master license that accompanies the business in the following amounts:

(A) For the first sale of a master licensee's business, a transfer fee for the master license in the amount of $10,000.00;

(B) For the second sale of such business, a transfer fee for the master license in the amount of $25,000.00;

(C) For the third sale of such business, a transfer fee for the master license in the amount of $50,000.00; and

(D) For the fourth sale of such business and each sale thereafter, a transfer fee for the master license in an amount to be established by the corporation, which transfer fee shall be not less than $50,000.00.

(f) An application for the renewal of a license or permit must be made to the corporation in accordance with the due dates set forth in the rules promulgated by the board each year.

(g) Acceptance of a license or permit issued under this Code section constitutes consent by the licensee and the location owner or location operator of the business where bona fide coin operated amusement machines are available for commercial use and for play by the public that the corporation's agents may freely enter the business premises

where the licensed and permitted machines are located during normal business hours for the purpose of ensuring compliance with this article.

(h) An application for a license or permit to do business under this article shall contain a complete statement regarding the ownership of the business to be licensed or the business where the permitted machines are to be located. This statement of ownership shall specify the same information that is required by the application to secure a sales tax number for the State of Georgia.

(i) An application for a master license shall be accompanied by either the annual or semiannual fee plus the required permit fee due for each machine. Additional per machine permits can be purchased during the year if needed by the owner. An application for a location license shall be accompanied by the appropriate fee.

(j) An application is subject to public inspection.

(k) A renewal application filed on or after the due dates set forth in the rules promulgated by the board, but before the license expires, shall be accompanied by a nonrefundable late fee of $1,000.00. A manufacturer, distributor, or master license or location license that has been expired for more than 90 days may not be renewed. In such a case, the manufacturer, distributor, master license, or location license owner shall obtain a new license, as applicable, by complying with the requirements and procedures for obtaining an original license.

(l) A holder of a license who properly completes the application and remits all fees with it by the due date may continue to manufacture, distribute, or operate bona fide coin operated amusement machines after the expiration date if its license or permit renewal has not been issued, unless the holder of the license is notified by the corporation prior to the expiration date of a problem with the renewal.

(m) Holders of manufacturer, distributor, and location licenses and temporary location permits shall be subject to the same provisions of this article with regard to refunds, license renewals, license suspensions, and license revocations as are master licensees.

(n) Failure to obtain a license as required by this Code section shall subject the person to a fine of up to $25,000.00 and repayment of all fees or receipts due to the corporation pursuant to this article and may subject the person to a loss of all state licenses.

History. — Code 1981, § 48-17-2, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1994, p. 834, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 2010, p. 9, § 1-89/HB 1055; Ga. L. 2010, p. 470, § 2/SB 454; Code 1981, § 50-27-71, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 2/SB 190.

Code Commission notes. — The amendment of subsection (a) of this Code section by Ga. L. 2010, p. 9, § 1-89, irreconcilably conflicted with and was treated

as superseded by Ga. L. 2010, p. 470, § 2. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

Cited in Ga. Lottery Corp. v. Tabletop Media, LLC, 346 Ga. App. 498, 816 S.E.2d 438 (2018).

50-27-72. Refund of license.

(a) No refund is allowed for a manufacturer, distributor, or master license except as follows:

(1) The licensee makes a written request to the corporation for a refund prior to the beginning of the calendar year for which it was purchased;

(2) The licensee makes a written request prior to the issuance of the license or registration certificate;

(3) The licensee makes a written request for a refund claiming the license or registration certificate was mistakenly purchased due to reliance on incorrect information from the corporation;

(4) The processing of the license is discontinued; or

(5) The issuance of the license is denied.

(b) Before a refund will be allowed if the renewal of a master license is denied, the corporation shall verify that the applicant has no machines in operation and does not possess any machines except those that are exempt from the fees. If a master license is not issued, the corporation may retain $100.00 to cover administrative costs.

(c) No refund will be allowed if the owner has an existing liability for any other fees or taxes due. Any refund will be applied to the existing liability due.

History. — Code 1981, § 48-17-3, enacted by Ga. L. 1992, p. 1521, § 3; Code 1981, § 50-27-72, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 3/SB 190.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-73. Refusal to issue or renew license; revocation or suspension; hearing; limitation on issuance of licenses.

(a) The corporation shall not renew a license for a person under this article and shall suspend for any period of time or cancel a license if the corporation finds that the applicant or licensee is indebted to the state for any fees, costs, penalties, or delinquent fees.

(b) The corporation shall not issue or renew a license for a person under this article if the applicant does not designate and maintain an office in this state or if the applicant does not permit inspection by the corporation's agents of his or her place of business or of all records which the applicant or licensee is required to maintain; provided, however, that this subsection shall not apply to manufacturers.

(c) The corporation may refuse to issue or renew a manufacturer, distributor, or master license or may revoke or suspend a manufacturer, distributor, or master license issued under this chapter if:

(1) The licensee or applicant has intentionally violated a provision of this chapter or a regulation promulgated under this chapter;

(2) The licensee or applicant has intentionally failed to provide requested information or answer a question, intentionally made a false statement in or in connection with his or her application or renewal, or omitted any material or requested information;

(3) The licensee or applicant used coercion to accomplish a purpose or to engage in conduct regulated by the corporation;

(4) A master licensee or applicant allows the use of its master license certificate or per machine permit stickers by any other business entity or person that owns or operates bona fide coin operated amusement machines available for commercial use and

available to the public for play. If such unauthorized use occurs, the corporation may fine the licensee as follows:

(A) One thousand dollars for each improper use of a per machine permit sticker; and

(B) Twenty-five thousand dollars for each improper use of a master license certificate.

In addition, the corporation is authorized to seize the machines in question and assess the master license and permit fees as required by law and to assess the costs of such seizure to the owner or operator of the machines;

(5) Failure to suspend or revoke the license would be contrary to the intent and purpose of this article;

(6) The licensee or applicant has engaged in unfair methods of competition and unfair or deceptive acts or practices as provided in Code Section 50-27-87.1; or

(7) Any applicant, or any person, firm, corporation, legal entity, or organization having any interest in any operation for which an application has been submitted, fails to meet any obligations imposed by the tax laws or other laws or regulations of this state.

(d) The corporation, on the request of a licensee or applicant for a license, shall conduct a hearing to ascertain whether a licensee or applicant for a license has engaged in conduct which would be grounds for revocation, suspension, or refusal to issue or renew a license.

(e) Effective July 1, 2015, the corporation may issue up to 220 Class B master licenses through a process of competitive auction to be established by the corporation and such competitive auction shall occur at least once every three years effective July 1, 2015; provided, however, that any person or entity holding a Class B master license on the effective date of this subsection shall not be subject to the competitive auction process provided for in this Code section but shall be subject to all other requirements of this article; provided, further, that the corporation shall be permitted to renew Class B master licenses at any time.

History. — Code 1981, § 48-17-4, enacted by Ga. L. 1992, p. 1521, § 3; Code 1981, § 50-27-73, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 39, § 4/SB 190.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality

of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-74. Right to notice and hearing; service of notice; establishment of procedures; prohibition on assigning, transferring or selling by master licensee.

(a) An applicant or licensee is entitled to at least 30 days' written notice and, if requested, a hearing in the following instances:

(1) After an application for an original or renewal license has been refused;

(2) Before the corporation may revoke a license; or

(3) Before the corporation may invoke any other sanctions provided by this article. For purposes of this paragraph, sanctions shall not include:

(A) Issuance of a citation;

(B) Imposition of a late fee, penalty fee, or interest penalty under subsection (k) of Code Section 50-27-71, Code Section 50-27-80, or subsection (a) of Code Section 50-27-82; or

(C) Sealing a machine or imposing charges related thereto under subsection (f) of Code Section 50-27-82.

(b) The written notice provided by this Code section may be served personally by the chief executive officer or an authorized representative of the corporation or sent by United States certified mail or statutory overnight delivery addressed to the applicant, licensee, or registration certificate holder at its last known address. In the event that notice cannot be effected by either of these methods after due diligence, the chief executive officer may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence of the corporation's action, including publishing the notice in a newspaper of general circulation in the area in which the applicant, licensee, or registration certificate holder conducts its business activities. The written notice shall state with particularity the basis upon which the corporation is taking the proposed actions.

(c) Subject to approval by the chief executive officer and corporation, the Bona Fide Coin Operated Amusement Machine Operator Advisory Board shall establish a procedure for hearings required by this article. Such procedure shall empower the chief executive officer with the authority to delegate or appoint any person or public agency to preside

over the hearing and adjudicate the appeal, and the chief executive officer shall identify the party responsible for entering a final decision for the corporation.

(d) At the time that a master licensee receives notice of a potential revocation of its master license as provided in this Code section, the master licensee shall be prohibited from assigning, selling, or otherwise transferring any of its contracts with location owners or location operators to any other master licensee or other person, and such prohibition shall remain in effect unless or until a final decision, not subject to further appeal, is rendered which does not result in the revocation of the master license. After a master license is revoked by final order and no other appeals are available, any contracts between a master licensee and a location owner or location operator for the providing of bona fide coin operated amusement machines shall be null and void. Nothing in this subsection shall prevent a location owner or location operator from exercising any contractual right to place machines of another master licensee in such location.

History. — Code 1981, § 48-17-5, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1998, p. 563, § 3; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 415, § 48; Code 1981, § 50-27-74, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2016, p. 762, § 1/SB 388.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that that Act shall apply with respect to notices delivered on or after July 1, 2000.

Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

Intra-agency appeal procedure must be followed. — Licensee's appeal was properly dismissed for failing to exhaust the required administrative remedy available as the Georgia Lottery Commission rules required that affected persons must exhaust the intra-agency appeal procedure, and the failure to do so operated as a waiver of the person's appeal rights. Amazing Amusements Group, Inc. v. Wilson, 353 Ga. App. 256, 835 S.E.2d 781 (2019).

50-27-75. Delivery of order refusing application or imposing sanction.

(a) The corporation shall deliver to the applicant or licensee a written copy of the order refusing an application or renewal application, revoking a master license, or imposing any other sanction provided in this article issued after any required hearing provided by Code Section 50-27-74.

(b) Delivery of the corporation's order may be given by:

(1) Personal service upon an individual applicant or licensee;

(2) Personal service upon any officer, director, partner, trustee, or receiver, as the case may be;

(3) Personal service upon the person in charge of the business premises, temporarily or otherwise, of the applicant or licensee;

(4) Sending such notice by United States certified mail or statutory overnight delivery addressed to the business premises of the applicant or licensee; or

(5) Posting notice upon the outside door of the business premises of the applicant or licensee.

(c) Notice shall be deemed complete upon the performance of any action authorized in this Code section.

History. — Code 1981, § 48-17-6, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1998, p. 563, § 4; Ga. L. 2000, p. 1589, § 3; Code 1981, § 50-27-75, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that this Act shall apply with respect to notices delivered on or after July 1, 2000.

Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-76. Judicial review of action by corporation or chief executive officer.

(a) Appeal by an affected person from all actions of the corporation or chief executive officer shall be to the Superior Court of Fulton County.

The review shall be conducted by the court and shall be confined to the record.

(b) The court shall not substitute its judgment for that of the corporation or chief executive officer as to the weight of the evidence on questions of fact committed to the discretion of the corporation or chief executive officer. The court may affirm the decision of the corporation or chief executive officer in whole or in part; the court shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the corporation's or chief executive officer's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the corporation or chief executive officer;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History. — Code 1981, § 48-17-7, enacted by Ga. L. 1992, p. 1521, § 3; Code 1981, § 50-27-76, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

Inaccurate interpretation of statute and tablet useage in restaurant. — Georgia Lottery Corporation erred in interpreting O.C.G.A. § 50-27-70(2)(A) to conclude that a tablet used by customers at tables in restaurants was a "coin-operated amusement machine" or COAM; although the premium component of the machines required payment, and the operation of the premium component depended on the skill of the player, the tablets could be used without payment for other purposes, including to order and pay for food and play certain other games. Ga. Lottery Corp. v. Tabletop Media, LLC, 346 Ga. App. 498, 816 S.E.2d 438 (2018), cert.

denied, No. S18C1520, 2019 Ga. LEXIS 175 (Ga. 2019).

Intra-agency appeal procedure must be followed. — Licensee's appeal was properly dismissed for failing to exhaust the required administrative remedy available as the Georgia Lottery Commission rules required that affected persons must exhaust the intra-agency appeal procedure, and the failure to do so operated as a waiver of the person's appeal rights. Amazing Amusements Group, Inc. v. Wilson, 353 Ga. App. 256, 835 S.E.2d 781 (2019).

50-27-77. Appeal from superior court.

Appeal from any final judgment of the Superior Court of Fulton County may be taken by any party, including the corporation, in the manner provided for in civil actions generally.

History. — Code 1981, § 48-17-8, enacted by Ga. L. 1992, p. 1521, § 3; Code 1981, § 50-27-77, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

Licensee could appeal directly under O.C.G.A. § 5-6-34. — Because O.C.G.A. § 50-27-4 provided that the Georgia Lottery Corporation (GLC) was not an agency of the state, a superior court order reviewing a decision of the GLC did not fall within the ambit of O.C.G.A. § 5-6-35(a)(1), requiring an application for discretionary review of agency decisions; rather, a licensee of coin-operated amusement machines (COAM) could appeal directly under O.C.G.A. § 5-6-34(a). Amusement Leasing, Inc. v. Ga. Lottery Corp., 352 Ga. App. 243, 834 S.E.2d 330 (2019).

50-27-78. Payment and collection of annual permit fee; permit stickers; treatment of fees; penalty for defacing sticker.

(a) Every owner, except an owner holding a coin operated amusement machine solely for personal use or resale, who offers others the opportunity to play for a charge, whether direct or indirect, any bona fide coin operated amusement machine shall pay an annual permit fee for each bona fide coin operated amusement machine in the amount of $25.00 for each Class A machine and $125.00 for each Class B machine.

The fee shall be paid to the corporation by company check, cash, cashier's check, money order, or any other method approved by the chief executive officer. Upon payment, the corporation shall issue a sticker for each bona fide coin operated amusement machine. The board may establish procedures for annual collection and set due dates for the fee payments. No refund or credit of the annual fee levied by this article shall be allowed to any owner who ceases the exhibition or display of any bona fide coin operated amusement machine prior to the end of any license or permit period.

(b) The sticker issued by the corporation to evidence the payment of the fee under this Code section shall be securely attached to the machine. Owners may transfer stickers from one machine to another in the same class and from location to location so long as all machines in commercial use available for play by the public have a sticker of the correct class and the owner uses the stickers only for machines that it owns.

(c) Each permit sticker shall not list the name of the owner but shall have a control number which corresponds with the control number issued on the master license certificate to allow for effective monitoring of the licensing and permit system. Permit stickers are only required for bona fide coin operated amusement machines in commercial use available to the public for play at a location.

(d) The corporation may provide a duplicate permit sticker if a valid permit sticker has been lost, stolen, or destroyed. The fee for a duplicate permit sticker shall be $25.00 for each Class A machine and $125.00 for each Class B machine. If a permit sticker is lost, stolen, or destroyed, a sworn, written statement must be submitted explaining the circumstances by which the permit sticker was lost, stolen, or destroyed and including the number of the lost, stolen, or destroyed permit before a replacement permit can be issued. A permit for which a duplicate permit sticker has been issued is void.

(e) Each permit sticker issued for a bona fide coin operated amusement machine which rewards a winning player exclusively with free replays, noncash redemption merchandise, prizes, toys, gift certificates, or novelties; or points, tokens, tickets, cards, or other evidence of winnings that may be exchanged for free replays or noncash redemption merchandise, prizes, toys, gift certificates, or novelties, in accordance with the provisions of subsections (b) through (d) of Code Section 16-12-35 shall include the following: "GEORGIA LAW PROHIBITS THE PAYMENT OR RECEIPT OF ANY MONEY FOR REPLAYS OR MERCHANDISE AWARDED FOR PLAYING THIS MACHINE. O.C.G.A. SECTION 16-12-35."

(f) The corporation shall not assess any fees that are not explicitly authorized under this article on a manufacturer, distributor, operator, location owner, or location operator.

(g) All fees assessed by the corporation pursuant to this article shall be considered proceeds derived from a lottery operated on or on behalf of the state and shall not be remitted to the general fund pursuant to Article I, Section II, Paragraph VIII(c) of the Constitution.

(h) It shall be unlawful to remove or deface a sticker which is attached to a machine without authorization by the owner of the machine or the corporation. A violation of this subsection shall be a misdemeanor.

History. — Code 1981, § 48-17-9, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1994, p. 834, § 2; Ga. L. 1998, p. 563, § 5; Ga. L. 2010, p. 9, § 1-90/HB 1055; Ga. L. 2010, p. 470, § 3/SB 454; Code 1981, § 50-27-78, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 5/SB 190; Ga. L. 2016, p. 762, § 2/SB 388.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, a quotation mark was added at the end of subsection (e).

The amendment of subsection (a) by Ga. L. 2010, p. 9, § 1-90, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 470, § 3. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

Cited in Ga. Lottery Corp. v. Tabletop Media, LLC, 346 Ga. App. 498, 816 S.E.2d 438 (2018).

50-27-79. Refund of annual permit fee.

No refund shall be allowed for the annual permit fee assessed on each bona fide coin operated amusement machine registered with the corporation except as follows:

(1) The owner makes a written request to the corporation for a refund prior to the beginning of the calendar year for which the permit sticker was purchased and returns the permit sticker;

(2) The owner makes a written request for a refund prior to the issuance of the permit sticker;

(3) The owner makes a written request for a refund claiming the permit sticker was mistakenly purchased for a machine not subject to the permit fee and returns the permit sticker; or

(4) The owner provides the corporation with a sworn affidavit that a machine was sold, stolen, or destroyed prior to the beginning of the calendar year for which the permit was purchased and returns the sticker unless it was attached to the stolen or destroyed machine.

History. — Code 1981, § 48-17-10, enacted by Ga. L. 1992, p. 1521, § 3; Code 1981, § 50-27-79, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-80. Permit fees for additional machines; penalty fee.

If an owner purchases or receives additional bona fide coin operated amusement machines during the calendar year, the applicable annual permit fee shall be paid to the corporation and the sticker shall be affixed to the machine before the machine may be legally operated. A penalty fee equal to twice the applicable annual permit fee shall be assessed by the corporation for every machine in operation without a permit sticker.

History. — Code 1981, § 48-17-11, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1994, p. 834, § 3; Ga. L. 2010, p. 470, § 4/SB 454; Ga. L. 2010, p. 9, § 1-91/HB 1055; Code 1981, § 50-27-80, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487.

Code Commission notes. — The amendment of this Code section by Ga. L. 2010, p. 9, § 1-91, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 470, § 4. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or

use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-81. Administration of article.

(a) The chief executive officer shall provide for the proper administration of this article and is authorized to act on behalf of the corporation for such purpose. The chief executive officer may initiate investigations, hearings, and take other necessary measures to ensure compliance with the provisions of this article or to determine whether violations exist. If the chief executive officer finds evidence of any criminal violations, he or she shall notify the appropriate prosecuting attorney in the county in which such violation occurred.

(b) The chief executive officer is authorized to provide for the enforcement of this article and the board shall provide for collection of the revenues under this article by rule and regulation.

(c) The chief executive officer may delegate to an authorized representative any authority given to the chief executive officer by this article, including the conduct of investigations, imposing of fees and fines, and the holding of hearings.

History. — Code 1981, § 48-17-12, enacted by Ga. L. 1992, p. 1521, § 3; Code 1981, § 50-27-81, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

Exhaustion of remedies. — Coin operated amusement machine licensee failed to exhaust the licensee's administrative remedies under the procedure set out in the GLC rules before filing suit in superior court; therefore, the licensee's action was properly dismissed. After the hearing officer denied the licensee's request for reconsideration, the licensee had ten days from receipt of the reconsideration order to file a motion for review with the GLC's President/CEO under GLC Rule 13.2.5(1)(b)(1)(A), which the licensee failed to do. Amusement Leasing, Inc. v. Ga. Lottery Corp., 352 Ga. App. 243, 834 S.E.2d 330 (2019).

50-27-82. Criminal violations; investigations; seizure and confiscation of machines; repossession; sealing of machines.

(a) If any owner or operator of any bona fide coin operated amusement machine in this state shall violate any provision of this article or any rule and regulation promulgated under this article, the corporation may investigate the violation and may seek sanctions, including late fees of $50.00 for failure to pay timely permit sticker fees, $125.00 for failure to pay timely the master license fee, suspension or revocation of a license, seizure of equipment, interest penalty, and debarment for repeat offenders.

(b) No person other than an owner shall intentionally remove a current permit sticker from a bona fide coin operated amusement machine or from the location where the machine is located. Any person who violates this subsection shall be guilty of a misdemeanor.

(c) A person who owns or operates bona fide coin operated amusement machines without a current master license or without a permit sticker on display shall be guilty of a misdemeanor.

(d) A person who knowingly makes a material false statement on any application or renewal application for a master license or permit sticker under this article by fraud, misrepresentation, or subterfuge or makes a material false entry on any book, record, or report which is compiled, maintained, or submitted to the corporation pursuant to the provisions of this article is guilty of a felony and upon conviction thereof shall be punished by imprisonment for not less than one nor more than five years, a fine not to exceed $25,000.00, or both.

(e) Any bona fide coin operated amusement machine not having the required master license or permit stickers may be seized and confiscated by the corporation's agents or employees and sold at public auction after 30 days' advertisement. Upon payment of the license required, the corporation may return any property so seized and confiscated and compromise any fee or penalty assessed. The owner from whom the bona fide coin operated amusement machine is seized may, at any time within ten days after the seizure, repossess the property by filing with the corporation a bond, in cash or executed by a surety company authorized to do business in this state, in double amount of the tax and penalties due. Within 30 days after the bond has been filed, the owner must bring an action in a court of competent jurisdiction to have the seizure set aside; otherwise, the bond so filed shall be declared forfeited to the corporation.

(f) The chief executive officer or an authorized representative thereof may seal in a manner that will prevent its full operation any such bona

fide coin operated amusement machine that is in commercial use available to the public for play whose master license or sticker under this article has been suspended or revoked, upon which the fee has not been paid, or that is not registered with the corporation under this article. Whoever shall break the seal affixed by the chief executive officer or an authorized representative thereof without the chief executive officer's approval or whoever shall provide in commercial use available to the public for play any such bona fide coin operated amusement machine after the seal has been broken without the chief executive officer's approval or whoever shall remove any bona fide coin operated amusement machine from its location after the same has been sealed by the chief executive officer shall be guilty of a misdemeanor. The corporation shall charge a fee of $75.00 for the release of any bona fide coin operated amusement machine which is sealed. The fee shall be paid to the corporation.

History. — Code 1981, § 48-17-13, enacted by Ga. L. 1992, p. 1521, § 3; Code 1981, § 50-27-82, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

Cited in Ga. Lottery Corp. v. Tabletop Media, LLC, 346 Ga. App. 498, 816 S.E.2d 438 (2018).

50-27-83. Validity of prior existing obligations to state.

(a) All taxes, fees, penalties, and interest accruing to the State of Georgia under any other provision of Title 48 as it existed prior to July 1, 2010, shall be and remain valid and binding obligations to the State of Georgia for all taxes, penalties, and interest accruing under the provisions of prior or preexisting laws and all such taxes, penalties, and interest now or hereafter becoming delinquent to the State of Georgia prior to July 1, 2010, are expressly preserved and declared to be legal and valid obligations to the state.

(b) The enactment and amendment of this article shall not affect offenses committed or prosecutions begun under any preexisting law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

(c) Nothing in this article shall be construed or have the effect to license, permit, authorize, or legalize any machine, device, table, or bona fide coin operated amusement machine the keeping, exhibition, operation, display, or maintenance of which is in violation of the laws or Constitution of this state.

History. — Code 1981, § 48-17-14, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 2010, p. 470, § 5/SB 454; Code 1981, § 50-27-83, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-84. Limitation on percent of monthly gross retail receipts derived from machines; monthly verified reports; issuance of fine or revocation or suspension of license for violations; submission of electronic reports.

(a) As used in this Code section, the term:

(1) "Amusement or recreational establishment" means an open-air establishment frequented by the public for amusement or recreation. Such an establishment shall be in a licensed fixed location located in this state and which has been in operation for at least 35 years.

(2) "Business location" means any structure, vehicle, or establishment where a business is conducted.

(3) "Gross retail receipts" means the total revenue derived by a business at any one business location from the sale of goods and services and the commission earned at any one business location on the sale of goods and services but shall not include revenue from the sale of goods or services for which the business will receive only a commission. The sale of goods or services for which the business will receive only a commission shall not include the sale of any item which

the business has purchased for resale. Revenue shall not include the sale of goods and services at wholesale.

(b)(1) No location owner or location operator shall derive more than 50 percent of such location owner's or location operator's monthly gross retail receipts for the business location in which the Class B machine or machines are situated from such Class B machines; provided, however, that revenues that are due to a master licensee or the corporation or noncash redemption that is earned by the player shall not be deemed revenue derived from Class B machines.

(2) No location owner or location operator shall offer more than nine Class B machines to the public for play in the same business location; provided, however, that this limitation shall not apply to an amusement or recreational establishment.

(c) For each business location which offers to the public one or more Class B machines, the location owner or location operator shall prepare a monthly verified report setting out separately by location in Georgia:

(1) The gross receipts from the Class B machines;

(2) The gross retail receipts for the business location; and

(3) The net receipts of the Class B machines.

(c.1) Each person holding a Class B master license shall prepare a monthly verified report setting out separately by location in Georgia:

(1) The gross receipts from the Class B machines which the master licensee maintains; and

(2) The net receipts of the Class B machines.

(d) In accordance with the provisions of Code Section 50-27-73 and the procedures set out in Code Sections 50-27-74 and 50-27-75, the corporation may fine an applicant or holder of a license, refuse to issue or renew a location license or master license, or revoke or suspend a location license or master license for single or repeated violations of subsection (b) of this Code section.

(e) A location owner or location operator shall report the information prescribed in this Code section in the form required by the corporation. Such report shall be submitted in an electronic format approved by the corporation.

(f) Beginning on August 20, 2013, and on the twentieth day of each month thereafter, for the previous month, the reports required by subsections (c) and (c.1) of this Code section shall be supplied to the corporation on forms provided by the corporation, including electronic means. The corporation shall be authorized to audit any records for any such business location or master licensee subject to this Code section.

The corporation may contract with any state agencies to perform the audits authorized by this Code section, and it may contract or enter into a memorandum of understanding with the Department of Revenue to enforce the provisions of this Code section.

History. — Code 1981, § 48-17-15, enacted by Ga. L. 1999, p. 1223, § 2; Ga. L. 2010, p. 470, § 6/SB 454; Code 1981, § 50-27-84, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 6/SB 190; Ga. L. 2016, p. 762, § 3/SB 388.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-85. Penalties for violations by location owners or operators.

(a) Except as specifically provided in this article, for single or repeated violations of this article by a location owner or location operator who offers one or more bona fide coin operated amusement machines for play by the public, the corporation may impose the following penalties on such a location owner or location operator:

(1) A civil fine in an amount specified in rules and regulations promulgated in accordance with this article; or

(2) For a third or subsequent offense, a suspension or revocation of the privilege of offering one or more bona fide coin operated amusement machines for play by the public.

(b) Before a penalty is imposed in accordance with this Code section, a location owner or location operator shall be entitled to at least 30 days' written notice and, if requested, a hearing as provided in Code Section 50-27-74. Such written notice shall be served in the manner provided for written notices to applicants and holders of licenses in subsection (b) of Code Section 50-27-74, and an order imposing a penalty shall be delivered in the manner provided for delivery of the corporation's orders to applicants for licenses and holders of licenses in Code Section 50-27-75.

(c) In the case of a suspension or revocation in accordance with this Code section, the corporation shall require the location owner or

location operator to post a notice in the business location setting out the period of the suspension or revocation. No applicant or holder of a license or permit shall allow a bona fide coin operated amusement machine under the control of such applicant or holder of a license or permit to be placed in a business location owned or operated by a location owner or location operator who has been penalized by a suspension or revocation during the period of the suspension or revocation.

History. — Code 1981, § 48-17-16, enacted by Ga. L. 2010, p. 470, § 7/SB 454; Code 1981, § 50-27-85, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-86. Local government to adopt any combination of a list of ordinance provisions.

In addition to the state regulatory provisions regarding bona fide coin operated amusement machines contained in Code Section 16-12-35 and this article, the governing authority of any county or municipal corporation shall be authorized to enact and enforce an ordinance which includes any or all of the following provisions:

(1) Prohibiting the offering to the public of more than six Class B machines that reward the player exclusively with noncash merchandise, prizes, toys, gift certificates, or novelties at the same business location;

(2) Requiring the owner or operator of a business location which offers to the public any bona fide coin operated amusement machine that rewards the player exclusively as described in subsection (d) of Code Section 16-12-35 to inform all employees of the prohibitions and penalties set out in subsections (e), (f), and (g) of Code Section 16-12-35;

(3) Requiring the owner or possessor of any bona fide coin operated amusement machine that rewards the player exclusively as described in subsection (d) of Code Section 16-12-35 to inform each location

owner or location operator of the business location where such machine is located of the prohibitions and penalties set out in subsections (e), (f), and (g) of Code Section 16-12-35;

(4) Providing for the suspension or revocation of a license granted by such local governing authority to manufacture, distribute, or sell alcoholic beverages or for the suspension or revocation of any other license granted by such local governing authority as a penalty for conviction of the location owner or location operator of a violation of subsection (e), (f), or (g) of Code Section 16-12-35, or both. An ordinance providing for the suspension or revocation of a license shall conform to the due process guidelines for granting, refusal, suspension, or revocation of a license for the manufacture, distribution, or sale of alcoholic beverages set out in subsection (b) of Code Section 3-3-2;

(5) Providing for penalties, including fines or suspension or revocation of a license as provided in paragraph (4) of this subsection, or both, for a violation of any ordinance enacted pursuant to this subsection; provided, however, that a municipal corporation shall not be authorized to impose any penalty greater than the maximum penalty authorized by such municipal corporation's charter;

(6) Requiring any location owner or location operator subject to paragraph (1) of subsection (b) of Code Section 50-27-84 to provide to the local governing authority a copy of each verified monthly report prepared in accordance with such Code section, incorporating the provisions of such Code section in the ordinance, providing for any and all of the penalties authorized by subsection (d) of Code Section 50-27-84, and allowing an annual audit of the reports from the location owner or location operator;

(7) Requiring the location owner or location operator of any business location which offers to the public one or more bona fide coin operated amusement machines to post prominently a notice including the following or substantially similar language:

"GEORGIA LAW PROHIBITS PAYMENT OR RECEIPT OF MONEY FOR WINNING A GAME OR GAMES ON THIS AMUSEMENT MACHINE; PAYMENT OR RECEIPT OF MONEY FOR FREE REPLAYS WON ON THIS AMUSEMENT MACHINE; PAYMENT OR RECEIPT OF MONEY FOR ANY MERCHANDISE, PRIZE, TOY, GIFT CERTIFICATE, OR NOVELTY WON ON THIS AMUSEMENT MACHINE; OR AWARDING ANY MERCHANDISE, PRIZE, TOY, GIFT CERTIFICATE, OR NOVELTY OF A VALUE EXCEEDING $5.00 FOR A SINGLE PLAY OF THIS MACHINE.";

(8) Providing for restrictions relating to distance from specified structures or uses so long as those distance requirements are no more

restrictive than such requirements applicable to the sale of alcoholic beverages;

(9) Requiring as a condition for doing business in the jurisdiction disclosure by the location owner or location operator of the name and address of the owner of the bona fide coin operated amusement machine or machines;

(10) Requiring that all bona fide coin operated amusement machines are placed and kept in plain view and accessible to any person who is at the business location; and

(11) Requiring a business that offers one or more bona fide coin operated amusement machines to the public for play to post its business license or occupation tax certificate.

History. — Code 1981, § 48-17-17, enacted by Ga. L. 2012, p. 1136, § 4/SB 431; Code 1981, § 50-27-86, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2012, p. 1136, § 4/SB 431, not codified by the General Assembly, provides, in part, that this Code section shall apply to conduct that occurs on and after May 2, 2012. It is not the intention of this Act to abate any prosecution undertaken for conduct occurring under the law in effect prior to such date, and any offense committed before May 2, 2012, shall be prosecuted and punished under the statutes in effect at the time the offense was committed.

Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

State statute preempted city's ordinance. — Conviction and fine against a convenience store operator for violating a city ordinance that prohibited certain retailers of packaged alcoholic beverages from allowing coin operated amusement machines (COAM) on the same premises was reversed because the state's COAM Laws, O.C.G.A. §§ 16-12-35 and 50-27-70, et seq., preempted the city's ordinance at least insofar as the ordinance applied to COAM as defined by the state statutes. Gebrekidan v. City of Clarkston, 298 Ga. 651, 784 S.E.2d 373 (2016).

50-27-87. Master licenses; requirements and restrictions for licensees.

(a)(1) Except as provided in this Code section, a person shall not own, maintain, place, or lease a bona fide coin operated amusement

machine unless he or she has a valid master license; provided, however, that a manufacturer or distributor may own a bona fide coin operated amusement machine intended for sale to an operator, master licensee, manufacturer, or distributor.

(2) A master licensee shall only place or lease bona fide coin operated amusement machines for use in Georgia in a licensed location owner's or location operator's establishments.

(3) To be eligible as a master licensee, the person shall not have had a gambling license in any state for at least five years prior to obtaining or renewing a Georgia master's license.

(4) On or after July 1, 2013, no person with or applying for a master license shall have an interest in any manufacturer, distributor, location owner, or location operator in this state. No person with or applying for a manufacturer license shall have an interest in a distributor, master licensee, location owner, or location operator in this state. No person applying for a distributor license shall have an interest in a manufacturer, master licensee, location owner, or location operator in this state. Additionally, no group or association whose membership includes manufacturers, distributors, operators, master licensees, location owners, or location operators shall obtain a master license nor shall they form an entity which acts as a master licensee, operator, location owner, or location operator for the purpose of obtaining a master license; provided, however, that through June 30, 2015, this paragraph shall not apply to persons who, as of December 31, 2013, have or will have continuously possessed a master license for ten or more years and, for ten or more years, have or will have continuously owned or operated a location where a bona fide coin operated machine has been placed. Nothing in this paragraph shall prohibit a manufacturer, distributor, or master licensee from entering into a financing arrangement with the other for the sale of machines, including but not limited to a lien, guaranty, or line of credit.

(5) Failure to adhere to the provisions of this subsection shall result in a fine of not more than $50,000.00 and loss of the license for a period of one to five years per incident and subject the master licensee to the loss of any other state or local license held by the master licensee. The corporation shall notify any state or federal agency that issues a license to such master licensee of the breach of its duties under this article.

(b)(1) No bona fide coin operated amusement machine, its parts, or software or hardware shall be placed or leased in any location owner's or location operator's establishment except by a master licensee and only if the owner or agent of the location owner or location operator

has entered into a written agreement with a master licensee for placement of the bona fide coin operated amusement machine. Beginning on July 1, 2013, no person with or applying for a location owner's or location operator's license shall have an interest in any person or immediate family member of a person with a master license, or doing business as a distributor, or manufacturer in this state. A location owner or location operator may sell a bona fide coin operated amusement machine to anyone except another location owner or location operator. Failure to adhere to this subsection shall result in a fine of up to $50,000.00 and loss of the location owner's or location operator's license for a period of one to five years per incident and subject the location owner or location operator to the loss of any other state or local licenses held by the location owner or location operator. The corporation shall notify any state or federal agency that issues a license to such location owner or location operator of the breach of its duties under this article.

(2) A copy of the written agreement shall be on file in the master licensee's and the location owner's and location operator's place of business and available for inspection by individuals authorized by the corporation.

(3)(A) Any written agreement entered into after April 10, 2013, shall be exclusive as between one bona fide coin operated amusement machine master licensee and one location owner or location operator per location. Any agreement entered into before April 10, 2013, shall not be deemed void for failure to allocate revenue pursuant to Code Section 50-27-87.1 or 50-27-102, and notwithstanding any agreements between master licensees and location owners and location operators, both shall act in a manner that complies with this chapter.

(B) Any agreement entered into or renewed after May 3, 2016, shall be for at least one year.

(C) Any applicant for a new location license for a location where machines have been placed at any time in the immediately preceding nine months shall either:

(i) Not place machines in such location for nine months from the date of the granting of the location license; or

(ii) Formally accept an assignment of the written agreement between the master licensee and the immediately preceding location owner or location operator; provided, however, that the master licensee may refuse to assign the written agreement.

For the purposes of division (ii) of this subparagraph, the master licensee is the master licensee that, in the nine months preceding the

application for a new location license, had the last written agreement with the immediately preceding location owner or location operator or the master licensee that, in the nine months preceding the application for a new location license, had requested or commenced a hearing pursuant to Code Section 50-27-102, whichever had machines placed in the location first.

(c) No person shall receive a portion of any proceeds or revenue from the operation of a bona fide coin operated amusement machine except the operator, location owner, or location operator, notwithstanding Code Section 50-27-102. No commission or fee shall be awarded for the facilitation of a contract or agreement between a master licensee and a location owner or location operator; provided, however, that an employee of a master licensee may receive compensation, including a commission, for such agreements or contracts. A master licensee shall not pay a commission or provide anything of value to any person who is an employee, independent contractor, or immediate family member of a location owner or location operator.

(d) This Code section shall only apply to manufacturers, distributors, operators, master licensees, and location owners or location operators of Class B machines.

History. — Code 1981, § 50-27-87, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2014, p. 866, § 50/SB 340; Ga. L. 2015, p. 39, § 7/SB 190; Ga. L. 2016, p. 762, § 4/SB 388.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, "after April 10, 2013," was substituted for "after the effective date of this article" in paragraph (b)(3).

Pursuant to Code Section 28-9-5, in 2016, "May 3, 2016," was substituted for "the effective date of this subparagraph" in paragraph (b)(3)(B).

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

Cited in All Star, Inc. v. Ga. Atlanta Amusements, LLC, 332 Ga. App. 1, 770 S.E.2d 22 (2015).

50-27-87.1. Unfair methods of competition; unfair and deceptive acts.

The following acts or practices are deemed unfair methods of competition and unfair and deceptive acts under this article:

(1) Until the corporation certifies that the Class B accounting terminal authorized by Code Section 50-27-101 is implemented, a master licensee, location owner, or location operator retaining more than 50 percent of the net monthly proceeds for the operation of a Class B machine;

(2) A master licensee or owner entering into an agreement with a manufacturer or distributor:

(A) That grants the owner or master licensee exclusive rights to own, maintain, place, or lease a type, model, or brand of bona fide coin operated amusement machine in this state; or

(B) For the lease of a bona fide coin operated amusement machine, its parts, or software or hardware;

(3) A location owner or location operator asking, demanding, or accepting anything of value, including but not limited to a loan or financing arrangement, gift, procurement fee, lease payments, revenue sharing, or payment of license fees or permit fees from a manufacturer, distributor, or master licensee, as an incentive, inducement, or any other consideration to locate bona fide coin operated amusement machines in that establishment. A location owner that violates this subsection shall have all of the location owner's state business licenses revoked for a period of one to five years per incident. The location owner also shall be fined up to $50,000.00 per incident and required to repay any incentive fees or other payments received from the operator; and

(4) A manufacturer, distributor, operator, master licensee, or individual providing anything of value, including but not limited to a loan or financing arrangement, gift, procurement fee, lease payments, revenue sharing, or payment of license fees or permit fees to a location owner or location operator, as an incentive, inducement, or any other consideration to locate bona fide coin operated amusement machines in that establishment. A manufacturer, distributor, operator, master licensee, or individual who violates this subsection shall have all of his or her state business licenses revoked for a period of one to five years per incident. The individual, manufacturer, distributor, owner, or master licensee also shall be fined up to $50,000.00 per incident.

History. — Code 1981, § 50-27-87.1, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 8/SB 190; Ga. L. 2017, p. 774, § 50/HB 323.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

Cited in All Star, Inc. v. Ga. Atlanta Amusements, LLC, 332 Ga. App. 1, 770 S.E.2d 22 (2015).

50-27-88. Establishment of rules and policies; application for license.

(a) The corporation shall establish rules or policies, with the advice of the Bona Fide Coin Operated Amusement Machine Operator Advisory Board, to establish or create:

(1) Forms and information reasonably required for the submission of a license application; and

(2) Procedures to ensure that applicants for a license provide the identical name and address of the applicant as stated in the application for a license required by local governing authorities and specify the premises where the licensee shall have its place of business.

(b) Any legal entity, including but not limited to all partnerships, limited liability companies, and domestic or foreign corporations, lawfully registered and doing business under the laws of Georgia or the laws of another state and authorized by the Secretary of State to do business in Georgia which seeks to obtain a license for bona fide coin operated amusement machines may be permitted to apply for a license in the name of the legal entity as it is registered in the office of the Secretary of State; provided, however, that:

(1) In its application for any bona fide coin operated amusement machine license, the legal entity shall provide the corporation with the name and address of its agent authorized to receive service of process under the laws of Georgia, together with a listing of its current officers and their respective addresses;

(2) Any change in the status of licensee's registered agent, including but not limited to change of address or name, shall be reported to the corporation within ten business days of such occurrence;

(3) In the event that a legal entity shall fail to appoint or maintain a registered agent in Georgia as required by law, or whenever its registered agent cannot with due diligence be found at the registered office of the business as designated in its application for license, the chief executive officer shall be appointed agent to receive any citation for violation of the provisions of this article;

(4) Process may be served upon the chief executive officer by leaving with the chief executive officer duplicate copies of such citations;

(5) In the event that the notice of citation is served upon the chief executive officer or one of the chief executive officer's designated agents, the chief executive officer shall immediately forward one of the copies to the business at its registered office;

(6) Any service made upon the chief executive officer shall be answerable within 30 days; and

(7) The corporation shall keep a record of all citations served upon the chief executive officer under this article and shall record the time of service and the disposition of that service.

History. — Code 1981, § 50-27-88, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-89. Bona Fide Coin Operated Amusement Machine Operator Advisory Board; membership; terms; policies and procedures; selection of vendors.

(a) There shall be a Bona Fide Coin Operated Amusement Machine Operator Advisory Board to be composed of ten members. The chief executive officer of the corporation shall serve as a member. Two members shall be appointed by the Speaker of the House of Representatives, two members by the Lieutenant Governor, and five members by

the Governor; at least one appointee shall be a licensed location owner or location operator. At least seven members shall be Georgia operators with current master licenses representing the broadest possible spectrum of business characteristics of bona fide coin operated amusement machine operators.

(b) Members appointed to the advisory board shall serve terms of four years. Upon the expiration of a member's term of office, a new member appointed in the same manner as the member whose term of office expired as provided in subsection (a) of this Code section shall become a member of the advisory board and shall serve for a term of four years and until such member's successor is duly appointed and qualified. If a vacancy occurs in the membership of the advisory board, a new member shall be appointed for the unexpired term of office by the official who appointed the vacating member. Members may be reappointed to additional terms.

(c) The advisory board shall establish its own policies and internal operating procedures. Members of the advisory board shall serve without compensation or reimbursement of expenses. The advisory board may report to the corporation in writing at any time. The corporation may invite the advisory board to make an oral presentation to the corporation.

(d) The advisory board shall have the exclusive authority to initiate a process to determine a variety of cost-effective, efficacious, and fiscally responsible approaches for consideration by the corporation of a Class B accounting terminal authorized by Code Section 50-27-101; provided, however, that the board shall comply with the deadline contained in subsection (a) of Code Section 50-27-101 for procuring the centralized accounting terminal and communications network. The advisory board shall be further authorized to contract with the Department of Administrative Services to develop a request for proposal to receive bids to provide the Class B accounting terminal and shall submit a minimum of three recommended proposals to the corporation unless only two vendors respond. The corporation shall select one of the recommended proposals to serve as the Class B accounting terminal vendor.

(e) No advisory board member, corporation member, or immediate family of either may own a substantial interest in or be an employee, independent contractor, agent, or officer of any vendor recommended to or selected by the corporation. For the purposes of this Code section, "substantial interest" means the direct or indirect ownership of any privately held assets or stock or over $5,000.00 in publicly traded stock.

History. — Code 1981, § 50-27-89, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction

or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

Part 2

Class B Accounting Terminals

RESEARCH REFERENCES

Am. Jur. 2d. — Restriction on installation of coin-operated amusement devices, 4A Am. Jur. Legal Forms 2d § 50:294.

38 Am. Jur. 2d, Gambling, §§ 67 et seq., 77 et seq.

C.J.S. — 30A C.J.S., Entertainment and Amusement, §§ 12, 48.

50-27-100. Legislative findings.

The General Assembly finds that:

(1) There is a compelling state interest in ensuring the most efficient, honest, and accurate regulation of the bona fide coin operated amusement machine industry in this state; and

(2) The most efficient, accurate, and honest regulation of the bona fide coin operated amusement machine industry in this state can best be facilitated by establishing a Class B accounting terminal to which all Class B machines will be linked by a communications network to provide superior capability of auditing, reporting, and regulation of the coin operated amusement machine industry.

History. — Code 1981, § 50-27-100, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-101. Class B accounting terminal; communication networks; other procedures and policies.

(a) On or before July 1, 2014, in cooperation with the Bona Fide Coin Operated Amusement Machine Operator Advisory Board established under Code Section 50-27-89, the corporation shall procure a Class B accounting terminal linked by a communications network through which all Class B machines in a location shall connect to a single point of commerce for the purpose of accounting and reporting to the state. In no event shall the terminal approved by the corporation limit participation to only one manufacturer or one type of bona fide coin operated amusement machine. Consideration shall be given to the cost associated with retrofitting all existing Class B machines and efforts made to minimize that cost.

(b) Six months after the procurement of a Class B accounting terminal and successful pilot testing, all Class B machines shall be linked by a communications network to a Class B accounting terminal for purposes of monitoring and reading device activities as provided for in this Code section. When the corporation is satisfied with the operation of the Class B accounting terminal it shall certify the effective status of the Class B accounting terminal and notify all licensees of such certification.

(c) The Class B accounting terminal shall be designed and operated to allow the monitoring and reading of all Class B machines for the purpose of compliance with regard to their obligations to the state. The Class B accounting terminal shall be located within and administered by the corporation.

(d) The Class B accounting terminal shall not provide for the monitoring or reading of personal or financial information concerning patrons of bona fide coin operated amusement machines.

(e) Any entity that acts as a vendor for the corporation in building, operating, maintaining, or contracting to build, operate, or maintain a Class B accounting terminal shall be prohibited from obtaining a license as an operator or location owner or location operator. As used in this subsection, the term "entity" shall also include the entity's employees, independent contractors, consultants, or any other person as defined in paragraph (15) of subsection (b) of Code Section 50-27-70 which is related to the entity during the time the vendor is involved with providing service as it relates to the Class B accounting terminal for the corporation.

(f) Except as provided in subsection (e) of Code Section 50-27-73, nothing in this part shall be construed to provide any authority to the corporation to limit or eliminate Class B machines or to limit, elimi-

nate, or unduly restrict the number of licenses, permits, or certifications for operators or location owners or location operators.

(g) The corporation shall not expand, limit, or otherwise alter what constitutes a bona fide coin operated amusement machine and the permitted redemption related items, except that the corporation shall be permitted to authorize any ticket or product of the corporation.

History. — Code 1981, § 50-27-101, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-102. Role of corporation; implementation and certification; separation of funds and accounting; disputes.

(a) Upon successful implementation and certification of the Class B accounting terminal under the provisions of Code Section 50-27-101, and for the first fiscal year thereafter, the corporation shall:

(1) Retain 5 percent of the net receipts;

(2) Provide, within five business days of receipt, 47.5 percent of the net receipts to the location owner and location operator for the cost associated with allowing the Class B machines to be placed; and

(3) Provide, within five business days of receipt, 47.5 percent of the net receipts to the operator holding the Class B master license for the cost of securing, operating, and monitoring the machines.

(b) In each fiscal year after the implementation and certification required by subsection (a) of this Code section, the corporation's share shall increase 1 percent, taken evenly from the location owner or location operator and the operator, to a maximum of 10 percent.

(c) The corporation shall require location owners and location operators to place all bona fide coin operated amusement machine proceeds due the corporation in a segregated account in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid over to the corporation. At the time of such

deposit, bona fide coin operated amusement machine proceeds shall be deemed to be the property of the corporation. The corporation may require a location owner or location operator to establish a single separate electronic funds transfer account where available for the purpose of receiving proceeds from Class B machines, making payments to the corporation, and receiving payments for the corporation. Unless otherwise authorized in writing by the corporation, each bona fide coin operated amusement machine location owner or location operator shall establish a separate bank account for bona fide coin operated amusement machine proceeds which shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets. Whenever any person who receives proceeds from bona fide coin operated amusement machines becomes insolvent, the proceeds due the corporation from such person shall have preference over all debts or demands. Whenever any person who receives proceeds from bona fide coin operated amusement machines dies insolvent, the proceeds due the corporation from such person's estate shall have preference over all debts or demands except the provision of year's support for such person's family. If any financial obligation to the corporation has not been timely received, the officers, directors, members, partners, or shareholders of the location owner or location operator shall be personally liable for the moneys owed to the corporation.

(d)(1) As a condition of the license issued pursuant to this article, no master licensee or location owner or location operator shall replace or remove a Class A or Class B bona fide coin operated amusement machine from a location until the master licensee and location owner or location operator certify to the corporation that there are no disputes regarding any agreement, distribution of funds, or other claim between the master licensee and location owner or location operator; provided, however, that this certification shall not be required if a master licensee is replacing its own Class A or Class B bona fide coin operated amusement machine at a location. If either the master licensee or location owner or location operator is unable to make the certification required by this Code section, the corporation shall refer the dispute to a hearing officer as set forth in this subsection.

(2) The corporation shall have jurisdiction of all disputes between and among any licensees or former licensees whose licenses were issued pursuant to this article relating in any way to any agreement involving coin operated amusement machines, distribution of funds, tortious interference with contract, other claims against a subsequent master license holder or location owner, or any other claim involving coin operated amusement machines; provided, however, that this paragraph shall not apply to any agreement which expired

on or before April 10, 2013. Except as provided in paragraph (1) of this subsection, the corporation shall refer any dispute certified by any master licensee against any other master licensee or any location owner or location operator or by any location owner or location operator against any master licensee to a hearing officer. For the purpose of service on licensees with respect to disputes, each licensee or former licensee shall register and keep current with the corporation the name of an agent and his or her address and an email address which shall be made available to any licensee on request. Service by registered mail, courier delivery, or overnight mail delivered to the agent's registered address and to the email address shall be adequate service on the licensee for a hearing on the dispute. All disputes subject to the provisions of this Code section certified by a master licensee, location owner, or location operator shall be decided by a hearing officer approved or appointed by the corporation. The corporation shall adopt rules and regulations governing the selection of hearing officers after consultation with the Bona Fide Coin Operated Amusement Machine Operator Advisory Board. Costs of the hearing officer's review, including any hearing set pursuant to this Code section, shall be shared equally between the parties in the dispute unless provided otherwise in the agreement or by the hearing officer; provided, however, that the corporation shall not be responsible for any of the costs associated with the dispute resolution mechanism set forth in this Code section. If any party fails to timely pay the costs of the hearing officer's review within ten days of service of notice of costs by the hearing officer, the hearing officer shall grant a default judgment on liability against the nonpaying party. The hearing officer shall then consider evidence related to damages or any other relief and shall render judgment based upon a preponderance of the evidence.

(3) The corporation shall also adopt rules governing the procedure, evidentiary matters, and any prehearing discovery applicable to disputes resolved pursuant to this Code section. Such rules shall be consistent with the Georgia Arbitration Code, and the corporation shall consult the Bona Fide Coin Operated Amusement Machine Operator Advisory Board regarding the procedures or rules adopted pursuant to this subsection. Notwithstanding Code Section 9-9-9, such procedures and rules shall include at least the right of notice to produce books, writings, and other documents or tangible things; depositions; and interrogatories.

(4) If requested by the master licensee or the location owner or location operator, the hearing officer shall conduct a hearing as to the dispute, but in no case unless extended by the hearing officer for good cause shall the hearing officer conduct a hearing more than 90 days after he or she has been appointed or selected to decide the dispute.

No Class B bona fide coin operated amusement machine that is subject to the dispute resolution mechanism required by this Code section shall be removed from the terminal by a master licensee, location owner, or location operator or otherwise prevented by a master licensee, location owner, or location operator from play by the public until a final decision is entered and all appellate rights have been exhausted, or until the master licensee and location owner or location operator agree to a resolution, whichever occurs first.

(5) The decision of the hearing officer may be appealed to the chief executive officer or his or her designee. The chief executive officer shall not reverse a finding of fact of the hearing officer if any evidence supports the hearing officer's conclusion. The chief executive officer shall not reverse a conclusion of law of the hearing officer unless it was clearly erroneous, arbitrary, and capricious or exceeded the hearing officer's jurisdiction. The decision of the chief executive officer may be appealed to the Superior Court of Fulton County, which court shall not reverse the chief executive officer's findings of fact unless it is against the weight of the evidence as set forth in Code Section 5-5-21, and the chief executive officer's legal conclusions shall not be set aside unless there is an error of law.

History. — Code 1981, § 50-27-102, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 9/SB 190; Ga. L. 2016, p. 762, § 5/SB 388; Ga. L. 2016, p. 864, § 50/HB 737; Ga. L. 2018, p. 1112, § 50/SB 365; Ga. L. 2020, p. 377, § 2-28/HB 865; Ga. L. 2021, p. 922, § 50/HB 497.

The 2020 amendment, effective January 1, 2021, in subsection (c), substituted ", the proceeds due the corporation from such person shall have preference over all debts or demands" for "or" at the end of the fifth sentence, in the sixth sentence, added "Whenever any person who receives proceeds from bona fide coin operated amusement machines" at the beginning, substituted "person's" for "person or his or her", and added "except the provision of year's support for such person's family" at the end of the sentence.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" in the third and fourth sentences of paragraph (d)(2).

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

Jurisdiction. — Trial court properly vacated an arbitration award against a mart owner in the mart owner's personal capacity due to the arbitrator lacking personal jurisdiction over the mart owner as the mart owner was not a named party to the dispute, and the lessor failed to amend the demand or add the mart owner as a party. Ultra Group of Companies, Inc. v. Alli, 352 Ga. App. 71, 833 S.E.2d 751 (2019), cert. denied, No. S20C0336, 2020 Ga. LEXIS 421 (Ga. 2020).

Georgia Lottery Corporation arbitrator had subject matter jurisdiction over disputes between licensees, not personal jurisdiction over the licensees themselves, particularly when the licensee was not a party to the dispute. Ultra Group of Companies, Inc. v. Alli, 352 Ga. App. 71, 833 S.E.2d 751 (2019), cert. denied, No. S20C0336, 2020 Ga. LEXIS 421 (Ga. 2020).

Statute did not void pre-existing contracts. — In a suit for tortious interference with contractual relations, the trial court erred by granting partial summary judgment against the owners of coin-operated amusement machines because O.C.G.A. § 50-27-70 et seq. did not void preexisting contracts and it was error to interpret the statute otherwise. All Star, Inc. v. Ga. Atlanta Amusements, LLC, 332 Ga. App. 1, 770 S.E.2d 22 (2015).

Cited in Ultra Group of Cos. v. Inam Int'l, Inc., 354 Ga. App. 304, 840 S.E.2d 708 (2020).

50-27-103. Removal of Class B machines; notification; audits.

(a) Any local governing authority may, after providing no less than 60 days' notice to all master licensees and location owners and location operators, and in a manner consistent with this Code section, vote to remove any Class B machines from the local jurisdiction.

(b) Beginning on the first day of the first January after the certification of the Class B accounting terminal under the provisions of Code Section 50-27-101:

(1) The corporation shall notify any master licensee and location owner and location operator of any materially adverse findings of any audit conducted by the corporation to ensure compliance with Code Section 50-27-102. The notice shall be provided to both the master licensee and the location owner or location operator, regardless of which party's acts or conduct caused the materially adverse finding;

(2) If, after the notice required by this Code section, another consecutive audit conducted by the corporation not less than six months later contains a similar materially adverse finding, the corporation shall notify the master licensee and the location owner or location operator that were audited and every master licensee and location owner and location operator in this state. After the second consecutive audit described in this paragraph, the corporation may enter into a corrective action plan with the master licensee or the location owner or location operator, or both. If the next audit conducted by the corporation not less than six months later contains a similar materially adverse finding, the corporation shall notify the master licensee and the location owner or location operator that were

audited and every master licensee and location owner and location operator in this state, and such notice shall be considered an order by the corporation. Unless a longer period of time is agreed to by the corporation, not more than 30 days after the third consecutive materially adverse audit finding, the master licensee and location owner or location operator that were audited may appeal the findings of any of the three audits to the Office of State Administrative Hearings as a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." If the master licensee or location owner or location operator that was audited does not appeal the corporation's order as authorized in this Code section, it shall be deemed a final order and shall be used to determine whether the notice to local governing authorities provided for in paragraph (3) of this subsection is required, and only upon such notice shall the action described by subsection (a) of this Code section be authorized. For the purposes of this Code section, notice shall be provided in the same manner required by subsection (b) of Code Section 50-27-74; and

(3) If, pursuant to paragraph (2) of this subsection, a final judgment or final order has been entered against at least 15 percent of master licensees and location owners and location operators in a local jurisdiction over any consecutive two-year period, the corporation shall notify the city or county and each and every licensee in this state.

History. — Code 1981, § 50-27-103, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law. "(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

50-27-104. Penalties.

The penalties provided for in this article shall be in addition to any criminal penalties that may otherwise be provided by law.

History. — Code 1981, § 50-27-104, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an

appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2021, no such decision has been issued.

JUDICIAL DECISIONS

State statute preempted city's ordinance. — Conviction and fine against a convenience store operator for violating a city ordinance that prohibited certain retailers of packaged alcoholic beverages from allowing coin operated amusement machines (COAM) on the same premises was reversed because the state's COAM Laws, O.C.G.A. §§ 16-12-35 and 50-27-70 et seq., preempted the city's ordinance at least insofar as the ordinance applied to COAM as defined by the state statutes. Gebrekidan v. City of Clarkston, 298 Ga. 651, 784 S.E.2d 373 (2016).

CHAPTER 28

STATE PRODUCTIVITY COUNCIL

Sec.
50-28-1 through 50-28-5 [Repealed].

50-28-1 through 50-28-5.

Reserved. Repealed by former Code Section 50-28-5 as enacted by Ga. L. 1994, p. 1844, § 1, effective July 1, 1996.

Editor's notes. — These Code sections were based on Code 1981, §§ 50-28-1 through 50-28-5, enacted by Ga. L. 1994, p. 1844, § 1.

Ga. L. 2013, p. 141, § 50/HB 79, effective April 24, 2013, reserved the designation of this chapter.

CHAPTER 29

INFORMATION TECHNOLOGY

Sec.
50-29-1. Georgia Technology Authority successor in interest to Georgia Information Technology Policy Council.
50-29-2. Authority of public agencies that maintain geographic information systems to contract for the provision of services; fees; contract provisions.
Sec.
50-29-3. Submission of business cases for information technology programs; requirements.
50-29-4 through 50-29-11 [Repealed].
50-29-12. Authorization for state agencies to establish pilot projects to serve as models for application of technology; reports.

50-29-1. Georgia Technology Authority successor in interest to Georgia Information Technology Policy Council.

The Georgia Technology Authority shall be the successor in interest to the Georgia Information Technology Policy Council created by Ga. L. 1995, p. 761, as amended, and all debts, obligations, and liabilities of said council shall become the debts, obligations, and liabilities of said authority.

History. — Code 1981, § 50-29-1, enacted by Ga. L. 1995, p. 761, § 1; Ga. L. 2000, p. 249, § 13.

Law reviews. — For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 280 (2000).

50-29-2. Authority of public agencies that maintain geographic information systems to contract for the provision of services; fees; contract provisions.

(a) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, a county or municipality of the State of Georgia, a regional commission, or a local authority created by local or general law that has created or maintains a geographic information system in electronic form may contract to distribute, sell, provide access to, or otherwise market records or information maintained in such system and may license or establish fees for providing such records or information or providing access to such system.

(b) Any fees or license fees established pursuant to subsection (a) of this Code section shall be based upon the recovery of the actual development cost of creating or providing the geographic information system and upon the recovery of a reasonable portion of the costs associated with building and maintaining the geographic information system. The fees may include cost to the county, municipality, regional commission, or local authority of time, equipment, and personnel in the

creation, purchase, development, production, or update of the geographic information system.

(c) Any contract authorized by subsection (a) of this Code section shall include provisions that:

(1) Protect the security and integrity of the system;

(2) Limit the liability of the county, municipality, regional commission, or local authority for providing the services and products;

(3) Restrict the duplication and resale of the services and products provided; and

(4) Ensure that the public is fairly and reasonably compensated for the records or information or access provided.

(d) A county, municipality, a regional commission, or local authority may contract with a private person or corporation to provide the geographic information system records or information or access to the system to members of the public as authorized by this Code section.

History. — Code 1981, § 50-29-2, enacted by Ga. L. 2001, p. 804, § 1; Ga. L. 2008, p. 181, § 18/HB 1216; Ga. L. 2012, p. 218, § 17/HB 397.

Editor's notes. — Ga. L. 2000, p. 249, § 13, repealed former Code Section 50-29-2, pertaining to legislative findings and intent in enacting the Information Technology Policy Act, effective July 1, 2000. The former Code section was based on Ga. L. 1995, p. 761, § 1.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

50-29-3. Submission of business cases for information technology programs; requirements.

(a) The General Assembly finds that:

(1) As Georgia's state government seeks to provide improved service at a lower cost to its citizens and technology continues to play an increased role in service delivery, the pace of change for state agencies, boards, authorities, and commissions will continue to increase;

(2) Programs that involve significant expenditures or major changes for large numbers of Georgia residents should each be backed by a strong business case at its launch;

(3) Research has consistently shown that projects with effective change management programs are significantly more likely to be successful than projects with little or no change management programs and are significantly more likely to come in on time and on or under budget; and

(4) Leading private businesses have grown and regularly utilize change management services to ensure that technological, organizational, and other changes are effectively implemented.

(b)(1) All state agencies, boards, authorities, and commissions of the executive branch of state government shall provide a written business case for every information technology project that exceeds $1 million in value. Such business case shall include at a minimum:

(A) A description of the business need for the project;

(B) A budget for the project;

(C) An estimate of its operational impacts;

(D) A scan of available options to meet the business need;

(E) An outline of the benefits of a successful implementation to the citizens of Georgia and an outline with time frames of anticipated benefits;

(F) An analysis of the risks of not acting and how the proposed solutions will mitigate those risks; and

(G) An assessment of business process improvement, the need for process improvement, and corresponding change management.

(2) Written business cases for covered projects shall be provided to the Georgia Technology Authority at least 30 days prior to the request of any state funds or the issuance of any procurement documents for the project. The Georgia Technology Authority shall consult with the Department of Administrative Services and report to the Governor's Office of Planning and Budget on findings and recommendations.

(c)(1) All state agencies, boards, authorities, and commissions of the executive branch of state government shall provide for a change management plan and resources necessary for plan execution for projects that exceed $1 million in value, projects that directly involve two or more state agencies, or service delivery changes in existing programs that significantly change existing business processes.

(2) A change management plan and execution shall, at a minimum, incorporate:

(A) A stakeholder analysis covering all impacted parties, including impacted groups, number of stakeholders impacted, type and degree of impact, and like areas and degree of resistance;

(B) A change risk assessment;

(C) Primary sponsors for the change program;

(D) A change management program approach; and

(E) A change management work plan for communication, coaching, training, sponsorship, and resistance management.

(3) It is the intent of the General Assembly that agencies shall seek best practices with private or public sector experts when appropriate to develop and implement change management plans. Change management consulting may be independent of project implementation.

(4) Written change management plans for covered projects shall be delivered to the Governor's Office of Planning and Budget and the Georgia Technology Authority.

History. — Code 1981, § 50-29-3, enacted by Ga. L. 2016, p. 363, § 2/HB 676.

Editor's notes. — Ga. L. 2000, p. 249, § 13, repealed former Code Section 50-29-3, pertaining to the definitions within the Information Technology Policy Act, effective July 1, 2000. The former Code section was based on Ga. L. 1995, p. 761, § 1.

Ga. L. 2016, p. 363, § 1/HB 676, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Accountability, Change Management, and Process Improvement Act of 2016.'"

50-29-4 through 50-29-11.

Reserved. Repealed by Ga. L. 2000, p. 249, § 13, effective July 1, 2000.

Editor's notes. — Code Sections 50-29-4 through 50-29-11, relating to information technology policies, were based on Ga. L. 1995, p. 761, § 1; Ga. L. 1998, p. 232, § 4; Ga. L. 1998, p. 1157, § 1.

50-29-12. Authorization for state agencies to establish pilot projects to serve as models for application of technology; reports.

(a) The General Assembly desires to promote economic development and efficient delivery of government services by encouraging state governmental agencies and private sector entities to conduct their business and transactions using electronic media.

(b) All state agencies, authorities, and boards are authorized to establish pilot projects, which are to serve as models for the application of technology such as electronic signatures, through public and private partnerships with private companies providing such technology related services. Such pilot projects shall be approved by the Georgia Technology Authority. Such projects shall consider both commercial and government applications, be inclusive of major categories of electronic signature technology, and be established through a request for proposal process. The pilot projects are intended to provide a proof of concept for the application of technology, such as electronic signatures, and to serve to educate the General Assembly and the public at large as to the

benefits of electronic signatures as well as the role of state government in any future regulatory capacity. One such pilot project may involve digital signatures and the use of a public key infrastructure established by a service provider. Any private partner chosen for these pilot projects may establish user fees to pay for the cost of these services so that no state funds would be required.

(c) State agencies establishing pilot projects shall submit quarterly progress reports on such projects to the Georgia Technology Authority. The authority shall monitor the success of such pilot projects and provide technical assistance to the extent that resources of the authority are available.

History. — Code 1981, § 50-29-12, enacted by Ga. L. 1997, p. 1052, § 3; Ga. L. 1998, p. 232, § 5; Ga. L. 1999, p. 322, § 1; Ga. L. 2000, p. 249, § 14; Ga. L. 2009, p. 133, § 5/HB 436.

Editor's notes. — Former subsection (d), concerning the creation of the Electronic Commerce Study Committee, was repealed by its own terms effective December 31, 2002.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Ga. St. U.L. Rev. 25 (1997).

For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 280 (2000).

JUDICIAL DECISIONS

No private cause of action in challenge to electronic filing system. — In a suit challenging a court's electronic filing fee system, the trial court did not err when the court granted the motion to dismiss the plaintiff's claims because none of the statutes or rules cited by the plaintiff provided a private cause of action for damages arising from any violation of the respective statute or rule. Best Jewelry Mfg. Co. v. Reed Elsevier Inc., 334 Ga. App. 826, 780 S.E.2d 689 (2015), cert. denied, No. S16C0502, 2016 Ga. LEXIS 286 (Ga. 2016).

CHAPTER 30

INSTITUTE FOR COMMUNITY BUSINESS DEVELOPMENT

Sec.
50-30-1 through 50-30-6 [Repealed].

Code Commission notes. — Pursuant to Code Section 28-9-5, the Code sections in this chapter, originally designated as Code Sections 50-29-1 through 50-29-6 by Ga. L. 1995, p. 870, were redesignated as Code Sections 50-30-1 through 50-30-6, since Chapter 29 had already been enacted by Ga. L. 1995, p. 761.

50-30-1 through 50-30-6.

Reserved. Repealed by Ga. L. 2008, p. 1015, § 11/SB 344, effective May 14, 2008.

Code Commission notes. — The amendment of Code Section 50-30-4, by Ga. L. 2008, p. 181, § 24, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 1015, § 11. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Editor's notes. — This chapter was based on Code 1981, §§ 50-30-1 to 50-30-6, enacted by Ga. L. 1995, p. 870, § 1; Ga. L. 1998, p. 128, § 50.

CHAPTER 31

GEORGIA SUGGESTION SYSTEM

50-31-1 through 50-31-7.

Reserved. Repealed by Ga. L. 2001, p. 873, § 27, effective July 1, 2001.

Editor's notes. — This chapter, consisting of Code Sections 50-31-1 through 50-31-7, concerning the Georgia Suggestion System, was repealed prior to becoming effective and was based on Ga. L. 1996, p. 1647, § 1; Ga. L. 1997, p. 533, § 1.

CHAPTER 32

GEORGIA REGIONAL TRANSPORTATION AUTHORITY

Article 1

General Provisions

Sec.

50-32-1. Short title.
50-32-2. Definitions.
50-32-3. Creation of authority and board; quorum; vacancies.
50-32-4. Membership; terms; appointment; expenses; removal; applicability of Chapter 10 of Title 45; meetings; voting; assignment.
50-32-5. Development of the Atlanta region's Concept 3 transit proposal; use of federal and state planning funds; assessment of economic benefit and environmental impact [Repealed].

Article 2

Jurisdiction

50-32-10. Purpose of authority.
50-32-11. Powers of authority generally.
50-32-12. Creation and activation of special districts.
50-32-13. Governor's power to delegate.
50-32-14. Expenditure of state or federal funds.
50-32-15. Issuance of bonds.
50-32-16. Utilization of appropriated funds.
50-32-17. Power of eminent domain.
50-32-18. Rights of authority.
50-32-19. Liability of authority.
50-32-20. Access to all books, records, and other information resources; assistance of personnel; use of facilities, vehicles, aircraft, and other equipment.

Article 3

Funding

50-32-30. Funding resources.
50-32-31. Revenue bonds.
50-32-32. Guaranteed revenue bonds.
50-32-33. Bonds are made securities.
50-32-34. Pledge by the state.
50-32-35. Applicability of Chapter 5 of Title 10.
50-32-36. State immune from obligations or indebtedness created by authority.
50-32-37. Legislative findings; bonds, notes, or other obligations issued by the authority exempt from taxation.
50-32-38. Issuance of bonds or other obligations subject to approval of commission.
50-32-39. Limitation of indebtedness.

Article 4

Local Government Services

50-32-50. Local government services approval and funding.
50-32-51. Lease agreements.
50-32-52. Grants or loans to local government.
50-32-53. Effect of failure to implement local government services on state and federal grants.
50-32-54. Failure of local government to collect and remit amounts due to authority.
50-32-55. Uninterrupted transit services.

Article 5

Allocation of Funds by Department of Transportation

50-32-60. Department of Transportation's allocation of funds unaltered.

Article 6

Construction of Chapter

50-32-70. Chapter to be liberally construed.
50-32-71. Exemption of buses, motor vehicles, and rapid rail systems of the authority from motor carrier regulations [Repealed].

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, this chapter, as enacted by Ga. L. 1999, p. 161, § 1, was redesignated as Chapter 33 of Title 50.

Law reviews. — For note on 1999 enactment of this chapter, see 16 Ga. St. U.L. Rev. 233 (1999).

For comment, "Hamlets: Expanding the Fair Share Doctrine Under Strict Home Rule Constitutions," see 49 Emory L.J. 255 (2000).

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For article, "Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority," see 36 Ga. L. Rev. 247 (2001).

50-32-1. Short title.

This chapter shall be known and may be cited as the "Georgia Regional Transportation Authority Act."

History. — Code 1981, § 50-32-1, enacted by Ga. L. 1999, p. 112, § 7.

JUDICIAL DECISIONS

Garbage collection fees. — There was no merit in a resident's arguments that the provision in a contract in which a county agreed to reimburse a private enterprise for a percentage of uncollected fees for garbage collection services prior to the county's recovery of those fees from residents by means provided by O.C.G.A. § 12-8-39.3 violated O.C.G.A. § 50-32-1 et seq. Strykr v. Long County Bd. of Comm'rs, 277 Ga. 624, 593 S.E.2d 348 (2004).

50-32-2. Definitions.

As used in this chapter, the term:

(1) "Authority" means the Georgia Regional Transportation Authority.

(2) "Bond" includes any revenue bond, bond, note, or other obligation.

(3) "Clean Air Act" means the federal Clean Air Act, as amended in 1990 and codified at 42 U.S.C.A. Sections 7401 through 7671q.

(4) "Cost of project" or "cost of any project" means:

(A) All costs of acquisition, by purchase or otherwise, construction, assembly, installation, modification, renovation, extension, rehabilitation, operation, or maintenance incurred in connection with any project, facility, or undertaking of the authority or any part thereof;

(B) All costs of real property or rights in property, fixtures, or personal property used in or in connection with or necessary for any project, facility, or undertaking of the authority or for any facilities related thereto, including but not limited to the cost of all land, interests in land, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in or in connection with or necessary for any project, facility, or undertaking of the authority;

(C) All financing charges, bond insurance or other credit enhancement fee, and loan or loan guarantee fees and all interest on revenue bonds, notes, or other obligations of the authority which accrue or are paid prior to and during the period of construction of a project, facility, or undertaking of the authority and during such additional period as the authority may reasonably determine to be necessary to place such project, facility, or undertaking of the authority in operation;

(D) All costs of engineering, surveying, planning, environmental assessments, financial analyses, and architectural, legal, and accounting services and all expenses incurred by engineers, surveyors, planners, environmental scientists, fiscal analysts, architects, attorneys, accountants, and any other necessary technical personnel in connection with any project, facility, or undertaking of the authority or the issuance of any bonds, notes, or other obligations for such project, facility, or undertaking;

(E) All expenses for inspection of any project, facility, or undertaking of the authority;

(F) All fees of fiscal agents, paying agents, and trustees for bond owners under any bond resolution, trust agreement, indenture of trust, or similar instrument or agreement; all expenses incurred by any such fiscal agents, paying agents, bond registrar, and trustees; and all other costs and expenses incurred relative to the issuance of any bonds, revenue bonds, notes, or other obligations for any project, facility, or undertaking of the authority, including bond insurance or credit enhancement fee;

(G) All fees of any type charged by the authority in connection with any project, facility, or undertaking of the authority;

(H) All expenses of or incidental to determining the feasibility or practicability of any project, facility, or undertaking of the authority;

(I) All costs of plans and specifications for any project, facility, or undertaking of the authority;

(J) All costs of title insurance and examinations of title with respect to any project, facility, or undertaking of the authority;

(K) Repayment of any loans for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(L) Administrative expenses of the authority and such other expenses as may be necessary or incidental to any project, facility, or undertaking of the authority or the financing thereof or the placing of any project, facility, or undertaking of the authority in operation; and

(M) The establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, or such other funds or reserves as the authority may approve with respect to the financing and operation of any project, facility, or undertaking of the authority and as may be authorized by any bond resolution, trust agreement, indenture, or trust or similar instrument or agreement pursuant to the provisions of which the issuance of any revenue bonds, notes, or other obligations of the authority may be authorized.

Any cost, obligation, or expense incurred for any of the purposes specified in this paragraph shall be a part of the cost of the project, facility, or undertaking of the authority and may be paid or reimbursed as such out of the proceeds of revenue bonds, notes, or other obligations issued by the authority or as otherwise authorized by this chapter.

(5) "County" means any county created under the Constitution or laws of this state.

(6) "Facility" shall have the same meaning as "project."

(6.1) "Land public transportation" means surfaces upon which travel by vehicle or persons is intended, which is either is open to the public or has been acquired as right of way, including but not limited to public rights, structures, sidewalks, facilities, and appurtenances incidental to the construction, maintenance, and enjoyment of such rights of way. Such term shall not include transit.

(7) "Local government" or "local governing authority" means any municipal corporation or county or any state or local authority, board, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of this state.

(8) "May" means permission and not command.

(9) "Metropolitan planning organization" means the forum for cooperative transportation decision making for a metropolitan planning area.

(10) "Metropolitan transportation plan" means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for a metropolitan planning area.

(11) "Municipal corporation" or "municipality" means any city or town in this state.

(12) "Obligation" means any bond, revenue bond, note, lease, contract, evidence of indebtedness, debt, or other obligation of the authority, the state, or local governments which is authorized to be issued under this chapter or under the Constitution or other laws of this state, including refunding bonds.

(13) "Office of profit or trust under the state" means any office created by or under the provisions of the Constitution, but does not include elected officials of county or local governments.

(14) "Project" means the acquisition, construction, installation, modification, renovation, repair, extension, renewal, replacement, or rehabilitation of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of providing facilities and services to meet land public transportation needs and environmental standards and to aid in the accomplishment of the purposes of the authority.

(15) "Revenue bond" includes any bond, note, or other obligation payable from revenues derived from any project, facility, or undertaking of the authority.

(16) "State implementation plan" means the portion or portions of an applicable implementation plan approved or promulgated, or the most recent revision thereof, under Sections 110, 301(d), and 175A of the Clean Air Act.

(17) "State-wide transportation improvement program" means a staged, multiyear, state-wide, intermodal program defined in 23 C.F.R. Section 450.104 which contains transportation projects consistent with the state-wide transportation plan and planning processes and metropolitan plans, transportation improvement programs, and processes.

(18) "State-wide transportation plan" means the official state-wide, intermodal transportation plan as defined in 23 C.F.R. Section 450.104 that is developed through the state-wide transportation planning process.

(18.1) "Transit" means regular, continuing shared-ride or shared-use surface transportation services that are made available by a public entity and are open to the general public or open to a segment of the general public defined by age, disability, or low income. Such term includes services or systems operated by or under contract with the state, a public agency or authority, a county or municipality, a community improvement district, or any other similar public entity of this state and all accompanying infrastructure and services necessary to provide access to these modes of transportation. Such term excludes charter or sightseeing services, school bus services, courtesy shuttle and intrafacility or terminal services, limousine carriers, and ride share network services, transportation referral services, and taxi services not paid for by a public entity.

(19) "Transportation improvement program" means a staged, multiyear, intermodal program as defined in 23 C.F.R. Section 450.104 and consisting of transportation projects which is consistent with the metropolitan transportation plan.

(20) "Undertaking" shall have the same meaning as "project."

History. — Code 1981, § 50-32-2, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2018, p. 377, § 4-8/HB 930; Ga. L. 2019, p. 1056, § 50/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, substituted "Sections 7401 through 7671q" for "Sections 7401 to 7671q" in paragraph (3); and, in the last sentence of paragraph (18.1), substituted "intrafacility" for "intra-facility" and inserted "and" preceding "ride share".

Editor's notes. — Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

50-32-3. Creation of authority and board; quorum; vacancies.

(a) There is created the Georgia Regional Transportation Authority as a body corporate and politic, which shall be deemed an instrumentality of the State of Georgia and a public corporation thereof, for purposes of managing or causing to be managed land transportation and air quality within certain areas of this state; and by that name, style, and title such body may contract and be contracted with and bring and defend actions in all courts of this state.

(b) The management of the business and affairs of the authority shall be vested in a board of directors, subject to the provisions of this chapter and to the provisions of bylaws adopted by the board as authorized by this chapter. The board of directors shall make bylaws governing its own operation and shall have the power to make bylaws, rules, and regulations for the government of the authority and the operation, management, and maintenance of such projects as the board may determine appropriate to undertake from time to time.

(c) Except as otherwise provided in this chapter, a majority of the members of the board then in office shall constitute a quorum for the transaction of business. The vote of a majority of the members of the board present at the time of the vote, if a quorum is present at such time, shall be the act of the board unless the vote of a greater number is required by law or by the bylaws of the board of directors. The board of directors, by resolution adopted by a majority of the full board of directors, shall designate from among its members an executive committee and one or more other committees, each consisting of two or more members of the board, which shall have and exercise such authority as the board may delegate to it under such procedures as the board may direct by resolution establishing such committee or committees.

(d) No vacancy on the authority shall impair the right of a majority of the appointed members from exercising all rights and performing all duties of the authority. The authority shall have perpetual existence. Any change in the name or composition of the authority shall in no way affect the vested rights of any person under this chapter or impair the obligations of any contracts existing under this chapter.

History. — Code 1981, § 50-32-3, enacted by Ga. L. 1999, p. 112, § 7.

50-32-4. Membership; terms; appointment; expenses; removal; applicability of Chapter 10 of Title 45; meetings; voting; assignment.

(a) The initial board of directors of the authority shall consist of 15 members. All members of the board and their successors shall be appointed for terms of five years each, except that the initial terms for eight members of the board appointed in 1999 shall be three years each; and the particular beginning and ending dates of such terms shall be specified by the Governor. All members of the board shall be appointed by the Governor and shall serve until the appointment and qualification of a successor, the provisions of subsection (b) of Code Section 45-12-52 to the contrary notwithstanding, except as otherwise provided in this Code section. Said members shall be appointed so as to reasonably reflect the characteristics of the general public within the jurisdiction or

potential jurisdiction of the authority, subject to the provisions of subsection (d) of this Code section. No person holding any other office of profit or trust under the state shall be appointed to membership. The chair of the board of directors shall be appointed and designated by the Governor.

(b) All successors shall be appointed in the same manner as original appointments. Vacancies in office shall be filled in the same manner as original appointments. A person appointed to fill a vacancy shall serve for the unexpired term. No vacancy on the board shall impair the right of the quorum of the remaining members then in office to exercise all rights and perform all duties of the board.

(c) The members of the board of directors shall be entitled to and shall be reimbursed for their actual travel expenses necessarily incurred in the performance of their duties and, for each day actually spent in the performance of their duties, shall receive the same per diem as do members of the General Assembly.

(d) Members of the board of directors may be removed by executive order of the Governor for misfeasance, malfeasance, nonfeasance, failure to attend three successive meetings of the board without good and sufficient cause, abstention from voting unless authorized under subsection (g) of this Code section, or upon a finding of a violation of Code Section 45-10-3 pursuant to the procedures applicable to that Code section. A violation of Code Section 45-10-3 may also subject a member to the penalties provided in subparagraphs (a)(1)(A), (a)(1)(B), and (a)(1)(C) of Code Section 45-10-28, pursuant to subsection (b) of Code Section 45-10-28. In the event that a vacancy or vacancies on the board render the board able to obtain a quorum but unable to obtain the attendance of a number of members sufficient to constitute such supermajorities as may be required by this chapter, the board shall entertain no motion or measure requiring such a supermajority until a number of members sufficient to constitute such supermajority is present, and the Governor shall be immediately notified of the absence of members.

(e) The members of the authority shall be subject to the applicable provisions of Chapter 10 of Title 45, including without limitation Code Sections 45-10-3 through 45-10-5. Members of the authority shall be public officers who are members of a state board for purposes of the financial disclosure requirements of Article 3 of Chapter 5 of Title 21. The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable books and records of all actions and transactions and shall submit such books together with a statement of the authority's financial position to the state auditor on or about the close of the state's fiscal year. The books and records shall be inspected and audited by the state auditor at least once in each year.

(f) Meetings of the board of directors, regular or special, shall be held at the time and place fixed by or under the bylaws, with no less than five days' public notice for regular meetings as prescribed in the bylaws and such notice as the bylaws may prescribe for special meetings. Each member shall be given written notice of all meetings as prescribed in the bylaws. Meetings of the board may be called by the chairperson or by such other person or persons as the bylaws may authorize. Notice of any regular or special meeting shall be given to the Governor at least five days prior to such meeting, unless the Governor waives such notice requirement, and no business may be transacted at any meeting of the board unless and until the Governor has acknowledged receipt of or waived such notice.

(g) All meetings of the board of directors shall be subject to the provisions of Chapter 14 of this title. A written record of each vote taken by the board, specifying the yea or nay vote or absence of each member as to each measure, shall be transmitted promptly to the Governor upon the adjournment of each meeting. No member may abstain from a vote other than for reasons constituting disqualification to the satisfaction of a majority of a quorum of the board on a record vote.

(h) The authority is assigned to the Department of Community Affairs for administrative purposes only.

History. — Code 1981, § 50-32-4, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2002, p. 415, § 50; Ga. L. 2013, p. 141, § 50/HB 79.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "render" was substituted for "renders" in the last sentence of subsection (d).

50-32-5. Development of the Atlanta region's Concept 3 transit proposal; use of federal and state planning funds; assessment of economic benefit and environmental impact.

Repealed by Ga. L. 2018, p. 377, § 4-9/HB 930, effective May 3, 2018.

Editor's notes. — This Code section was based on Ga. L. 2010, p. 778, § 7/HB 277; Ga. L. 2015, p. 385, § 2-10/HB 252.

ARTICLE 2

JURISDICTION

Law reviews. — For note, "Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority," see 36 Ga. L. Rev. 247 (2001).

50-32-10. Purpose of authority.

(a)(1) This chapter shall operate uniformly throughout the state.

(2)(A) The initial jurisdiction of the authority for purposes of this chapter shall encompass the territory of every county which was designated by the United States Environmental Protection Agency (USEPA) in the *Code of Federal Regulations* as of December 31, 1998, as a county included in whole or in part within a nonattainment area under the Clean Air Act and which the board designates, through regulation, as a county having excess levels of ozone, carbon monoxide, or particulate matter.

(B) The jurisdiction of the authority for purposes of this chapter shall also encompass the territory of every county designated by the USEPA in the *Code of Federal Regulations* after December 31, 1998, as a county included in whole or in part within a nonattainment area under the Clean Air Act and which the board designates, through regulation, as a county having excess levels of ozone, carbon monoxide, or particulate matter, provided that the jurisdictional area encompassed under this subparagraph shall be contiguous with the jurisdictional area encompassed under subparagraph (A) of this paragraph.

(b)(1) Within three months of May 6, 1999, the director of the Environmental Protection Division shall report and certify to the authority and the Governor, pursuant to criteria established by that division, counties which are reasonably expected to become nonattainment areas under the Clean Air Act within seven years from the date of such report and certification, and shall update such report and certification every six months thereafter. Within the geographic territory of any county so designated, the board shall provide, by resolution or regulation, that the funding, planning, design, construction, contracting, leasing, and other related facilities of the authority shall be made available to county and local governments for the purpose of planning, designing, constructing, operating, and maintaining land public transportation systems and other land transportation projects, air quality installations, and all facilities necessary and beneficial thereto, and for the purpose of designing and implementing designated metropolitan planning organizations' land transportation plans and transportation improvement programs, on such terms and conditions as may be agreed to between the authority and such county or local governments.

(2) By resolution of the county governing authority, the special district created by this chapter encompassing the territory of any county reported and certified pursuant to paragraph (1) of this subsection may be activated for the purposes of this chapter, or such

county may be brought within the jurisdiction of the authority by resolution of the governing authority.

(3) The jurisdiction of the authority for purposes of this chapter shall be extended to the territory of any county the territory of which is not contiguous with the jurisdiction established by subsection (a) of this Code section which is designated by the USEPA in the *Code of Federal Regulations* as a county included in whole or in part within a nonattainment area under the Clean Air Act and which the board designates, through regulation, as a county having excess levels of ozone, carbon monoxide, or particulate matter. Upon any such county or self-contiguous group of counties coming within the jurisdiction of the authority, a single member who shall reside within such additional territory shall be added to the board, together with an additional member, who may reside inside or outside such additional territory, for each 200,000 persons above the number of 200,000 persons forming the population of such additional territory according to the 1990 United States decennial census or any future such census.

(c) Upon acquiring jurisdiction over the territory of any county, the authority's jurisdiction over such territory shall continue until 20 years have elapsed since the later of the date such county was redesignated by the USEPA as in attainment under the Clean Air Act or such designation by the USEPA is no longer made.

(d)(1) Upon the lapse of the authority's jurisdiction over a geographic area pursuant to the provisions of this Code section, the authority shall have the power to enter into such contracts, lease agreements, and other instruments necessary or convenient to manage and dispose of real property and facilities owned or operated by the authority within such geographic area, and shall dispose of all such property not more than five years after the lapse of such jurisdiction, but shall retain jurisdiction for the purpose of operating and managing such property and facilities until their final disposition.

(2) The provisions of this subsection shall be implemented consistent with the terms of such contracts, lease agreements, or other instruments or agreements as may be necessary or required to protect federal interests in assets purchased, leased, or constructed utilizing federal funding in whole or in part, and the authority is empowered to enter into such contracts, lease agreements, or other instruments or agreements with appropriate federal agencies or other representatives or instrumentalities of the federal government from time to time as necessary to achieve the purposes of this chapter and the protection of federal interests.

(e) Except for the purpose of reviewing proposed regional transportation plans and transportation improvement programs prepared by

metropolitan planning organizations in accordance with requirements specifically placed upon the Governor by federal law, the jurisdiction of the authority shall not extend to the territory and facilities of any airport as defined in Code Section 6-3-20.1 and which is certified under 14 C.F.R. Part 139. In no event shall the authority have jurisdiction to design, construct, repair, improve, expand, own, maintain, or operate any such airport or any facilities of such airport.

History. — Code 1981, § 50-32-10, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2006, p. 72, § 50/SB 465.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "of May 6, 1999," was substituted for "of the effective date of this chapter" in paragraph (b)(1).

50-32-11. Powers of authority generally.

(a) The authority shall have the following general powers:

(1) To sue and be sued in all courts of this state, the original jurisdiction and venue of any such action being the superior court of any county wherein a substantial part of the business was transacted, the tortious act, omission, or injury occurred, or the real property is located, except that venue and jurisdiction for bond validation proceedings shall be as provided by paragraph (9) of subsection (e) of Code Section 50-32-31;

(2) To have a seal and alter the same at its pleasure;

(3) To plan, design, acquire, construct, add to, extend, improve, equip, operate, and maintain or cause to be operated and maintained land public transportation systems and other land transportation projects, and all facilities and appurtenances necessary or beneficial thereto, within the geographic area over which the authority has jurisdiction or which are included within an approved transportation plan or transportation improvement program and provide land public transportation services within the geographic jurisdiction of the authority, and to contract with any state, regional, or local government, authority, or department, or with any private person, firm, or corporation, for those purposes, and to enter into contracts and agreements with the Georgia Department of Transportation and county and local governments for those purposes;

(4) To plan, design, acquire, construct, add to, extend, improve, equip, operate, and maintain or cause to be operated and maintained air quality control installations, and all facilities and appurtenances necessary or beneficial thereto, within the geographic area over which the authority has jurisdiction for such purposes pursuant to this chapter, and to contract with any state, regional, or local government, authority, or department, or with any private person, firm, or corporation, for those purposes; provided, however, that

where such air quality control measures are included in an applicable implementation plan, they shall be approved by the Environmental Protection Division of the state Department of Natural Resources and by the United States Environmental Protection Agency where necessary to preserve their protected status during any conformity lapse;

(5) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, such contracts, leases, or instruments to include contracts for acquisition, construction, operation, management, or maintenance of projects and facilities owned by local government, the authority, or by the state or any political subdivision, department, agency, or authority thereof, and to include contracts relating to the execution of the powers of the authority and the disposal of the property of the authority from time to time; and any and all local governments, departments, institutions, authorities, or agencies of the state are authorized to enter into contracts, leases, agreements, or other instruments with the authority upon such terms and to transfer real and personal property to the authority for such consideration and for such purposes as they deem advisable;

(6) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority, in compliance, where required, with applicable federal law including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. Section 4601, et seq., 23 C.F.R. Section 1.23, and 23 C.F.R. Section 713(c);

(7) To appoint an executive director who shall be executive officer and administrative head of the authority. The executive director shall be appointed and serve at the pleasure of the authority. The executive director shall hire officers, agents, and employees, prescribe their duties and qualifications and fix their compensation, and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director;

(8) To finance projects, facilities, and undertakings of the authority for the furtherance of the purposes of the authority within the geographic area over which the authority has jurisdiction by loan, loan guarantee, grant, lease, or otherwise, and to pay the cost of such from the proceeds of bonds, revenue bonds, notes, or other obligations of the authority or any other funds of the authority or from any contributions or loans by persons, corporations, partnerships,

whether limited or general, or other entities, all of which the authority is authorized to receive, accept, and use;

(9) To extend credit or make loans or grants for all or part of the cost or expense of any project, facility, or undertaking of a political subdivision or other entity for the furtherance of the purposes of the authority within the geographic area over which the authority has jurisdiction upon such terms and conditions as the authority may deem necessary or desirable; and to adopt rules, regulations, and procedures for making such loans and grants;

(10) To borrow money to further or carry out its public purpose and to issue guaranteed revenue bonds, revenue bonds, notes, or other obligations to evidence such loans and to execute leases, trust indentures, trust agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable in the judgment of the authority, and to evidence and to provide security for such loans;

(11) To issue guaranteed revenue bonds, revenue bonds, bonds, notes, or other obligations of the authority, to receive payments from the Department of Community Affairs, and to use the proceeds thereof for the purpose of:

(A) Paying or loaning the proceeds thereof to pay, all or any part of, the cost of any project or the principal of and premium, if any, and interest on the revenue bonds, bonds, notes, or other obligations of any local government issued for the purpose of paying in whole or in part the cost of any project and having a final maturity not exceeding three years from the date of original issuance thereof;

(B) Paying all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out the purposes of the authority; and

(C) Paying all costs of the authority incurred in connection with the issuance of the guaranteed revenue bonds, revenue bonds, bonds, notes, or other obligations;

(12) To collect fees and charges in connection with its loans, commitments, management services, and servicing including, but not limited to, reimbursements of costs of financing, as the authority shall determine to be reasonable and as shall be approved by the authority;

(13) Subject to any agreement with bond owners, to invest moneys of the authority not required for immediate use to carry out the

purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks or federal savings and loan associations located within the state which have deposits insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation and certificates of deposit of state building and loan associations located within the state which have deposits insured by any Georgia deposit insurance corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank located within the state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least $50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least $50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys; and

(G) State operated investment pools;

(14) To acquire or contract to acquire from any person, firm, corporation, local government, federal or state agency, or corporation by grant, purchase, or otherwise, leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and local government is authorized to grant, sell, or otherwise alienate leaseholds, real and personal property, or any interest therein to the authority;

(15) Subject to applicable covenants or agreements related to the issuance of bonds, to invest any moneys held in debt service funds or sinking funds not restricted as to investment by the Constitution or laws of this state or the federal government or by contract not required for immediate use or disbursement in obligations of the types specified in paragraph (13) of this subsection, provided that, for the purposes of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service, which debt service shall be the principal installments and interest payments, schedule for which such moneys are to be applied;

(16) To provide advisory, technical, consultative, training, educational, and project assistance services to the state and local government and to enter into contracts with the state and local government to provide such services. The state and local governments are

authorized to enter into contracts with the authority for such services and to pay for such services as may be provided them;

(17) To make loan commitments and loans to local governments and to enter into option arrangements with local governments for the purchase of said bonds, revenue bonds, notes, or other obligations;

(18) To sell or pledge any bonds, revenue bonds, notes, or other obligations acquired by it whenever it is determined by the authority that the sale thereof is desirable;

(19) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(20) To lease to local governments any authority owned facilities or property or any state owned facilities or property which the authority is managing under contract with the state;

(21) To contract with state agencies or any local government for the use by the authority of any property or facilities or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the authority, and such state agencies and local governments are authorized to enter into such contracts;

(22) To extend credit or make loans, including the acquisition of bonds, revenue bonds, notes, or other obligations of the state, any local government, or other entity, including the federal government, for the cost or expense of any project or any part of the cost or expense of any project, which credit or loans may be evidenced or secured by trust indentures, loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, or assignments, on such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such trust indentures, loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project and such other terms and conditions as the authority may deem necessary or desirable;

(23) As security for repayment of any bonds, revenue bonds, notes, or other obligations of the authority, to pledge, lease, mortgage,

convey, assign, hypothecate, or otherwise encumber any property of the authority including, but not limited to, real property, fixtures, personal property, and revenues or other funds and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds, notes or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument;

(24) To receive and use the proceeds of any tax levied to pay all or any part of the cost of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(25) To use income earned on any investment for such corporate purposes of the authority as the authority in its discretion shall determine, including, but not limited to, the use of repaid principal and earnings on funds, the ultimate source of which was an appropriation to a budget unit of the state to make loans for projects;

(26) To cooperate and act in conjunction with industrial, commercial, medical, scientific, public interest, or educational organizations; with agencies of the federal government and this state and local government; with other states and their political subdivisions; and with joint agencies thereof, and such state agencies, local government, and joint agencies are authorized and empowered to cooperate and act in conjunction and to enter into contracts or agreements with the authority and local government to achieve or further the purposes of the authority;

(27) To coordinate, cooperate, and contract with any metropolitan planning organization for a standard metropolitan statistical area which is primarily located within an adjoining state but which includes any territory within the jurisdiction of the authority to achieve or further the purposes of the authority as provided by this chapter;

(28) To coordinate and assist in planning for land transportation and air quality purposes within the geographic area over which the authority has jurisdiction pursuant to this chapter, between and among all state, regional, and local authorities charged with planning responsibilities for such purposes by state or federal law, and to adopt a regional plan or plans based in whole or in part on such planning;

(29) Reserved;

(30) To review and make recommendations to the Governor concerning all land transportation plans and transportation improvement programs prepared by the Department of Transportation involving design, construction, or operation of land transportation facilities wholly or partly within the geographic area over which the authority has jurisdiction pursuant to this chapter, and to negotiate with that department concerning changes or amendments to such plans which may be recommended by the authority or the Governor consistent with applicable federal law and regulation, and to adopt such plans as all or a portion of its own regional plans;

(31) To acquire by the exercise of the power of eminent domain any real property or rights in property which it may deem necessary for its purposes under this chapter pursuant to the procedures set forth in this chapter, and to purchase, exchange, sell, lease, or otherwise acquire or dispose of any property or any rights or interests therein for the purposes authorized by this chapter or for any facilities or activities incident thereto, subject to and in conformity with applicable federal law and regulation;

(32) Reserved;

(33) Reserved;

(34) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(35) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(36) To procure insurance against any loss in connection with its property and other assets or obligations or to establish cash reserves to enable it to act as self-insurer against any and all such losses;

(37) To accept and use federal funds; to enter into any contracts or agreements with the United States or its agencies or subdivisions relating to the planning, financing, construction, improvement, operation, and maintenance of any public road or other mode or system of land public transportation; and to do all things necessary, proper, or expedient to achieve compliance with the provisions and requirements of all applicable federal-aid acts and programs. Nothing in this chapter is intended to conflict with any federal law; and, in case of such conflict, such portion as may be in conflict with such federal law is declared of no effect to the extent of the conflict;

(38) To ensure that any project funded by the authority in whole or in part with federal-aid funds is included in approved transportation

improvement programs adopted and approved by designated metropolitan planning organizations and the Governor and in the land transportation plan adopted and approved by the designated metropolitan planning organization and is in compliance with the requirements of relevant portions of the regulations implementing the Clean Air Act including without limitation 40 C.F.R. Section 93.105(c)(1)(ii) and 40 C.F.R. Section 93.122(a)(1), where such inclusion, approval, designation, or compliance is required by applicable federal law or regulation; and

(39) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts and attorneys, and to fix their compensation.

(b) In addition to the above-enumerated general powers, and such other powers as are set forth in this chapter, the authority shall have the following powers with respect to special districts created and activated pursuant to this chapter:

(1) By resolution, to authorize the provision of land public transportation services and the institution of air quality control measures within the bounds of such special districts by local governments within such special districts utilizing the funding methods authorized by this chapter where the facilities for such purposes are located wholly within the jurisdiction of such local governments and such special districts or are the subject of contracts between or among such local governments and where such services and measures are certified by the authority to be consistent with the designated metropolitan planning organizations' regional plans, where applicable;

(2) By resolution, to authorize the utilization by local governments within such special districts of the funding mechanisms enumerated in Code Section 50-32-30 to provide funding to defray the cost of land public transportation and air quality control measures certified and provided pursuant to paragraph (1) of this subsection;

(3) By resolution, to authorize the utilization by local governments within such special districts of the above-enumerated funding mechanisms to assist in funding those portions of regional land public transportation systems which lie within and provide service to the territory of such local governments within special districts; and

(4) By resolution, to contract with local governments within such special districts for funding, planning services, and such other services as the authority may deem necessary and proper to assist such local governments in providing land public transportation services and instituting air quality control measures within the bounds of such special districts where the facilities for such purposes are located wholly within the jurisdiction of such local governments

and such special districts or are the subject of contracts between or among such local governments, and where such services and measures are certified by the authority to be consistent with the designated metropolitan planning organizations' regional plans, where applicable.

(c) The provision of local government services and the utilization of funding mechanisms therefor consistent with the terms of this chapter shall not be subject to the provisions of Chapter 70 of Title 36; provided, however, that the authority shall, where practicable, provide for coordination and consistency between the provision of such services pursuant to the terms of this chapter and the provision of such services pursuant to Chapter 70 of Title 36.

History. — Code 1981, § 50-32-11, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2002, p. 415, § 50; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 976, § 13/SB 200; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2014, p. 866, § 50/SB 340; Ga. L. 2018, p. 377, § 4-10/HB 930.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "provision" was substituted for "provisions" in subsection (c).

Editor's notes. — Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

50-32-12. Creation and activation of special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. One such district shall exist within the geographic boundaries of each county, and the territory of each district shall include all of the territory within its respective county. Any special district within a county within the geographic area over which the authority has jurisdiction shall be deemed activated for purposes of this chapter.

History. — Code 1981, § 50-32-12, enacted by Ga. L. 1999, p. 112, § 7.

50-32-13. Governor's power to delegate.

(a) The Governor may delegate to the authority, by executive order, his or her powers under applicable federal transportation planning and air quality laws and regulations, including without limitation the power to resolve revision disputes between metropolitan planning organizations and the Department of Transportation under 40 C.F.R. Section 93.105, the power to approve state-wide transportation im-

provement programs under 23 U.S.C. Section 134 and 23 C.F.R. Sections 450.312(b), 450.324(b), and 450.328(a), and the power of approval and responsibilities for public involvement under 23 C.F.R. Section 450.216(a).

(b) In exercising the authority's delegated powers concerning proposed state-wide transportation plans and transportation improvement programs prepared by metropolitan planning organizations wholly or partly within the geographic area over which the authority has jurisdiction or by the Department of Transportation:

(1) Transportation plans and transportation improvement programs subject to the authority's delegated review powers shall be approved by the affirmative vote of two-thirds of the authorized membership of the board to a motion made for that purpose;

(2) The authority may request modification of such a plan or program and approve such proposal for modification of a plan or program by the affirmative vote of two-thirds of the authorized membership of the board to a motion made for that purpose;

(3) The board may set a date certain as a deadline for submission of any such plan or program to the authority for review; and

(4) If any such plan or program is not timely submitted for review in compliance with a deadline set by the board, the authority may exercise its delegated power to disapprove such plan or program upon the affirmative vote of two-thirds of the authorized membership of the board to a motion made for that purpose;

provided, however, that where one or more vacancies exist on the board and the board is not otherwise prohibited from entertaining a motion requiring such a supermajority, such motion shall carry on the affirmative vote of two-thirds of the members present. On any motion requiring a supermajority for passage, any abstention not authorized as provided in this chapter shall be deemed an affirmative vote for purposes of passage or failure of such motion.

(c) The authority shall formulate measurable targets for air quality improvements and standards within the geographic area over which the authority has jurisdiction pursuant to this chapter, and annually shall report such targets to the Governor, together with an assessment of progress toward achieving such targets and projected measures and timetables for achieving such targets.

History. — Code 1981, § 50-32-13, enacted by Ga. L. 1999, p. 112, § 7.

50-32-14. Expenditure of state or federal funds.

In any case where a development of regional impact, as determined by the Department of Community Affairs pursuant to Article 1 of Chapter 8 of this title, is planned within the geographic area over which the authority has jurisdiction which requires the expenditure of state or federal funds by the state or any political subdivision, agency, authority, or instrumentality thereof to create land transportation services or access to such development, any expenditure of such funds shall be prohibited unless and until the plan for such development and such expenditures is reviewed and approved by the authority. The decision of the authority to allow or disallow the expenditure of such funds shall be final and nonreviewable, except that such decision shall be reversed where a resolution for such purpose is passed by vote of three-fourths of the authorized membership of the county commission of the county in which the development of regional impact is planned or, if such development is within a municipality, by vote of three-fourths of the authorized membership of the city council. Such a vote shall not constitute failure or refusal by the local government for purposes of Code Section 50-32-53.

History. — Code 1981, § 50-32-14, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2009, p. 8, § 50/SB 46.

50-32-15. Issuance of bonds.

(a) In furtherance of the purposes of the authority, no project of the Georgia Rail Passenger Authority created by Article 9 of Chapter 9 of Title 46 which is located wholly or partly within the geographic area over which the authority has jurisdiction shall be commenced after May 6, 1999, unless such project is approved by the affirmative vote of two-thirds of the authorized membership of the board of directors of the authority pursuant to a motion made for that purpose; provided, however, that where such project is an approved transportation control measure pursuant to an approved state implementation plan, such project may proceed consistent with applicable federal law and regulation.

(b) From time to time, by the affirmative vote of two-thirds of the authorized membership of the board of directors of the authority, the authority may direct the Georgia Environmental Finance Authority to issue revenue bonds, bonds, notes, loans, credit agreements, or other obligations or facilities to finance, in whole or in part, any project or the cost of any project of the authority wholly or partly within the geographic area over which the authority has jurisdiction, by means of a loan, extension of credit, or grant from the Georgia Environmental

Finance Authority to the authority, on such terms or conditions as shall be concluded between the two authorities.

(c) The Georgia Environmental Finance Authority shall be subordinate to the authority in all respects, with respect to authority projects, within the geographic area over which the authority has jurisdiction; and, in the event of any conflict with the provisions of Chapter 23 of this title, the provisions of this chapter shall prevail in all respects. It is expressly provided, however, that nothing in this Code section and nothing in this chapter shall be construed to permit in any manner the alteration, elimination, or impairment of any term, provision, covenant, or obligation imposed on any state authority, including but not limited to the Georgia Environmental Finance Authority, the State Road and Tollway Authority, the Georgia Regional Transportation Authority, or the Georgia Rail Passenger Authority, for the benefit of any owner or holder of any bond, note, or other obligation of any such authority.

History. — Code 1981, § 50-32-15, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2013, p. 141, § 50/HB 79.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "May 6, 1999," was substituted for "the effective date of this chapter" in subsection (a).

50-32-16. Utilization of appropriated funds.

Notwithstanding any provision of law to the contrary, funds appropriated to or otherwise obtained by the Department of Transportation pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of this state and paragraphs (2) and (7) of subsection (a) of Code Section 32-2-2 shall not be utilized for designation, improvement, or construction of any land public transportation system or any part of the state highway system lying within the boundaries of a county whose special district created pursuant to this chapter has been activated pursuant to the provisions of this chapter, unless such designation, improvement, or construction is safety related or has been conducted by or through, or approved by, the authority, or such funds are within categories applicable to state-wide inspection or improvement required for compliance with federal law or regulation.

History. — Code 1981, § 50-32-16, enacted by Ga. L. 1999, p. 112, § 7.

50-32-17. Power of eminent domain.

(a) After the adoption by the authority of a resolution declaring that the acquisition of the real property described therein is necessary for the purposes of this chapter, the authority may exercise the power of eminent domain in the manner provided in Title 22; or it may exercise

the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of such power; provided, however, that the provisions of Article 7 of Chapter 16 of this title shall not be applicable to the exercise of the power of eminent domain by the authority. Property already devoted to public use may be acquired, except that no real property belonging to the state other than property acquired by or for the purposes of the Department of Transportation may be acquired without the consent of the state.

(b) Real property acquired by the authority in any manner for the purposes of this chapter shall not be subject to the exercise of eminent domain by any state department, division, board, bureau, commission, authority, or other agency or instrumentality of the executive branch of state government, or by any political subdivision of the state or any agency, authority, or instrumentality thereof, without the consent of the authority.

History. — Code 1981, § 50-32-17, enacted by Ga. L. 1999, p. 112, § 7.

50-32-18. Rights of authority.

The authority shall have all rights afforded the state by virtue of the Constitution of the United States, and nothing in this chapter shall be construed to remove any such rights.

History. — Code 1981, § 50-32-18, enacted by Ga. L. 1999, p. 112, § 7.

50-32-19. Liability of authority.

Neither the members of the authority nor any officer or employee of the authority acting on behalf thereof, while acting within the scope of his or her authority, shall be subject to any liability resulting from:

(1) The construction, ownership, maintenance, or operation of any project financed with the assistance of the authority;

(2) The construction, ownership, maintenance, or operation of any project, facility, or undertaking authorized by the authority and owned by a local government; or

(3) Carrying out any of the powers expressly given in this chapter.

History. — Code 1981, § 50-32-19, enacted by Ga. L. 1999, p. 112, § 7.

50-32-20. Access to all books, records, and other information resources; assistance of personnel; use of facilities, vehicles, aircraft, and other equipment.

(a) Upon request of the board of the authority, the Department of Transportation and the Department of Natural Resources shall provide to the authority and its authorized personnel and agents access to all books, records, and other information resources available to those departments which are not of a commercial proprietary nature and shall assist the authority in identifying and locating such information resources. Reimbursement for costs of identification, location, transfer, or reproduction of such information resources, including personnel costs incurred by the respective departments for such purposes, shall be made by the authority to those respective departments.

(b) The authority may request from time to time, and the Department of Transportation and the Department of Natural Resources shall provide as permissible under the Constitution and laws of this state, the assistance of personnel and the use of facilities, vehicles, aircraft, and equipment of those departments, and reimbursement for all costs and salaries thereby incurred by the respective departments shall be made by the authority to those respective departments.

History. — Code 1981, § 50-32-20, enacted by Ga. L. 1999, p. 112, § 7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, a comma was deleted following "nature" in the first sentence of subsection (a).

ARTICLE 3

FUNDING

Law reviews. — For note, "Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority," see 36 Ga. L. Rev. 247 (2001).

50-32-30. Funding resources.

In accomplishing its purposes pursuant to the provisions of this chapter, the authority may utilize, unless otherwise prohibited by law, any combination of the following funding resources:

(1) Revenue bonds as authorized by this chapter;

(2) Guaranteed revenue bonds as authorized by this chapter;

(3) Funds obtained in a special district created and activated pursuant to this chapter, for the purposes of providing local land transportation and air quality services within such district or, by contract with, between, and among local governments within such special districts, throughout such districts;

(4) Moneys borrowed by the authority pursuant to the provisions of this chapter;

(5) Such federal funds as may from time to time be made available to the authority or for purposes coincident with the purposes of the authority within the territory over which the authority has jurisdiction; and

(6) Such grants or contributions from persons, firms, corporations, or other entities as the authority may receive from time to time.

History. — Code 1981, § 50-32-30, enacted by Ga. L. 1999, p. 112, § 7.

50-32-31. Revenue bonds.

(a)(1) The authority shall have the power and is authorized at one time or from time to time to provide by one or more authorizing resolutions for the issuance of revenue bonds, but the authority shall not have the power to incur indebtedness under this subsection in excess of the cumulative principal sum of $1 billion but excluding from such limit bonds issued for the purpose of refunding bonds which have been previously issued. The authority shall have the power to issue such revenue bonds and the proceeds thereof for the purpose of paying all or part of the costs of any project or undertaking which is for the purpose of exercising the powers delegated to it by this chapter, and the construction and provision of such installations and facilities as the authority may from time to time deem advisable to construct or contract for those purposes, as such undertakings and facilities shall be designated in the resolution of the board of directors authorizing the issuance of such bonds.

(2) The revenue bonds and the interest payable thereon shall be exempt from all taxation within the state imposed by the state or any county, municipal corporation, or other political subdivision of the state.

(b) In addition, the authority shall have the power and is authorized to issue bonds in such principal amounts as the authority deems appropriate, such bonds to be primarily secured by a pool of obligations issued by local governments when the proceeds of the local government obligations are applied to projects of the authority.

(c) The authority shall have the power from time to time to refund any bonds by the issuance of new bonds whether the bonds to be refunded have or have not matured and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose.

(d) Bonds issued by the authority may be general or limited obligations payable solely out of particular revenues or other moneys of the

authority as may be designated in the proceedings of the authority under which the bonds shall be authorized to be issued, subject to any agreements entered into between the authority and state agencies, local government, or private parties and subject to any agreements with the owners of outstanding bonds pledging any particular revenues or moneys.

(e)(1) The authority is authorized to obtain from any department, agency, or corporation of the United States of America or governmental insurer, including the state, any insurance or guaranty, to the extent now or hereafter available, as to or for the payment or repayment of interest or principal, or both, or any part thereof on any bonds or notes issued by the authority or on any obligations of federal, state, or local governments purchased or held by the authority; and to enter into any agreement or contract with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the authority to perform and fulfill the terms of any agreement made with the owners of the bonds or notes of the authority.

(2) Bonds issued by the authority shall be authorized by resolution of the authority, be in such denominations, bear such date or dates, and mature at such time or times as the authority determines to be appropriate, except that bonds and any renewal thereof shall mature within 25 years of the date of their original issuance. Such bonds shall be subject to such terms of redemption, bear interest at such rate or rates payable at such times, be in registered form or book-entry form through a securities depository, or both, as to principal or interest or both principal and interest, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution of the authority may provide; provided, however, in lieu of specifying the rate or rates of interest which the bonds to be issued by an authority are to bear, the resolution of the authority may provide that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest which may be fixed or may fluctuate or otherwise change from time to time as specified in the resolution or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate, which rate may be fixed or may fluctuate or otherwise change from time to time, as specified. Bonds may be sold at public or private sale for such price or prices as the authority shall determine.

(3) Any resolution or resolutions authorizing bonds or any issue of bonds may contain provisions which may be a part of the contract with the owners of the bonds thereby authorized as to:

(A) Pledging all or part of its revenues, together with any other moneys, securities, contracts, or property, to secure the payment of the bonds, subject to such agreements with bond owners as may then exist;

(B) Setting aside of reserves and the creation of sinking funds and the regulation and disposition thereof;

(C) Limiting the purpose to which the proceeds from the sale of bonds may be applied;

(D) Limiting the right of the authority to restrict and regulate the use of any project or part thereof in connection with which bonds are issued;

(E) Limiting the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(F) Setting the procedure, if any, by which the terms of any contract with bond owners may be amended or abrogated, including the proportion of bond owners which must consent thereto and the manner in which such consent may be given;

(G) Creating special funds into which any revenues or other moneys may be deposited;

(H) Setting the terms and provisions of any trust, deed, or indenture or other agreement under which the bonds may be issued;

(I) Vesting in a trustee or trustees such properties, rights, powers, and duties in trust as the authority may determine;

(J) Defining the acts or omissions to act which may constitute a default in the obligations and duties of the authority to the bond owners and providing for the rights and remedies of the bond owners in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this chapter;

(K) Limiting the power of the authority to sell or otherwise dispose of any environmental facility or any part thereof or other property, including municipal bonds held by it;

(L) Limiting the amount of revenues and other moneys to be expended for operating, administrative, or other expenses of the authority;

(M) Providing for the payment of the proceeds of bonds, obligations, revenues, and other moneys to a trustee or other depository

and for the method of disbursement thereof with such safeguards and restrictions as the authority may determine; and

(N) Establishing any other matters of like or different character which in any way affect the security for the bonds or the rights and remedies of bond owners.

(4) In addition to the powers conferred upon the authority to secure its bonds, the authority shall have power in connection with the issuance of bonds to enter into such agreements as the authority may deem necessary, consistent, or desirable concerning the use or disposition of its revenues or other moneys or property, including the mortgaging of any property and the entrusting, pledging, or creation of any other security interest in any such revenues, moneys, or property and the doing of any act, including refraining from doing any act, which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this chapter and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the owners of bonds of the authority.

(5) Any pledge of or other security interest in revenues, moneys, accounts, contract rights, general intangibles, or other personal property made or created by the authority shall be valid, binding, and perfected from the time when such pledge is made or other security interest attaches without any physical delivery of the collateral or further act, and the lien of any such pledge or other security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

(6) All bonds issued by the authority shall be executed in the name of the authority by the chairperson and secretary of the authority and shall be sealed with the official seal or a facsimile thereof. The facsimile signature of the chairperson and the secretary of the authority may be imprinted in lieu of the manual signature if the authority so directs. Bonds bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid, notwithstanding the fact that before or after delivery thereof such person ceased to hold such office.

(7) Prior to the preparation of definitive bonds, the authority may issue interim receipts, interim certificates, or temporary bonds exchangeable for definitive bonds upon the issuance of the latter; the authority may provide for the replacement of any bond which shall become mutilated or be destroyed or lost.

(8) All bonds issued by the authority under this chapter may be executed, confirmed, and validated under and in accordance with Article 3 of Chapter 82 of Title 36, except as otherwise provided in this chapter.

(9) The venue for all bond validation proceedings pursuant to this chapter shall be Fulton County, and the Superior Court of Fulton County shall have exclusive final court jurisdiction over such proceedings.

(10) Bonds issued by the authority shall have a certificate of validation bearing the facsimile signature of the clerk of the Superior Court of Fulton County and shall state the date on which said bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court of this state.

(11) The authority shall reimburse the district attorney for his or her actual costs, if any, associated with the bond validation proceedings. The fees payable to the clerk of the Superior Court of Fulton County for validation shall be as follows for each bond, regardless of the denomination of such bond:

(A) Fifty cents each for the first 100 bonds;

(B) Twenty-five cents each for the next 400 bonds; and

(C) Ten cents for each such bond over 500.

(12) Whether or not the bonds of the authority are of such form and character as to be negotiable instruments, the bonds are made negotiable instruments within the meaning of and for all the purposes of Georgia law subject only to the provisions of the bonds for registration.

(13) Neither the members of the authority nor any person executing bonds shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof.

(14) The authority, subject to such agreements with bond owners as then may exist, shall have power out of any moneys available therefor to purchase bonds of the authority, which shall thereupon be canceled, at a price not in excess of the following:

(A) If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date; or

(B) If the bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the

bonds become subject to redemption, plus accrued interest to the next interest payment date.

(15) In lieu of specifying the rate or rates of interest which bonds to be issued by the authority are to bear, the notice to the district attorney or the Attorney General, the notice to the public of the time, place, and date of the validation hearing, and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest, which rate may be fixed or may fluctuate or otherwise change from time to time, specified in such notices and petition and complaint or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate, which rate may be fixed or may fluctuate or otherwise change from time to time, so specified; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint.

History. — Code 1981, § 50-32-31, enacted by Ga. L. 1999, p. 112, § 7.

50-32-32. Guaranteed revenue bonds.

(a) The authority shall have the power and is authorized to issue guaranteed revenue bonds in a maximum aggregate principal amount not to exceed $1 billion, under the terms and conditions set forth in this chapter, pursuant to the provisions of Article 2 of Chapter 17 of this title, which bonds shall constitute guaranteed revenue debt under Article VII, Section IV, Paragraph III of the Constitution of this state. The General Assembly hereby finds and determines that such issue will be self-liquidating over the life of the issue and declares its intent to appropriate an amount equal to the highest annual debt service requirements for such issue. The proceeds of such bonds and the investment earnings thereon shall be used to finance land public transportation facilities or systems, including any costs of such projects.

(b) The guaranteed revenue bonds and the interest payable thereon shall be exempt from all taxation within the state imposed by the state or any county, municipal corporation, or other political subdivision of the state.

History. — Code 1981, § 50-32-32, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2019, p. 1056, § 50/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in the second sentence of subsection (a).

50-32-33. Bonds are made securities.

The bonds of the authority are made securities in which all public officials and bodies of the state and all counties and municipalities, all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business, and administrators, guardians, executors, trustees, and other fiduciaries and all other persons whatsoever, who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and may be received by all public officers and bodies of this state and all counties and municipalities for any purposes for which the deposit of bonds or other obligations of this state are now or hereafter may be authorized.

History. — Code 1981, § 50-32-33, enacted by Ga. L. 1999, p. 112, § 7.

50-32-34. Pledge by the state.

The State of Georgia does pledge to and agree with the owners of any bonds issued by the authority pursuant to this chapter that the state will not alter or limit the rights vested in the authority to fulfill the terms of any agreement made with or for the benefit of the owners of bonds or in any way impair the rights and remedies of bond owners until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such owners, are fully met and discharged or funds for the payment of such are fully provided. The authority is authorized to include this pledge and agreement of the state in any agreement with bond owners.

History. — Code 1981, § 50-32-34, enacted by Ga. L. 1999, p. 112, § 7.

50-32-35. Applicability of Chapter 5 of Title 10.

The offer, sale, or issuance of bonds, notes, or other obligations by the authority shall not be subject to regulation under Chapter 5 of Title 10, known as the "Georgia Uniform Securities Act of 2008." No notice, proceeding, or publication except those required in this chapter shall be necessary to the performance of any act authorized in this chapter; nor shall any such act be subject to referendum.

History. — Code 1981, § 50-32-35, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2008, p. 381, § 10/SB 358.

50-32-36. State immune from obligations or indebtedness created by authority.

No bonds, notes, or other obligations of and no indebtedness incurred by the authority, other than guaranteed revenue bonds, shall constitute an indebtedness or obligation or a pledge of the faith and credit of the State of Georgia or of its agencies; nor shall any act of the authority in any manner constitute or result in the creation of an indebtedness of the state or its agencies or a cause of action against the state or its agencies; provided, however, the state, to the extent permitted by its Constitution, may guarantee payment of such bonds, notes, or other obligations as guaranteed revenue debt.

History. — Code 1981, § 50-32-36, enacted by Ga. L. 1999, p. 112, § 7.

50-32-37. Legislative findings; bonds, notes, or other obligations issued by the authority exempt from taxation.

It is found, determined, and declared that the creation of this authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter. For such reasons the state covenants with the owners from time to time of the bonds, notes, and other obligations issued under this chapter that the authority shall not be required to pay any taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others, or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise, and that the bonds, notes, and other obligations of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this chapter shall include an exemption from sales and use tax on property purchased by the authority or for use by the authority.

History. — Code 1981, § 50-32-37, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2005, p. 19, § 1/HB 281.

50-32-38. Issuance of bonds or other obligations subject to approval of commission.

The issuance of any bond, revenue bond, note, or other obligation or incurring of debt, public or otherwise, by the authority must be approved by the commission established by Article VII, Section IV, Paragraph VII of the Constitution of the State of Georgia of 1983 or its successor.

History. — Code 1981, § 50-32-38, enacted by Ga. L. 1999, p. 112, § 7.

50-32-39. Limitation of indebtedness.

No bonded indebtedness of any kind shall be incurred by the authority or on behalf of the authority by the Georgia Environmental Finance Authority at any time when the highest aggregate annual debt service requirements of the state for the then current fiscal year or any subsequent fiscal year for outstanding general obligation debt and guaranteed revenue debt, including the proposed debt and treating it as state general obligation debt or guaranteed revenue debt for purposes of calculating debt limitations under this Code section, and the highest aggregate annual payments for the then current fiscal year or any subsequent fiscal year of the state under all contracts then in force to which the provisions of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of 1976 are applicable, exceed 7.5 percent of the total revenue receipts, less refunds of the state treasury in the fiscal year immediately preceding the fiscal year in which any such debt is to be incurred.

History. — Code 1981, § 50-32-39, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2010, p. 949, § 1/HB 244.

ARTICLE 4

LOCAL GOVERNMENT SERVICES

Law reviews. — For note, "Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority," see 36 Ga. L. Rev. 247 (2001).

50-32-50. Local government services approval and funding.

(a) Any local government which is within the geographic area over which the authority has jurisdiction or which is within any county for which a special district has been otherwise activated pursuant to this chapter may provide, subject to the authorization of the authority as provided for in this chapter, within the territorial limits of the special

district authorized by this chapter local government services consisting of land public transportation and air quality control, consistent with the terms of any authorizing resolution of the authority and, further, consistent with the regional plan or plans approved by the authority pursuant to its delegated powers if such plans are applicable to such local government's territory. In providing such local services in such special district pursuant to the provisions of this chapter, the local government shall utilize one or more of the funding mechanisms enumerated in Article IX, Section II, Paragraph VI of the Constitution of this state for the purpose of funding, in whole or in part, only the local government services authorized by this chapter, and such services may be provided, in whole or in part, pursuant to a contract between one or more local governments within a special district activated pursuant to this chapter.

(b) Projects and facilities for the provision of local government services through special districts authorized by this chapter shall be planned by the authority consistent with approved regional plans, where applicable, and may be designed, constructed, managed, operated, and funded by the authority in whole or in part.

History. — Code 1981, § 50-32-50, enacted by Ga. L. 1999, p. 112, § 7.

50-32-51. Lease agreements.

(a) For the purposes of this Code section, the term "lease agreement" shall mean and include a lease, operating lease rental agreement, usufruct, sale and lease back, or any other lease agreement having a term of not more than 50 years and concerning real, personal, or mixed property, any right, title, or interest therein by and between the state, the authority, a local government, or any combination thereof.

(b) A local government by resolution of its governing body may enter into a lease agreement for the provision of land public transportation or air quality services utilizing facilities owned by the authority upon such terms and conditions as the authority shall determine to be reasonable including, but not limited to, the reimbursement of all costs of construction and financing and claims arising therefrom.

(c) No lease agreement shall be deemed to be a contract subject to any law requiring that a contract shall be let only after receipt of competitive bids.

(d) Any lease agreement may provide for the construction of such land public transportation or air quality facility by the local government as agent for the authority. In such event, all contracts for such construction shall be let by such local government in accordance with the provisions of law otherwise applicable to the letting of such

contracts by such local government and with the provisions of state law pertaining to prevailing wages, labor standards, and working hours. Any such lease agreement may contain provisions by which such local government shall indemnify the authority against any and all damages resulting from acts or omissions to act on the part of such local government or its officers, agents, or employees in constructing such facility or facilities, in letting any contracts in connection therewith, or in operating and maintaining the same.

(e) Any lease agreement executed by the authority directly with any local government may provide at the termination thereof that title to the land public transportation or air quality facility project shall vest in the local government or its successor in interest, if any, free and clear of any liens or encumbrances created in connection with any contract or bonds, revenue bonds, notes, or other obligations involving the authority.

(f) Any lease agreement directly between the state or authority and a local government may contain provisions requiring the local government to perform any or all of the following:

(1) In the case of a land public transportation facility, to establish and collect rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) The costs of operation, maintenance, renewal, replacement, and repairs of the land public transportation facility of such local government; and

(B) Outstanding bonds, revenue bonds, notes, or other obligations incurred for the purposes of such land public transportation facility and to provide for the payment of all amounts as they shall become due and payable under the terms of such lease agreement, including amounts for the creation and maintenance of any required reserves;

(2) In the case of an air quality facility, to establish and collect rents, rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) The costs of operation, maintenance, renewal, and repairs of the air quality facility of such local government; and

(B) Outstanding bonds, revenue bonds, notes, or other obligations incurred for the purposes of such air quality facility and to provide for the payment of all amounts as they shall become due and payable under the terms of such lease agreement, including amounts for the creation and maintenance of any required reserves;

(3) To create and maintain reasonable reserves or other special funds;

(4) To create and maintain a special fund or funds as additional security for the punctual payment of any rentals due under such lease agreement and for the deposit therein of such revenues as shall be sufficient to pay said lease rentals and any other amounts becoming due under such lease agreements as the same shall become due and payable; or

(5) To perform such other acts and take such other action as may be deemed necessary and desirable by the authority to secure the complete and punctual performance by such local government of such lease agreements and to provide for the remedies of the authority in the event of a default by such local government in such payment.

History. — Code 1981, § 50-32-51, enacted by Ga. L. 1999, p. 112, § 7.

50-32-52. Grants or loans to local government.

(a) The authority may make grants or loans to a local government to pay all or any part of the cost of a project. In the event the local government agrees to accept such grants or loans, the authority may require the local government to issue bonds or revenue bonds as evidence of such grants or loans. The authority and a local government may enter into such loan commitments and option agreements as may be determined appropriate by the authority.

(b) The authority may require as a condition of any grant or loan to a local government that such local government shall perform any or all of the following:

(1) In the case of grants or loans for a land public transportation or air quality facility, establish and collect rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) Costs of operation, maintenance, replacement, renewal, and repairs; and

(B) Outstanding indebtedness incurred for the purposes of such facility, including the principal of and interest on the bonds, revenue bonds, notes, or other obligations issued by the local government, as the same shall become due and payable, and to create and maintain any required reserves;

(2) In the case of loans for an air quality facility, establish and collect rents, rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) Costs of operation, maintenance, renewal, replacement, and repairs of the air quality facility of such local government; and

(B) Outstanding indebtedness incurred for the purposes of such air quality facility, including the principal of and interest on the bonds, revenue bonds, notes, or other obligations issued by the local government, as the same shall become due and payable, and to create and maintain any required reserves;

(3) Create and maintain a special fund or funds, as additional security for the payment of the principal of such revenue bonds and the interest thereon and any other amounts becoming due under any agreement, entered into in connection therewith and for the deposit therein of such revenues as shall be sufficient to make such payment as the same shall become due and payable;

(4) Create and maintain such other special funds as may be required by the authority; and

(5) Perform such other acts, including the conveyance of real and personal property together with all right, title, or interest therein to the authority, or take other actions as may be deemed necessary or desirable by the authority to secure the payment of the principal of and interest on such bonds, revenue bonds, notes, or other obligations and to provide for the remedies of the authority in the event of any default by such local government in such payment.

(c) All local governments issuing and selling bonds, revenue bonds, notes, or other obligations to the authority are authorized to perform such acts, take such action, adopt such proceedings, and to make and carry out such contracts with the authority as may be contemplated by this chapter.

(d) In connection with the making of any loan authorized by this chapter, the authority may fix and collect such fees and charges including, but not limited to, reimbursement of all costs of financing by the authority, as the authority shall determine to be reasonable. Neither the Public Service Commission nor any local government or state agency shall have jurisdiction over the authority's power over the regulation of such fees or charges.

History. — Code 1981, § 50-32-52, enacted by Ga. L. 1999, p. 112, § 7.

50-32-53. Effect of failure to implement local government services on state and federal grants.

(a) No local government which, upon the activation of a special district created by this chapter, fails or refuses to plan, coordinate, and implement local government services in such special district as pro-

vided for in this chapter and authorized pursuant to a resolution of the authority shall be eligible for any state grant of any kind whatsoever except such grants as may be related directly to the physical and mental health, education, and police protection of its residents, nor shall any funds appropriated to or otherwise obtained by the Department of Transportation pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of this state and paragraphs (2) and (7) of subsection (a) of Code Section 32-2-2 be utilized for designation, improvement, funding, or construction of any land public transportation system or any part of the state highway system lying within the boundaries of such local government's jurisdiction, or for the nonsafety related maintenance of any land public transportation system, highway, road, or bridge operating or located within such local government's jurisdictional boundaries, nor shall such local government be permitted to receive federal grants or funds for any such purpose, unless such funds are within categories applicable to state-wide inspection or improvement required for compliance with federal law or regulation.

(b) By resolution, the authority may restore eligibility for funding and receipt of grants denied pursuant to the provisions of subsection (a) of this Code section where such local government demonstrates to the satisfaction of the authority that it is taking or shall take appropriate action to cooperate with the authority.

History. — Code 1981, § 50-32-53, enacted by Ga. L. 1999, p. 112, § 7.

50-32-54. Failure of local government to collect and remit amounts due to authority.

(a) In the event of a failure of any local government to collect and remit in full all amounts due to the authority and all amounts due to others, which involve the credit or guarantee of the authority or of the state, on the date such amounts are due under the terms of any bond, revenue bond, note, or other obligation of the local government, it shall be the duty of the authority to notify the state treasurer who shall withhold all funds of the state and all funds administered by the state, its agencies, boards, and instrumentalities allotted to such local government, excluding funds for education purposes, until such local government has collected and remitted in full all sums due and cured or remedied all defaults on any such bond, revenue bond, note, or other obligation.

(b) Nothing contained in this Code section shall mandate the withholding of funds allocated to a local government which would violate contracts to which the state is a party, the requirements of federal law imposed on the state, or judgments of any court binding the state.

History. — Code 1981, § 50-32-54, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2010, p. 863, § 3/SB 296.

50-32-55. Uninterrupted transit services.

It is the intent of the General Assembly to provide for uninterrupted transit services to the people of this state. The authority shall retain power to provide any such transit services provided as of July 1, 2018, until the Atlanta-region Transit Link "ATL" Authority is able to provide such services or July 1, 2020, whichever date occurs first.

History. — Code 1981, § 50-32-55, enacted by Ga. L. 2018, p. 377, § 4-11/HB 930.

ARTICLE 5

ALLOCATION OF FUNDS BY DEPARTMENT OF TRANSPORTATION

Law reviews. — For note, "Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority," see 36 Ga. L. Rev. 247 (2001).

50-32-60. Department of Transportation's allocation of funds unaltered.

The prohibition of expenditures or withholding of funds for public road or other public transportation purposes by the authority pursuant to any provision of this chapter shall not alter the Department of Transportation's budgeted or programmed allocation of state or federal funds among congressional districts pursuant to Code Section 32-5-30.

History. — Code 1981, § 50-32-60, enacted by Ga. L. 1999, p. 112, § 7.

ARTICLE 6

CONSTRUCTION OF CHAPTER

Law reviews. — For note, "Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority," see 36 Ga. L. Rev. 247 (2001).

50-32-70. Chapter to be liberally construed.

This chapter, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes specified in this chapter.

History. — Code 1981, § 50-32-70, enacted by Ga. L. 1999, p. 112, § 7.

50-32-71. Exemption of buses, motor vehicles, and rapid rail systems of the authority from motor carrier regulations.

Repealed by Ga. L. 2018, p. 377, § 4-12/HB 930, effective May 3, 2018.

Editor's notes. — This Code section was based on Ga. L. 2005, p. 19, § 2/HB 281; Ga. L. 2012, p. 580, § 26/HB 865.

CHAPTER 33

YEAR 2000 READINESS

Sec.
50-33-1 through 50-33-6 [Repealed].

50-33-1 through 50-33-6.

Reserved. Repealed by Ga. L. 1999, p. 161, § 3, effective December 31, 2001.

Editor's notes. — This chapter consisted of Code Sections 50-33-1 through 50-33-6, relating to Year 2000 Readiness, and was based on Ga. L. 1999, p. 161, § 1.

Ga. L. 1999, p. 161, § 3, provided for the repeal of this chapter effective December 31, 2001, but also provided "that proceedings for enforcement of penalties provided for in this Act shall not be abated by such repeal, and such penalties may be imposed and collected where such proceedings were pending on or prior to that date."

Ga. L. 2013, p. 141, § 50/HB 79, effective April 24, 2013, reserved the designation of this chapter.

CHAPTER 34

ONEGEORGIA AUTHORITY

Sec.
50-34-1. Short title.
50-34-2. Definitions.
50-34-3. Creation, membership of board of directors, power, and authority of OneGeorgia Authority.
50-34-4. Limitation on the authority's liability.
50-34-5. Powers of the authority vested in the members.
50-34-6. Powers of the authority.
50-34-7. Powers to issue bonds and incur indebtedness.
50-34-8. Obligations not subject to the "Georgia Uniform Securities Act of 2008"; setting of rates, fees, and charges for loans; power to issue bonds.
50-34-9. Bonds as securities.
50-34-10. Payment of bond proceeds.
50-34-11. Power to secure issuance of bonds by trust agreement or indenture.
50-34-12. All moneys received deemed to be trust funds; pledge of assets, funds, and properties for payment of bonds.
50-34-13. Annual and biannual audits and reports.
50-34-14. Termination of the authority.
50-34-15. Facilitation of economic development for enterprises throughout the state.
50-34-16. Competitive bidding not a requirement.
50-34-17. OneGeorgia Authority Overview Committee established; duties.
50-34-18. Transfer of positions authorized by authority to Department of Community Affairs.
50-34-19. Border Region Retail Tourism Development Program; definition; procedure for implementation.

Administrative rules and regulations. — Equity Fund, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of the OneGeorgia Authority, Chapter 413-1.

Edge Fund, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of the OneGeorgia Authority, Chapter 413-2.

The OneGeorgia Authority's Regional E-9-1-1 Fund Program, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of the OneGeorgia Authority, Chapter 413-4.

Strategic Industries Loan Fund, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of the OneGeorgia Authority, Chapter 413-5-1.

Entrepreneur and small business development, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of the OneGeorgia Authority, Chapter 413-6-1.

Law reviews. — For note on 2000 enactment of this chapter, see 17 Ga. St. U.L. Rev. 302 (2000).

50-34-1. Short title.

(a) This chapter shall be known and may be cited as the "OneGeorgia Authority Act."

(b) The General Assembly finds that:

(1) Despite the overall prosperity of the State of Georgia, the economic prosperity and development of rural Georgia has lagged behind that of the urban areas of the state.

(2) It is declared to be the public policy of this state to promote the health, welfare, safety, and economic security of the rural citizens of the state through the development and retention of employment opportunities in rural areas and the enhancement of the infrastructures which accomplish that goal.

(3) The public policies of this state as set forth in this Code section cannot be fully attained without the use of public financing and financial assistance, either direct or indirect; and such public financing can best be provided by the creation of a rural economic development authority having as its members certain public officers and officials whose attentions and efforts will thereby be focused on the prosperity of rural Georgia.

History. — Code 1981, § 50-34-1, enacted by Ga. L. 2000, p. 582, § 1.

Law reviews. — For comment, "Broad-Banned: The FCC's Preemption of State Limits on Municipal Broadband and the Clear Statement Rule," see 68 Emory L.J. 409 (2018).

50-34-2. Definitions.

As used in this chapter, the term:

(1) "Authority" means the OneGeorgia Authority or any subsidiary corporation created by the board of directors of the OneGeorgia Authority pursuant to this chapter.

(2) "Bonds" or "revenue bonds" means any bonds, revenue bonds, notes, interim certificates, bond or revenue anticipation notes, or other evidences of indebtedness of the authority issued under this chapter, including, without limitation, obligations issued to refund any of the foregoing, notwithstanding that such bonds may be secured by the full faith and credit of a business, enterprise, or federal tobacco settlement proceeds paid to the State of Georgia.

(3) "Business" means any lawful activity engaged in for profit or not for profit, whether organized as a corporation; a partnership, either general or limited; a sole proprietorship; an educational institution; or otherwise.

(4) "Cost of project," "cost of any project," or "cost of an enterprise" means, as the context may require, all, including but without limiting the generality of the foregoing, of the following:

(A) All costs of acquisition, by purchase or otherwise, and all costs of installation, modification, repair, reconditioning, renova-

tion, remodeling, extension, rehabilitation, or preservation incurred in connection with any project or part of any project;

(B) All costs of real property, fixtures, equipment, or personal property used in or in connection with or necessary or convenient for any project or any facility or facilities related thereto, including, but not limited to, cost of land, interests in land, options to purchase, estates for years, easements, rights, improvements, water rights, connections for utility services, and infrastructure and connections for broadband services as such term is defined in Code Section 50-40-1; the cost of fees, franchises, permits, approvals, licenses, and certificates or the cost of securing any of the foregoing; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in connection with or necessary or convenient for any project or facility;

(C) All financing charges, including, but not limited to, premiums and prepayment penalties; interest accrued or to accrue prior to and up to three years after the acquisition, installation, financing, or commencement of a project and any other cost related to a project up to three years after such acquisition, installation, financing, refinancing, or commencement; any loan or loan guarantee fees; and any fees paid to or which accrue to the authority regardless of the timing of such fees, prior to, during the operation of, or after the acquisition, installation, financing, refinancing, or commencement of a project;

(D) The cost of architectural, engineering, legal, financing, surveying, planning, environmental reports and inspections, accounting services, and any and all other necessary technical personnel or other expenses necessary or incident to planning, providing, or determining the need for or the feasibility or practicability of a project or financial assistance to or financing of a project;

(E) All fees for legal, accounting, bond, underwriting, trustee, paying agent, option provider, credit enhancement, and fiscal agent services for bondholders under any bond resolution, trust agreement, indenture, or similar instrument or agreement and all expenses incurred by any of the above;

(F) The cost of plans and specifications for any project;

(G) The cost of title insurance and title examinations with respect to any project;

(H) Administrative costs, expenses, and fees rendered or incurred with respect to any project;

(I) The cost of the establishment of any reserves, including, but not limited to, any sinking fund and debt service reserves;

(J) All costs of servicing any loans made or acquired;

(K) The cost of the authority incurred in connection with providing a project, including reasonable sums to reimburse the authority for time spent by its agents or employees in providing and financing a project; and

(L) The cost paid or incurred for the administration of any program for the purchase or lease of or the making of loans for a project by the authority and any program for the sale or lease of or making of loans for a project to any business, enterprise, local government, or any other person.

(5) "Enterprise" means a business engaged in manufacturing, producing, processing, assembling, repairing, extracting, warehousing, handling, or distributing any agricultural, manufactured, mining, or industrial product or any combination of the foregoing; a business engaged in furnishing or facilitating communications, computer services, research, or transportation; a business engaged in tourism; a business engaged in commercial or retail sales or service; a business engaged in construction; and corporate and management offices and services provided in connection with any of the foregoing, in isolation or in any combination that involves, in each case, either the creation of new or additional employment, the retention of existing employment or payroll, or the increase of average payroll for employees of such enterprise.

(6) "Facilities" means any real property, personal property, or mixed property of any and every kind.

(7) "Local government" or "local governing authority" means any municipal corporation or county or any state or local authority, board, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of this state.

(8) "Operating capital" means the cost of general operation and administration of a business for a temporary period, not to exceed one year.

(9) "Project" includes:

(A) Any one or more buildings or structures to be used in the production, manufacturing, processing, assembling, storing, or handling of any agricultural, manufactured, mining, or industrial product or any combination of the foregoing, in every case with all necessary or useful furnishings, machinery, equipment, parking facilities, landscaping, and facilities for outdoor storage, all as determined by the authority, which determination shall be final and not subject to review; and there may be included as part of any such project all improvements necessary to the full utilization

thereof, including site preparation, roads and streets, sidewalks, water supply, outdoor lighting, belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad, automotive, and air transportation, transportation facilities incidental to the project, and the dredging and improving of harbors and waterways, none of which foregoing descriptive words shall be construed to constitute a limitation;

(B) The acquisition, construction, leasing, or equipping of new industrial facilities or the improvement, modification, acquisition, expansion, modernization, leasing, equipping, or remodeling of existing industrial facilities;

(C) The acquisition, construction, improvement, or modification of any property, real or personal, used as air or water pollution control facilities which the authority has determined is necessary for the operation of the industry or industries which the same is to serve and which is necessary for the public welfare, provided that, for the purposes of this subparagraph, the term "air pollution control facility" means any property used, in whole or in substantial part, to abate or control atmospheric pollution or contamination by removing, altering, disposing of, or storing atmospheric pollutants or contaminants, if such facility is in furtherance of applicable federal, state, or local standards for abatement or control of atmospheric pollutants or contaminants; and provided, further, that, for the purpose of this subparagraph, the term "water pollution control facility" means any property used, in whole or in substantial part, to abate or control water pollution or contamination by removing, altering, disposing of, or storing pollutants, contaminants, wastes, or heat, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, holding ponds, lagoons, and appurtenances thereto, if such facility is in the furtherance of applicable federal, state, or local standards for the abatement or control of water pollution or contamination;

(D) The acquisition, construction, improvement, or modification of any property, real or personal, used as or in connection with a sewage disposal facility or a solid waste disposal facility which the authority has determined is necessary for the operation of the industries which the same is to serve and which is necessary for the public welfare, provided that, for the purposes of this subparagraph, the term "sewage disposal facility" means any property used for the collection, storage, treatment, utilization, processing, or final disposal of sewage; for the purposes of this subparagraph, the term "solid waste disposal facility" means any property used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste; for the purposes of this subparagraph, the

term "solid waste" means garbage, refuse, or other discarded solid materials, including solid waste materials resulting from industrial and agricultural operations and from community activities but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as salt, dissolved or suspended solids in industrial waste-water effluents, and dissolved materials in irrigation return flows; for the purposes of this subparagraph, the word "garbage" includes putrescible wastes, including animal and vegetable matters, animal offal and carcasses, and recognizable industrial by-products but excludes sewage and human wastes; and for the purposes of this subparagraph, the word "refuse" includes all nonputrescible wastes;

(E) The acquisition, construction, leasing, or financing of:

(i) An office building facility and related real and personal property for use by the authority or by any business, nonprofit, or charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state and which shall be adjacent to or used in conjunction with any other existing or proposed project defined in this paragraph, which existing or proposed project is used or intended to be used by the authority or by such business or charitable corporation, association, or similar entity;

(ii) A separate office building facility and related real and personal property for use by the authority or by any business or charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state; or

(iii) Any real or personal property to be used by a charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state;

(F) The acquisition, construction, equipping, improvement, modification, or expansion of any property, real or personal, for use by an enterprise;

(G) The acquisition, construction, installation, modification, renovation, or rehabilitation of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of the development of

trade, commerce, industry, and employment opportunities. A project may be for any industrial, commercial, business, office, parking, public, or other use, provided that a majority of the members of the authority determines, by a duly adopted resolution, that the project and such uses thereof would further the public purpose of this chapter; and

(H) The acquisition, construction, improvement, or modification of any property, real or personal, used to provide or used in connection with the provision of broadband services which the authority has determined as necessary for the operation of the industries which such property, real or personal, is to serve and which is necessary for the public welfare, provided that, for the purposes of this subparagraph, the term "broadband services" shall have the same meaning as provided in Code Section 50-40-1.

History. — Code 1981, § 50-34-2, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2018, p. 629, § 5-1/SB 402.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-1" was substituted for "Code Section 50-39-1" in subparagraph (4)(B) and at the end of subparagraph (9)(H).

Editor's notes. — Ga. L. 2018, p. 629, § 1/SB 402, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Achieving Connectivity Everywhere (ACE) Act.'"

50-34-3. Creation, membership of board of directors, power, and authority of OneGeorgia Authority.

(a) There is created a body corporate and politic to be known as the OneGeorgia Authority which shall be deemed to be an instrumentality of the state, and not a state agency, and a public corporation performing an essential governmental function.

(b) The board of directors of the authority shall consist of the Governor, who shall serve as chair of the authority; the Lieutenant Governor, who shall serve as co-vice chair of the authority; the Speaker of the House of Representatives, who shall serve as co-vice chair of the authority; the director of the Office of Planning and Budget, who shall serve as secretary of the authority; the commissioner of community affairs; the commissioner of economic development; and the commissioner of revenue.

(c) Except for the authorization of the issuance of bonds, the authority may delegate to the executive director such powers and duties as it may deem proper.

(d) The Governor shall appoint an executive director of the authority whose compensation shall be fixed by the authority.

(e) No part of the funds of the authority shall inure to the benefit of or be distributed to its members or officers or other private persons,

except that the authority shall be authorized and empowered to pay reasonable compensation for services rendered and to reimburse expenses incurred. In addition, the authority shall be authorized and empowered to make loans and grants, allocate credits, provide financial assistance, and otherwise exercise its other powers in furtherance of its corporate purposes. No such loans or grants or financial assistance shall be made to, no credits shall be allocated to, and no property shall be purchased or leased from or sold, leased, or otherwise disposed of to any member or officer of the authority in his or her individual capacity or by virtue of partnership or ownership of a for profit corporation. This subsection does not preclude loans or grants to, financial assistance or allocation of credit to, or purchase or lease from or sale, lease, or disposal of property to any subsidiary corporation of the authority.

(f) The Attorney General shall provide legal services for the authority, and, in connection therewith, Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

History. — Code 1981, § 50-34-3, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2002, p. 1059, § 3; Ga. L. 2004, p. 690, § 43; Ga. L. 2018, p. 629, § 5-2/SB 402.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, in subsection (c) (now subsection (b)), "commissioner of community affairs" was substituted for "commissioner of the Department of Community Affairs", and "commissioner of revenue" was substituted for "commissioner of the Department of Revenue".

Pursuant to Code Section 28-9-5, in 2002, subsection (h) was redesignated as subsection (f).

Editor's notes. — Ga. L. 2018, p. 629, § 1/SB 402, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Achieving Connectivity Everywhere (ACE) Act.'"

50-34-4. Limitation on the authority's liability.

Neither the members of the authority nor any officer or employee of the authority acting in behalf thereof, while acting within the scope of his or her authority, is subject to any liability resulting from:

(1) The construction, ownership, maintenance, or operation of any project financed with the assistance of the authority; or

(2) Carrying out any of the powers given in this chapter.

History. — Code 1981, § 50-34-4, enacted by Ga. L. 2000, p. 582, § 1.

50-34-5. Powers of the authority vested in the members.

(a) The powers of the authority shall be vested in the members of the board of directors in office from time to time; and a majority of members in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the authority.

(b) Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of a majority of present and voting board members.

(c) No vacancy in the membership of the board shall impair the right of the members to exercise all the powers and perform all duties of the board.

History. — Code 1981, § 50-34-5, enacted by Ga. L. 2000, p. 582, § 1.

50-34-6. Powers of the authority.

(a) The authority shall have any and all powers necessary or convenient to its usefulness in carrying out and effectuating the purposes and provisions of this chapter which are not in conflict with the Constitution of this state, including, but without limiting the generality of the foregoing, the following powers:

(1) To sue and be sued in contract and in tort and to complain and defend in all courts;

(2) To adopt and alter a corporate seal;

(3) To adopt, amend, and repeal bylaws, rules and regulations, and policies and procedures for the regulation of its affairs and the conduct of its business, the election and duties of officers and employees of the authority, and such other matters as the authority may determine;

(4) To appoint and select officers, agents, and employees, including professional and administrative staff and personnel, financial advisers, consultants, fiscal agents, trustees, and accountants and to fix their compensation and pay their expenses, including the power to contract with the Department of Community Affairs and any other department, agency, board, commission, or authority of state government for professional, technical, clerical, and administrative support as may be required;

(5) To procure or to provide insurance against any loss in connection with its programs, property, and other assets;

(6) To borrow money and to issue notes and bonds and other obligations to accomplish its public purposes and to provide for the rights of the lenders or holders thereof;

(7) To pledge, mortgage, convey, assign, hypothecate securities, or otherwise encumber any property of the authority, including, but not limited to, real property, fixtures, personal property, intangible property, revenues, income, charges, fees, or other funds and to execute

any lease, trust indenture, trust agreement, resolution, agreement for the sale of the authority's bonds, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such bonds, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument; the state, on behalf of itself and each political subdivision, public body corporate and politic, or taxing district therein, waives any right it or such political subdivision, public body corporate and politic, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(8) To extend credit, to make loans, to participate in the making of loans, to provide credit enhancement, and to provide or procure insurance;

(9) To collect fees and charges in connection with its bonds, loans, commitments, insurance, credit enhancement, and servicing, including, but not limited to, reimbursement of costs of financing;

(10) To sell loans, security interests, and other obligations of the authority at public or private sale; to negotiate modifications or alterations in loans, security interests, and other obligations of the authority; to foreclose on any security interest in default or commence any action to protect or enforce any right conferred upon it by any law, security agreement, deed of trust, deed to secure debt, contract, or other agreement; to bid for and purchase property which was the subject of such loan, security interest, or other obligation of the authority at any foreclosure or at any other sale; to acquire or take possession of such property; and to exercise any and all rights as provided by law or contract for the benefit or protection of the authority or holders of the authority's notes, bonds, or other obligations;

(11) To procure or to make and execute contracts, agreements, and other instruments, including interest rate swap or currency swap agreements, letters of credit, or other credit facilities or agreements, and to take such other actions and do such other things as the authority may deem appropriate to secure the payment of any loan, lease, or purchase payment owed to the authority or any bonds or other obligations issued by the authority, including the power to pay the cost of obtaining any such contracts, agreements, and other instruments;

(12) To receive and use the proceeds of any tax levied by the state or a local government or taxing district of the state enacted for the purposes of providing credit enhancement or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(13) To receive and administer gifts, grants, and devises of money and property of any kind; to administer trusts; and to receive such part of the proceeds paid to the State of Georgia pursuant to funds received by the state pursuant to the settlement of the lawsuit filed by the state against certain tobacco companies (*State of Georgia, et al. v. Philip Morris, Inc., et al.*, Civil Action #E-61692, V19/246 (Fulton County Superior Court, 19 December 9, 1998)), as the General Assembly shall from time to time appropriate for the purposes of the authority, and to sell, convey, or otherwise encumber such moneys appropriated from the proceeds of such settlement by capitalizing or securitizing the same and entering into contracts pertaining thereto in order to enable the authority, in its judgment, to better accomplish the purposes of this chapter;

(14) To acquire real and personal property in its own name to promote any of the public purposes of the authority or for the administration and operation of the authority;

(15) To provide and administer grant moneys for any of the public purposes of the authority and to comply with all conditions attached thereto;

(16) To contract for any period, not exceeding 50 years, with the state, any institution, department, agency, or authority of the state, or any local government within the state for the use by the authority of any facilities or services of any such entity or for the use by any such entity of any facilities or services of the authority, provided that such contracts shall deal with such activities and transactions as the authority and any such entity with which the authority contracts are authorized by law to undertake;

(17) To invest any accumulation of its funds, including, but without limiting the generality of the foregoing, funds received from the issuance of bonds and any sinking funds or reserves in any manner as it determines is in its best interests and to purchase its own bonds and notes;

(18) To hold title to any project financed by it, but it shall not be required to do so;

(19) To establish eligibility standards for financing and financial assistance and technical assistance authorized for projects under this chapter;

(20) To sell or otherwise dispose of unneeded or obsolete equipment or property of every nature and every kind;

(21) To lease as lessor any facility or any project for such rentals and upon such terms and conditions as the authority considers advisable and not in conflict with this chapter;

(22) To sell by installment or otherwise to sell by option or contract for sale and to convey all or any part of any item of any project or facility for such price and upon such terms and conditions as the authority considers advisable and which are not in conflict with this chapter;

(23) To manage property, intangible, real, and personal, owned by the authority or under its control by lease or by other means;

(24) To do any and all things necessary, desirable, convenient, or incidental for the accomplishment of the objectives of this chapter and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the public purposes of the authority or the Constitution and laws of this state, including:

(A) The power to retain accounting and other financial services;

(B) The power to purchase all kinds of insurance, including, without limitation, insurance against tort liability and against risks of damage to property;

(C) The power to indemnify and hold harmless any parties contracting with the authority or its agents from damage to persons or property; and

(D) The power to act as self-insurer with respect to any loss or liability and to create insurance reserves;

(25) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and to accomplish any of the purposes of the authority. Any such subsidiary corporation shall be a nonprofit corporation, a public body, a political subdivision of the state, and an instrumentality of the state and shall exercise essential governmental functions. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. The members of the board of directors of any such corporation shall be appointed by the authority and may include persons who are members of the authority; provided, however, that a majority of the members of the board of directors of any such corporation shall be persons who are not members of the

authority and who are not officials or employees of the State of Georgia. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the State of Georgia. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents;

(26) To lease any authority owned facilities or property or any state owned facilities or property which the authority is managing under contract with the state; and no such lease agreement shall be deemed to be a contract subject to any law requiring that contracts shall be let only after receipt of competitive bids;

(27) To provide advisory, technical, consultative, training, management, educational, project assistance, and other services related to the purposes of the authority to the state and any institution, department, agency, or authority of the state, to any local government, or to any nonprofit or for profit business, corporation, partnership, association, sole proprietorship, or other entity or enterprise and to enter into contracts with the foregoing, including without limitation the Department of Community Affairs, to provide such services; and the state, any institution, department, agency, or authority of the state, including without limitation the Department of Community Affairs, and any local government are authorized to enter into contracts with the authority for such services, to perform all duties required by the contract, and to pay for such services as may be provided them;

(28) To impose restrictive covenants which shall be deemed to be running with the land to any person, corporation, partnership, or other form of business entity which receives financial assistance from the authority, which form of financial assistance shall include tax credits, bond financing, grants, guarantees of the authority, guarantees of the state, insurance of the authority, and all other forms of financial assistance, regardless of whether the authority enjoys privity of estate or whether the covenant touches and concerns the property burdened; and such restrictive covenants shall be valid for a period of up to the later of 40 years or the termination or satisfaction of such financial assistance, notwithstanding any other provision of law;

(29) To enter into partnership agreements, to sell and purchase partnership interests, and to serve as general or limited partner of a partnership created to further the public purposes of the authority;

(30) To allocate and issue any federal or state tax credits for which the authority is designated as the state allocating agency;

(31) To make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;

(32) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agency;

(33) To adopt regulations for its own governance regarding cost-effective distribution of authority funds and prioritization of projects, subject to the direction of the General Assembly with regard to funds appropriated for the purposes of the authority;

(34) The authority shall have the power to contract with the Department of Community Affairs and any other department, agency, board, commission, or authority of state government for any purpose necessary or incidental to carrying out or performing the duties, responsibilities, or functions of the authority in exercising the power and management of the authority; provided, however, such contracts shall not delegate the authorization of the issuance of any bonds or other indebtedness of the authority. No part of the funds or assets of the authority shall be distributed to the Department of Community Affairs or any other department, authority, agency, board, or commission of the state unless otherwise provided by law, except that the authority shall be authorized and empowered to pay reasonable compensation for services rendered and to reimburse expenses incurred and, except as may be deemed necessary or desirable by the authority, to fulfill the purposes of the authority as set forth in this chapter. Nothing in this paragraph shall be construed as precluding the provision by any department, authority, board, commission, or agency of the state and the authority of joint or complementary services or programs within the scope of their respective powers. The Department of Community Affairs is authorized to acquire, construct, operate, maintain, expand, and improve a project for the purposes of the authority, and for the public good and general welfare, to contract with the authority for any such acquisition, construction, operation, maintenance, expansion, or improvement and to pay the cost of such project from any lawful fund source available to the department, including without limitation, where applicable, funds received by appropriation, proceeds of general obligation debt, funds of local government, grants of the United States or any agency or instrumentality thereof, gifts, and otherwise; and

(35) To establish the Georgia Value-Added Agriculture Program and to develop and encourage value-added opportunities for farmers and agricultural producers in the state through establishment of an agricultural development fund and other means deemed appropriate by the authority.

(b) The powers enumerated in each paragraph of subsection (a) of this Code section are cumulative of and in addition to those powers

enumerated in the other paragraphs of subsection (a) of this Code section and elsewhere in this chapter and no such power limits or restricts any other power of the authority.

(c) This chapter, being for the welfare of this state and being for the welfare of its citizens, shall be liberally construed to effect the purposes specified in this chapter.

(d) No portion of the state ceiling, as defined in Code Section 36-82-182, shall be set aside or reserved, and no separate pool or share shall be created within the state ceiling, for the purpose of reserving for or allocating to the authority a portion of the state ceiling for use by the authority in the financing of, or the provision of financial assistance for, any enterprise. The distribution to the authority by the Department of Community Affairs of any portion of the state ceiling for the purpose of permitting the financing of any enterprise shall be accomplished based upon the merits of each enterprise and shall be accomplished upon the same terms and conditions, without preference or priority of any kind, as shall be applicable to the distribution of any portion of the state ceiling for the benefit of any enterprise proposed to be financed by a local authority.

(e) No personal financial information submitted to the authority in connection with any of its programs shall be subject to public disclosure.

History. — Code 1981, § 50-34-6, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2001, p. 4, § 50; Ga. L. 2002, p. 1059, § 4.

50-34-7. Powers to issue bonds and incur indebtedness.

(a) The authority may issue bonds for the purpose of facilitating economic development; for the improvement of public health, safety, and welfare; and for other public purposes through the provision of financing and financial assistance for projects, either directly or indirectly through a financial institution; a lender; the state; any institution, department, agency, fund, or authority of the state or created under any state law; any political subdivision of the state; or any other public agency, public or private business, enterprise, agency, corporation, authority, or any other entity.

(b) The authority shall have the power to borrow money and to issue bonds, regardless of whether the interest payable by the authority incident to such loans or bonds or income derived by the holders of the evidence of such indebtedness or bonds is, for purposes of federal taxation, includable in the taxable income of the recipients of such payments or is otherwise not exempt from the imposition of such taxation on the recipient.

(c) No bonds, notes, or other obligations of, and no indebtedness incurred by, the authority shall constitute an indebtedness or obligation or a pledge of the faith and credit of the State of Georgia or its agencies; nor shall any act of the authority in any manner constitute or result in the creation of an indebtedness of the state or its agencies or a cause of action against the state or its agencies; provided, however, that the state, to the extent permitted by its Constitution, may guarantee payment of such bonds, notes, or other obligations as guaranteed revenue debt.

(d) It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purpose are in all respects for the benefit of the people of this state and are a public purpose and the authority will be performing an essential government function in the exercise of the powers conferred upon it by this chapter. The state covenants with the holders of the bonds that the authority shall not be required to pay any taxes or assessments upon any of the property acquired or leased by the authority or under the jurisdiction, control, possession, or supervision of the authority or upon the activities of the authority in the financing of the activities financed by the authority or upon any principal, interest, premium, fees, charges, or other income received by the authority and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The exemption from taxation is declared to specifically extend to any subsidiary corporation created by the board of directors of the authority but shall not extend to tenants or lessees of the authority unless otherwise exempt from taxation. The exemption from taxation shall include exemptions from sales and use taxes on property purchased by the authority or for use by the authority.

(e) The state does pledge to and agree with the holders of any bonds issued by the authority pursuant to this chapter that the state will not alter or limit the rights vested in the authority to fulfill the terms of any agreement made with or for the benefit of the holders of bonds or in any way impair the rights and remedies of bondholders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders are fully met and discharged or funds for the payment of such are fully provided. The authority is authorized to include this pledge and agreement of the state in any agreement with bondholders.

History. — Code 1981, § 50-34-7, enacted by Ga. L. 2000, p. 582, § 1.

50-34-8. Obligations not subject to the "Georgia Uniform Securities Act of 2008"; setting of rates, fees, and charges for loans; power to issue bonds.

(a) The offer, sale, or issuance of bonds, notes, or other obligations by the authority shall not be subject to regulation under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008." No notice, proceeding, or publication except those required in this chapter is necessary to the performance of any act authorized in this chapter; nor is any such act subject to referendum.

(b) The authority shall fix such rates, fees, and charges for loans and for use of its services and facilities as is sufficient in the aggregate (when added to any other grants or funds available to the authority) to provide funds for the payment of the interest on and principal of all bonds payable from said revenues and to meet all other encumbrances upon such revenues as provided by any agreement executed by the authority in connection with the exercise of its powers under this chapter and for the payment of all operating costs and expenses which shall be incurred by the authority, including provisions for appropriate reserves, except for funds appropriated to the State of Georgia Guaranteed Revenue Debt Common Reserve Fund with respect to any bonds issued by the authority as guaranteed revenue debt; provided, however, that such costs and expenses shall include any reimbursement to the State of Georgia Guaranteed Revenue Debt Common Reserve Fund because of any payments made from such fund for any guaranteed revenue debt issued by the authority.

(c) The use and disposition of the authority's revenue is subject to the provisions of the resolutions authorizing the issuance of any bonds payable therefrom or of the trust agreement or indenture, if any, securing the same. The authority may designate any of its bonds as general obligations or may limit the source of repayment pursuant to the resolution authorizing the issuance of the bonds.

(d) The making of any loan commitment or loan, and the issuance, in anticipation of the collection of the revenues from such loan or loans, of bonds to provide funds therefor, may be authorized under this chapter by resolution of the authority. Unless otherwise provided therein, such resolution shall take effect immediately and need not be published or posted. The authority, in determining the amount of such bonds, may include all costs and estimated costs of the issuance of the bonds; all fiscal, legal, and trustee expenses; and all costs of the project. Such bonds may also be issued to pay off, refund, or refinance any outstanding bonds or other obligations of any nature, whether or not such bonds or other obligations are then subject to redemption; and the authority may provide for such arrangements as it may determine for the

payment and security of the bonds being issued or for the payment and security of the bonds or other obligations to be paid off, refunded, or refinanced.

(e) Bonds may be issued under this chapter in one or more series; may bear such date or dates; may mature at such time or times, not exceeding 40 years from their respective dates; may bear interest at such rate or rates, payable at such time or times; may be payable in such medium of payment at such place or places; may be in such denomination or denominations; may be in such form, either coupon or registered or book entry; may be issued in such specific amounts; may carry such registration, conversion, and exchangeability privileges; may be declared or become due before the maturity date thereof; may provide such call or redemption privileges; may have such rank or priority; may be the subject of a put or agreement to repurchase by the authority or others; may be resold by the authority, once acquired, without the acquisition being considered the extinguishment of the bonds; may be issued for a project or for more than one project, whether or not such project is identified at the time of bond issuance; and may contain such other terms, covenants, assignments, and conditions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide. The authority may sell such bonds in such manner, at such price or prices, and on such terms and conditions as the authority determines.

(f) The bonds must be signed by the chair or vice chair of the authority; the corporate seal of the authority must be impressed, imprinted, or otherwise reproduced on the bonds; and the bonds must be attested by the signature of the secretary or assistant secretary of the authority. The signatures of the officers of the authority and the seal of the authority on any bond issued by the authority may be facsimile if the instrument is authenticated or countersigned by a trustee other than the authority itself or an officer or employee of the authority. All bonds issued under authority of this chapter bearing signatures or facsimiles of signatures of officers of the authority in office on the date of the signing thereof are valid and binding, notwithstanding that before the delivery thereof and payment therefor such officers whose signatures appear thereon have ceased to be officers of the authority. Pending the preparation of the definitive bonds, interim certificates, in such form and with such provisions as the authority may determine, may be issued to the purchasers of bonds to be issued under this chapter.

(g) The provisions of this chapter and of any bond resolution, indenture, or trust agreement entered into pursuant to this chapter are a contract with every holder of the bonds; and the duties of the authority under this chapter and under any such bond resolution,

indenture, or trust agreement are enforceable by any bondholder by mandamus or other appropriate action or proceeding at law or in equity.

(h) The authority may provide for the replacement of any bond which becomes mutilated, lost, or destroyed in the manner provided by the resolution, indenture, or trust agreement.

(i)(1) The authority shall not have outstanding at any one time bonds and notes for financing of enterprises exceeding $1 billion; provided, however, that such limitations shall not apply with respect to bonds and notes issued to refund outstanding bonds and notes.

(2) Any limitation with respect to interest rates or any maximum interest rate or rates found in Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law"; the usury laws of this state; or any other laws of this state do not apply to bonds of the authority.

(j) All bonds issued by the authority under this chapter shall be issued and shall be validated by the Superior Court of Fulton County, Georgia, under and in accordance with the procedures set forth in Code Sections 36-82-73 through 36-82-83, which comprise a portion of the "Revenue Bond Law," as now or hereafter in effect, except as provided in this chapter. Notes and other obligations of the authority may be, but are not required to be, so validated.

(k) All bonds must bear a certificate of validation signed by the clerk of the Superior Court of Fulton County, Georgia. Such signature may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry is original evidence of the fact of judgment and shall be received as original evidence in any court in this state.

(l) The authority shall reimburse the district attorney for his or her actual costs, if any, associated with the bond validation proceedings. The fees payable to the clerk of the Superior Court of Fulton County for validation and confirmation shall be as follows for each bond, regardless of the denomination of such bond: $1.00 for each bond for the first 100 bonds; 25¢ for each of the next 400 bonds; and 10¢ for each bond over 500.

(m) In lieu of specifying the rate or rates of interest which bonds to be issued by the authority are to bear, the notice to the district attorney or the Attorney General; the notice to the public of the time, place, and date of the validation hearing; and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest (which may be fixed or may fluctuate or otherwise change from time to time) specified in such notices and the petition and complaint or may state that, if the bonds are to bear different rates of interest for different

maturity dates, none of such rates will exceed the maximum rate (which may be fixed or may fluctuate or otherwise change from time to time) so specified; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint.

(n) Prior to issuance, all bonds shall be subject to the approval of the Georgia State Financing and Investment Commission.

(o) Any other law to the contrary notwithstanding, this chapter shall govern all civil claims, proceedings, and actions respecting debt of the authority evidenced by bonds.

(p) Notwithstanding any contrary provision in this chapter, any bonds, revenue bonds, or securities of any kind issued under this chapter may only be secured by obligation of a business, enterprise, or proceeds paid to the State of Georgia pursuant to funds received by the state pursuant to the settlement of the lawsuit filed by the state against certain tobacco companies (*State of Georgia, et al. v. Philip Morris, Inc., et al.*, Civil Action #E-61692, V19/246 (Fulton Superior Court, 19 December 9, 1998)).

History. — Code 1981, § 50-34-8, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2008, p. 381, § 10/SB 358.

50-34-9. Bonds as securities.

The bonds authorized by this chapter are securities in which:

(1) All public officers and bodies of this state;

(2) All local governments of this state;

(3) All insurance companies and associations and other persons carrying on an insurance business;

(4) All banks, bankers, trust companies, saving banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business;

(5) All administrators, guardians, executors, trustees, and other fiduciaries; and

(6) All other persons whomsoever who are authorized to invest in bonds or other obligations of this state

may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are also securities which may be

deposited with and shall be received by all public officers and bodies of this state and local governments for any purpose for which deposit of the bonds or other obligations of this state is authorized.

History. — Code 1981, § 50-34-9, enacted by Ga. L. 2000, p. 582, § 1.

50-34-10. Payment of bond proceeds.

(a) All or any part of the gross or net revenues and earnings derived from any particular loan or loans and any and all revenues, earnings, and funds received by the authority, regardless of whether such revenues and earnings were produced by a particular loan or loans for which bonds have been issued, may be pledged by the authority to the payment of the principal of and interest on bonds of the authority as may be provided in any resolution authorizing the issuance of such bonds or in any indenture or trust agreement pertaining to such bonds.

(b) Such funds so pledged, from whatever source received, may include funds received from one or more of all sources and may be set aside at regular intervals into sinking funds for which provision may be made in any such resolution or indenture or trust agreement, which sinking funds may be pledged to and charged with the payment of:

(1) The interest on such bonds as such interest becomes due;

(2) The principal of the bonds as the same mature;

(3) The necessary charges of any trustee, paying agent, or registrar for such bonds;

(4) Any premium on bonds retired on call or purchase; and

(5) Reimbursement of a credit enhancement provider who has paid principal of or premium or interest on any bond.

(c) The use and disposition of any sinking fund may be subject to regulations for which provision may be made in the resolution authorizing the issuance of the bonds or in the trust instrument or indenture securing the payment of the same.

History. — Code 1981, § 50-34-10, enacted by Ga. L. 2000, p. 582, § 1.

50-34-11. Power to secure issuance of bonds by trust agreement or indenture.

(a) Any issue of bonds may be secured by a trust agreement or indenture made by the authority with a corporate trustee, which may be any trust company or bank having the power of a trust company inside or outside this state. Such trust agreement or indenture may

pledge or assign all revenue, receipts, and earnings to be received by the authority from any source and any proceeds which may derive from the disposition of any real or personal property of the authority or proceeds of insurance carried thereon.

(b) The resolution providing for the issuance of bonds and such trust agreement or indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders, including the right of appointment of a receiver on default in the payment of any principal or interest obligation and the right of any receiver or trustee to enforce collection of any rates, fees, and charges pertaining to any loan, any overdue principal and interest on any loan, any overdue principal of and interest on all bonds in the issue, all costs of collection, and all other costs reasonably necessary to accomplish the collection of such sums in the event of any default of the authority.

(c) Such resolution, trust agreement, or indenture may include covenants setting forth the duties to the authority regarding the custody, safeguarding, and application of all funds of the authority, including any proceeds derived from the disposition of any real or personal property of the authority or proceeds of insurance carried thereon. In addition, such resolution, trust agreement, or indenture may include covenants providing for the operation, maintenance, repair, and insurance of any facility or capital improvements constructed or acquired with loan proceeds.

(d) All expenses incurred in carrying out any trust agreement or indenture under this Code section may be treated as a part of the cost of financing and administering the loans that will be funded or acquired with the proceeds of the bonds governed by such trust agreement or indenture.

History. — Code 1981, § 50-34-11, enacted by Ga. L. 2000, p. 582, § 1.

50-34-12. All moneys received deemed to be trust funds; pledge of assets, funds, and properties for payment of bonds.

(a) All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or other obligations, as grants or other contributions, or as revenues and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The authority shall, in the resolution providing for the issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and the earnings and revenues to be received to any officer who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes expressed in this chapter, subject to such

regulations as this chapter and such resolution or trust indenture may provide.

(b) The authority may pledge for the payment of its bonds such assets, funds, and properties as the resolution providing for the issuance of its bonds may provide. Any such pledge made by the authority is valid and binding from the time when the pledge is made; the moneys or properties so pledged and thereafter received by the authority are immediately subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge is valid and binding as against all parties having claims of any kind against the authority, irrespective of whether such parties have notice thereof. No resolution or any other instrument by which a pledge is created need be recorded.

History. — Code 1981, § 50-34-12, enacted by Ga. L. 2000, p. 582, § 1.

50-34-13. Annual and biannual audits and reports.

(a) The state auditor or an independent public accountant retained by the authority shall make an annual audit of the books, accounts, and records of the authority with respect to its receipts, disbursements, contracts, leases, assignments, loans, and all other matters relating to its financial operations. The state auditor shall place the audit report on file in his or her office, make the report available for inspection by the general public, and submit a copy of the report to the General Assembly. The state auditor shall not be required to distribute copies of the audit to the members of the General Assembly but shall notify the members of the availability of the audit in the manner which he or she deems to be most effective and efficient.

(b) In addition to the annual audit report, the authority shall render to the state auditor every six months a report setting forth in detail a complete analysis of the activities, indebtedness, receipts, and financial affairs of the authority.

History. — Code 1981, § 50-34-13, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2005, p. 1036, § 50/SB 49.

50-34-14. Termination of the authority.

The authority and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as the authority shall have bonds or other obligations outstanding, unless adequate provision has been made for the payment thereof. On termination of the existence of the authority, all its rights and properties shall pass to and be vested in the State of Georgia.

History. — Code 1981, § 50-34-14, enacted by Ga. L. 2000, p. 582, § 1.

50-34-15. Facilitation of economic development for enterprises throughout the state.

Without limiting the generality of the findings and intent of the General Assembly or any provision of this chapter, the authority shall facilitate economic development for enterprises throughout the state by means that shall include, without limitation, the issuance of bonds, with or without such credit enhancement as the authority may deem appropriate; the collection of and accumulation of fees and other revenues; the establishment of debt service reserves and sinking funds; and the use of the proceeds from such bonds, funds, and reserves to make loans to enterprises, either directly to such enterprises or indirectly through a financial institution, a political subdivision, or otherwise; to acquire loans made by others to such enterprises; to establish revolving or other funds from which short-term or long-term loans can be made to such businesses; to guarantee the payment of loans or other obligations of such enterprises; and to do all things deemed by the authority to be necessary, convenient, and desirable for and incident to the efficient and proper development and operation of such types of undertakings.

History. — Code 1981, § 50-34-15, enacted by Ga. L. 2000, p. 582, § 1.

50-34-16. Competitive bidding not a requirement.

A project financed under this chapter is not subject to any statutory requirement of competitive bidding or other restriction imposed on the procedure for award of contracts or the lease, sale, or other disposition of property with regard to any action taken under authority of this chapter.

History. — Code 1981, § 50-34-16, enacted by Ga. L. 2000, p. 582, § 1.

50-34-17. OneGeorgia Authority Overview Committee established; duties.

(a) There is established the OneGeorgia Authority Overview Committee to be composed of one member of the House of Representatives to be appointed by the Speaker of the House of Representatives, one member of the Senate to be appointed by the President of the Senate, the director of the Senate Budget and Evaluation Office or his or her designee, the director of the House Budget and Research Office or his or her designee, and two members of the General Assembly to be ap-

pointed by the Governor. The legislative members shall serve for terms as members of the committee concurrent with their terms of office as members of the General Assembly. The first members of the committee shall be appointed by not later than July 1, 2000. Thereafter, their successors shall be appointed during the first 30 days of each regular legislative session which is held immediately following the election of members of the General Assembly.

(b) The Speaker of the House of Representatives shall designate one of the members appointed by the Speaker as chairperson of the committee. The President of the Senate shall designate one of the members appointed by the President of the Senate as vice chairperson of the committee. The members designated as chairperson and vice chairperson shall serve for terms as such officers concurrent with their terms as members of the committee. Other than the chairperson and vice chairperson provided for in this subsection, the committee shall provide for its own organization.

(c) The committee shall periodically inquire into and review the operations, contracts, safety, financing, organization, and structure of the OneGeorgia Authority, as well as periodically review and evaluate the success with which said authority is accomplishing its legislatively created purposes.

(d) The OneGeorgia Authority shall cooperate with the committee and its authorized personnel in order that the committee may efficiently and effectively carry out its duties. The OneGeorgia Authority shall submit to the committee such reports and data as the committee shall reasonably require of said authority in order that the committee may adequately inform itself of the activities of said authority. The committee shall, on or before the first day of January of each year and at such other times as it deems to be in the public interest, submit to the General Assembly a report of its findings and recommendations based upon the review of the operations of the OneGeorgia Authority.

(e) The members of the committee shall receive the same expenses and allowances for their services on the committee as are authorized by law for members of interim legislative study committees.

(f) Nothing in this Code section shall be construed to relieve the OneGeorgia Authority of the responsibilities imposed upon it under this chapter.

History. — Code 1981, § 50-34-17, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2008, p. VO1, § 1-22/HB 529; Ga. L. 2014, p. 866, § 50/SB 340.

Editor's notes. — Ga. L. 2008, p. VO1/HB 529, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on

May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

50-34-18. Transfer of positions authorized by authority to Department of Community Affairs.

Effective July 1, 2002, without diminishing the powers of the authority pursuant to Code Section 50-34-6, all personnel positions authorized by the authority in Fiscal Year 2002 shall be transferred to the Department of Community Affairs. All employees of the authority on June 30, 2002, whose positions are transferred by the authority to the Department of Community Affairs shall become employees of the Department of Community Affairs and shall become employees in the unclassified service as defined by Code Section 45-20-2.

History. — Code 1981, § 50-34-18, enacted by Ga. L. 2002, p. 1059, § 5; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-111/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

50-34-19. Border Region Retail Tourism Development Program; definition; procedure for implementation.

(a) As used in this Code section, the term "border region" means any part of the state that lies within 25 miles of a state border.

(b) Subject to appropriations, the authority shall establish and administer a grant program to be called the Border Region Retail Tourism Development Program, which shall serve the purpose of awarding grants to eligible applicants to induce businesses to, or assist businesses that intend to, relocate, expand, or construct projects in Georgia rather than a bordering state.

(c) The amount of any grant awarded pursuant to this Code section shall be determined by the authority on a case-by-case review of applications consistent with criteria to be prescribed by the authority which shall include, but shall not be limited to, the:

(1) Number and type of jobs retained or created;

(2) Total private capital investment;

(3) Impact on the state, regional, and community tax base;

(4) Degree of local commitment;

(5) Consistency with local and regional development goals and objectives;

(6) Project readiness and feasibility;

(7) Geographic distribution of existing retail and tourism facilities; and

(8) Reasonableness of cost estimates.

(d) All applications for grants under this Code section shall include a recommendation from a state agency whose statutory powers and duties include community and economic development that the proposed project will significantly develop, promote, and retain trade, commerce, industry, and employment opportunities within the border region and promote the general welfare of the state.

(e) After reviewing an application, the authority shall submit any pending grant award to the Governor and the commissioner of economic development for approval before such grant shall be awarded.

(f) The authority shall adopt such rules and regulations as are reasonable and necessary to implement and administer the grant program established under this Code section.

History. — Code 1981, § 50-34-19, enacted by Ga. L. 2021, p. 562, § 2/SB 255.

Effective date. — This Code section became effective July 1, 2021.

Editor's notes. — Ga. L. 2021, p. 562, § 1/SB 255, not codified by the General Assembly, provides: "The General Assembly finds that it is in the best interest of this state to:

"(1) Increase tourism and competitiveness with bordering states by encouraging the development of retail and tourism projects in border regions;

"(2) Support the efforts of businesses attempting to expand in or relocate to Georgia by dedicating resources to confront obstacles and barriers that impede economic growth in border regions; and

"(3) Promote the economic security of the citizens of this state through the retention or development of employment opportunities."

CHAPTER 35

GEORGIA ENVIRONMENTAL TRAINING AND EDUCATION AUTHORITY

Sec.
50-35-1 through 50-35-13 [Repealed].

50-35-1 through 50-35-13.

Reserved. Repealed by Ga. L. 2008, p. 1015/SB 344, § 12, effective May 14, 2008.

Code Commission notes. — The amendment of Code Section 50-35-11 by Ga. L. 2008, p. 381, § 10, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 1015, § 12. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Editor's notes. — This chapter was based on Code 1981, §§ 50-35-1 through 50-35-13, enacted by Ga. L. 2001, p. 1231, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2002, p. 1049, § 1.

CHAPTER 36

VERIFICATION OF LAWFUL PRESENCE WITHIN UNITED STATES

Sec.
50-36-1. Verification requirements, procedures, and conditions; exceptions; regulations; criminal and other penalties for violations.
50-36-2. Secure and verifiable identity document; applicability.
50-36-3. Immigration Enforcement Review Board; membership; duties; sanctions; civil actions [Repealed].
50-36-4. Definitions; requiring agencies to submit annual immigration compliance reports.

Law reviews. — For article, "Immigration Defense Waivers in Federal Criminal Plea Agreements," see 69 Mercer L. Rev. 839 (2018). For article, "The Rise of Zero Tolerance and the Demise of Family," see 36 Ga. St. U.L. Rev. 287 (2020). For note, "Deference Condoning Apathy: Social Visibility in the Eleventh Circuit," see 35 Ga. St. U.L. Rev. 777 (2019).

50-36-1. Verification requirements, procedures, and conditions; exceptions; regulations; criminal and other penalties for violations.

(a) As used in this Code section, the term:

(1) "Agency head" means a director, commissioner, chairperson, mayor, councilmember, board member, sheriff, or other executive official, whether appointed or elected, responsible for establishing policy for a public employer.

(2) "Agency or political subdivision" means any department, agency, authority, commission, or government entity of this state or any subdivision of this state.

(3) "Applicant" means any natural person, 18 years of age or older, who has made application for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.

(4) "Public benefit'" means a federal, a state, or local benefit which shall include the following:

(A) Adult education;

(B) Authorization to conduct a commercial enterprise or business;

(C) Business certificate, license, or registration;

(D) Business loan;

(E) Cash allowance;

(F) Disability assistance or insurance;

(G) Down payment assistance;

(H) Energy assistance;

(I) Food stamps;

(J) Gaming license;

(K) Grants;

(L) Health benefits;

(M) Housing allowance, grant, guarantee, or loan;

(N) Loan guarantee;

(O) Medicaid;

(P) Occupational license;

(Q) Professional license;

(R) Public and assisted housing;

(S) Registration of a regulated business;

(T) Rent assistance or subsidy;

(U) Retirement benefits;

(V) State grant or loan;

(W) State issued driver's license and identification card;

(X) Tax certificate required to conduct a commercial business;

(Y) Temporary assistance for needy families (TANF);

(Z) Unemployment insurance; and

(AA) Welfare to work.

(5) "SAVE program" means the federal Systematic Alien Verification for Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security for the same purpose.

(b) Except as provided in subsection (d) of this Code section or where exempted by federal law, every agency or political subdivision shall verify the lawful presence in the United States under federal immigration law of any applicant for public benefits.

(c) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Verification of lawful presence in the United States under federal immigration law under this Code section shall not be required:

(1) For any purpose for which lawful presence in the United States under federal immigration law is not required by law, ordinance, or regulation;

(2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;

(3) For short-term, noncash, in-kind emergency disaster relief;

(4) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:

(A) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) Are necessary for the protection of life or safety;

(6) For prenatal care; or

(7) For postsecondary education, whereby the Board of Regents of the University System of Georgia, the State Board of the Technical College System of Georgia, the board of commissioners of the Georgia Student Finance Commission, and the board of directors of the Georgia Student Finance Authority shall set forth, or cause to be set forth, policies or regulations, or both, regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.

(e) All policies of agencies or political subdivisions regarding public benefits for postsecondary education shall comply with federal law as provided in 8 U.S.C. Section 1623.

(f)(1) Except as provided in subsection (g) of this Code section, an agency or political subdivision providing or administering a public benefit shall require every applicant for such benefit to:

(A) Provide at least one secure and verifiable document, as defined in Code Section 50-36-2, or a copy or facsimile of such document. Any document required by this subparagraph may be submitted by or on behalf of the applicant at any time within nine months prior to the date of application so long as the document remains valid through the licensing or approval period or such other period for which the applicant is applying to receive a public benefit; and

(B) Execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States under federal immigration law; provided, however, that if the applicant is younger than 18 years of age at the time of the application, he or she shall execute the affidavit required by this subparagraph within 30 days after his or her eighteenth birthday. Such affidavit shall affirm that:

(i) The applicant is a United States citizen or legal permanent resident 18 years of age or older; or

(ii) The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully present in the United States and provide the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency.

(2) The state auditor shall create affidavits for use under this subsection and shall keep a current version of such affidavits on the Department of Audits and Accounts' official website.

(3) Documents and copies of documents required by this subsection may be submitted in person, by mail, or electronically, provided the submission complies with Chapter 12 of Title 10. Copies of documents submitted in person, by mail, or electronically shall satisfy the requirements of this Code section. For purposes of this paragraph, electronic submission shall include a submission via facsimile, Internet, electronic texting, or any other electronically assisted transmitted method approved by the agency or political subdivision.

(4) The requirements of this subsection shall not apply to any applicant applying for or renewing an application for a public benefit within the same agency or political subdivision if the applicant has previously complied with the requirements of this subsection by submission of a secure and verifiable document, as defined in Code

Section 50-36-2, and a signed and sworn affidavit affirming that such applicant is a United States citizen.

(g)(1) The Department of Driver Services shall require every applicant for a state issued driver's license or state identification card to submit, in person, an original secure and verifiable document, as defined in Code Section 50-36-2, and execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States under federal immigration law.

(2) The requirements of this subsection shall not apply to any applicant renewing a state issued driver's license or state identification card when such applicant has previously complied with the requirements of this subsection by submission of a secure and verifiable document, as defined in Code Section 50-36-2, and a signed and sworn affidavit affirming that such applicant is a United States citizen.

(h) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for public benefits shall be made through the SAVE program. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence in the United States under federal immigration law for the purposes of this Code section.

(i) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to this Code section shall be guilty of a violation of Code Section 16-10-20.

(j) Verification of citizenship through means required by federal law shall satisfy the requirements of this Code section.

(k) It shall be unlawful for any agency or political subdivision to provide or administer any public benefit in violation of this Code section. Agencies and political subdivisions subject to the requirements of this subsection shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this subsection. Any agency or political subdivision failing to provide a report as required by this subsection shall not be entitled to any financial assistance, funds, or grants from the Department of Community Affairs.

(l) Any and all errors and significant delays by the SAVE program shall be reported to the United States Department of Homeland Security.

(m) Notwithstanding subsection (i) of this Code section, any applicant for public benefits shall not be guilty of any crime for executing an affidavit attesting to his or her lawful presence in the United States

under federal immigration law that contains a false statement if such affidavit is not required by this Code section.

(n) In the event a legal action is filed against any agency or political subdivision alleging improper denial of a public benefit arising out of an effort to comply with this Code section, the Attorney General shall be served with a copy of the proceeding and shall be entitled to be heard.

(o) Compliance with this Code section by an agency or political subdivision shall include taking all reasonable, necessary steps required by a federal agency to receive authorization to utilize the SAVE program or any successor program designated by the United States Department of Homeland Security or other federal agency, including providing copies of statutory authorization for the agency or political subdivision to provide public benefits and other affidavits, letters of memorandum of understanding, or other required documents or information needed to receive authority to utilize the SAVE program or any successor program for each public benefit provided by such agency or political subdivision. An agency or political subdivision that takes all reasonable, necessary steps and submits all requested documents and information as required in this subsection but either has not been given access to use such programs by such federal agencies or has not completed the process of obtaining access to use such programs shall not be liable for failing to use the SAVE program or any such successor program to verify eligibility for public benefits.

(p) In the case of noncompliance with the provisions of this Code section by an agency or political subdivision, the appropriations committee of each house of the General Assembly may consider such noncompliance in setting the budget and appropriations.

(q) No employer, agency, or political subdivision shall be subject to lawsuit or liability arising from any act to comply with the requirements of this chapter; provided, however, that the intentional and knowing failure of any agency head to abide by the provisions of this chapter shall:

(1) Be a violation of the code of ethics for government service established in Code Section 45-10-1 and subject such agency head to the penalties provided for in Code Section 45-10-28, including removal from office and a fine not to exceed $10,000.00; and

(2) Be a high and aggravated misdemeanor offense where such agency head acts to willfully violate the provisions of this Code section or acts so as to intentionally and deliberately interfere with the implementation of the requirements of this Code section.

The Attorney General shall have the authority to conduct a criminal and civil investigation of an alleged violation of this chapter by an

agency or agency head and to bring a prosecution or civil action against an agency or agency head for all cases of violations under this chapter. In the event that an order is entered against an employer, the state shall be awarded attorney's fees and expenses of litigation incurred in bringing such an action and investigating such violation.

History. — Code 1981, § 50-36-1, enacted by Ga. L. 2006, p. 105, § 9/SB 529; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 970, § 3/HB 2; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2011, p. 794, §§ 16, 17, 18/HB 87; Ga. L. 2012, p. 775, § 50/HB 942; Ga. L. 2013, p. 111, § 6/SB 160; Ga. L. 2013, p. 125, § 1/HB 324.

Cross references. — Registration of Immigration Assistance Act, § 43-20A-1 et seq.

Editor's notes. — Ga. L. 2006, p. 105, § 1/SB 529, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Security and Immigration Compliance Act.' All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law."

Ga. L. 2011, p. 794, § 1/HB 87, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21/HB 87, not codified by the General Assembly, provides for severability, and provides that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22/HB 87, not codified by the General Assembly, provides, in part, that the amendments of this Code section by that Act shall apply to offenses and violations occurring on or after July 1, 2011.

Ga. L. 2013, p. 111, § 2/SB 160, not codified by the General Assembly, provides that: "It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment."

Law reviews. — For article on 2006 enactment of this Code section, see 23 Ga. St. U.L. Rev. 247 (2006). For article, "The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia — 'Think Globally … Act Locally'," see 13 Ga. St. B.J. 14 (2007). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 35 (2011). For article, "State Government: Illegal Immigration Reform and Enforcement Act of 2011," see 28 Ga. St. U.L. Rev. 51 (2011). For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

For comment, "Immigration Detention Reform: No Band Aid Desired," see 60 Emory L. J. 1211 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 50-36-1 are offenses for which fingerprinting is required. 2011 Op. Att'y Gen. No. 11-5.

50-36-2. Secure and verifiable identity document; applicability.

(a) This Code section shall be known and may be cited as the "Secure and Verifiable Identity Document Act."

(b) As used in this Code section, the term:

(1) "Agency or political subdivision" means any department, agency, authority, commission, or government entity of this state or any subdivision of this state.

(2) "Public official" means an elected or appointed official or an employee or an agent of an agency or political subdivision.

(3)(A) "Secure and verifiable document" means a document issued by a state or federal jurisdiction or recognized by the United States government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies and shall include:

(i) An original or certified birth certificate issued by a state, county, municipal authority, or territory of the United States bearing an official seal;

(ii) A certification of report of birth issued by the United States Department of State;

(iii) A certification of birth abroad issued by the United States Department of State; or

(iv) A consular report of birth abroad issued by the United States Department of State.

(B) The term "secure and verifiable document" shall not include any foreign passport unless the passport is submitted with a valid United States Homeland Security Form I-94, I-94A, or I-94W, or other federal document specifying an alien's lawful immigration status, or other proof of lawful presence in the United States under federal immigration law, or a Matricula Consular de Alta Seguridad, matricula consular card, consular matriculation card, consular identification card, or similar identification card issued by a foreign government regardless of the holder's immigration status. Only those documents approved and posted by the Attorney General pursuant to subsection (g) of this Code section shall be considered secure and verifiable documents.

(c) Unless required by federal law, on or after January 1, 2012, no agency or political subdivision shall accept, rely upon, or utilize an identification document for any official purpose that requires the presentation of identification by such agency or political subdivision or by federal or state law unless it is a secure and verifiable document.

(d) Copies of secure and verifiable documents submitted in person, by mail, or electronically shall satisfy the requirements of this Code section. For purposes of this subsection, electronic submission shall include, but shall not be limited to, submission via facsimile, Internet,

or any other electronically assisted transmitted method approved by the agency or political subdivision.

(e) Any person acting in willful violation of this Code section by knowingly accepting identification documents that are not secure and verifiable documents shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to exceed 12 months, a fine not to exceed $1,000.00, or both.

(f) This Code section shall not apply to:

(1) A person reporting a crime;

(2) An agency official accepting a crime report, conducting a criminal investigation, or assisting a foreign national to obtain a temporary protective order;

(3) A person providing services to infants, children, or victims of a crime;

(4) A person providing emergency medical service;

(5) A peace officer in the performance of the officer's official duties and within the scope of his or her employment;

(6) Instances when a federal law mandates acceptance of a document;

(7) A court, court official, or traffic violation bureau for the purpose of enforcing a citation, accusation, or indictment;

(8) Paragraph (2) of subsection (a) of Code Section 40-5-21 or paragraph (2) of subsection (a) of Code Section 40-5-21.1;

(9) An attorney or his or her employees for the purpose of representing a criminal defendant; or

(10) The provision of utility services related to basic human necessities, including water, sewer, electrical power, communications, and gas.

(g) Not later than August 1, 2011, the Attorney General shall provide and make public on the Department of Law's website a list of acceptable secure and verifiable documents. The list shall be reviewed and updated annually by the Attorney General.

History. — Code 1981, § 50-36-2, enacted by Ga. L. 2011, p. 794, § 19/HB 87; Ga. L. 2013, p. 111, § 7/SB 160.

Cross references. — Offenses involving illegal aliens, § 16-11-200 et seq. Determination of immigration status of suspects, § 17-5-100. Cooperation of Georgia law enforcement with federal immigration authorities, § 35-1-6. Immigration enforcement review board, § 50-36-3.

Editor's notes. — Ga. L. 2011, p. 794, § 1/HB 87, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21/HB 87, not codified by the General Assembly, provides for severability, and provides that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22/HB 87, not codified by the General Assembly, provides, in part, that this Code section shall apply to offenses and violations occurring on or after July 1, 2011.

Ga. L. 2013, p. 111, § 2/SB 160, not codified by the General Assembly, provides that: "It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment."

Law reviews. — For article on the 2011 enactment of this Code section, see 28 Ga. St. U.L. Rev. 35 (2011). For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 50-36-2 are offenses for which fingerprinting is required. 2011 Op. Att'y Gen. No. 11-5.

50-36-3. Immigration Enforcement Review Board; membership; duties; sanctions; civil actions.

Reserved. Repealed by Ga. L. 2019, p. 919, § 17-1/HB 553, effective July 1, 2019.

Editor's notes. — This Code section was based on Code 1981, § 50-36-3, enacted by Ga. L. 2011, p. 794, § 20/HB 87.

Ga. L. 2019, p. 919, § 17-2/HB 553, not codified by the General Assembly, provides: "Any assets of the Immigration Enforcement Review Board existing as of June 30, 2019, shall devolve by operation of law and without further action to the State of Georgia on July 1, 2019. Any liabilities and obligations of the Immigration Enforcement Review Board existing as of June 30, 2019, shall be transferred to and assumed by the State of Georgia, by such instruments as may be required to maintain the same."

50-36-4. Definitions; requiring agencies to submit annual immigration compliance reports.

(a) As used in this Code section, the term:

(1) "Agency or political subdivision" means any department, agency, authority, commission, or governmental entity of this state or any subdivision of this state.

(2) "Annual reporting period" means from December 1 of the preceding year through November 30 of the year in which the report is due.

(3) "Contractor" shall have the same meaning as set forth in Code Section 13-10-90.

(4) "Department" means the Department of Audits and Accounts.

(5) "Physical performance of services" shall have the same meaning as set forth in Code Section 13-10-90.

(6) "Public employer" shall have the same meaning as set forth in Code Section 13-10-90.

(b) Each agency or political subdivision subject to any of the requirements provided in Code Sections 13-10-91, 36-60-6, 36-80-23, and 50-36-1 shall submit an annual immigration compliance report to the department by December 31 that includes the information required under subsection (d) of this Code section for the annual reporting period. If an agency or political subdivision is exempt from any, but not all, of the provisions of subsection (d) of this Code section, it shall still be required to submit the annual report but shall indicate in the report which requirements from which it is exempt.

(c) The department shall create an immigration compliance reporting system and shall provide technical support for the submission of such reports. The department shall further provide annual notification of such reports with submission instructions to all agencies and political subdivisions subject to such requirements. The department shall be authorized to implement policy as is needed to carry out the requirements of this subsection.

(d) The immigration compliance report provided for in subsection (b) of this Code section shall contain the following:

(1) The agency or political subdivision's federal work authorization program verification user number and date of authorization;

(2) The legal name, address, and federal work authorization program user number of every contractor that has entered into a contract for the physical performance of services with a public employer as required under Code Section 13-10-91 during the annual reporting period;

(3) The date of the contract for the physical performance of services between the contractor and public employer as required under Code Section 13-10-91;

(4) A listing of each license or certificate issued by a county or municipal corporation to private employers that are required to utilize the federal work authorization program under the provisions of Code Section 36-60-6 during the annual reporting period, including the name of the person and business issued a license and his or her federally assigned employment eligibility verification system user number as provided in the private employer affidavit submitted at the time of application;

(5)(A) A listing of each public benefit administered by the agency or political subdivision and a listing of each public benefit for which SAVE program authorization for verification has not been received.

(B) As used in this paragraph, the terms "public benefit" and "SAVE program" shall have the same meanings as set forth in Code Section 50-36-1; and

(6) The agency or political subdivision's certificate of compliance with Code Section 36-80-23.

(e) In the event that the immigration compliance report submitted by an agency or political subdivision is found to be deficient by the department, so long as a new immigration compliance report is submitted with the prior deficiencies corrected and fully complies with this Code section, such agency or political subdivision shall be deemed to have satisfied the requirements of this Code section.

(f) Any action taken by an agency or a political subdivision for the purpose of complying with the requirements of this Code section shall not subject such agency or political subdivision to any civil liability arising from such action.

(g) The department shall not find an agency or a political subdivision to be in violation of this Code section as a result of any actions or omissions by a county constitutional officer.

History. — Code 1981, § 50-36-4, enacted by Ga. L. 2013, p. 111, § 8/SB 160; Ga. L. 2016, p. 244, § 2/SB 269.

Editor's notes. — Ga. L. 2013, p. 111, § 2/SB 160, not codified by the General Assembly, provides that: "It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment."

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013)

CHAPTER 37

GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACTING

Sec.		Sec.	
50-37-1.	Short title.	50-37-5.	Funding for contracts.
50-37-2.	Definitions.	50-37-6.	Review of capital improvement projects.
50-37-3.	State agencies to enter into guaranteed energy savings performance contracts.	50-37-7.	Requirements for state agencies.
50-37-4.	Contracts provisions.	50-37-8.	Statutory construction.

Cross references. — Multiyear contracts for energy efficiency or conservation improvement, Ga. Const. 1983, Art. VII, Sec. IV, Para XII.

Editor's notes. — Ga. L. 2010, p. 1091, § 3/SB 194, not codified by the General Assembly, provides, in part, that: "Section 2 of this Act shall become effective on January 1, 2011; provided, however, that Section 2 of this Act shall only become effective on January 1, 2011, upon the ratification of a resolution at the November, 2010, state-wide general election, which resolution amends the Constitution so as to authorize obligations of the state for governmental energy efficiency or conservation improvement projects in which vendors guarantee realization of specified savings or revenue gains attributable solely to the improvements. If such resolution is not so ratified, Section 2 of this Act shall not become effective and shall stand repealed in its entirety on January 1, 2011." The constitutional amendment (Ga. L. 2010, p. 1264) was approved by a majority of the qualified voters voting at the general election held on November 2, 2010.

Administrative rules and regulations. — Guaranteed energy savings performance contracts for public school facilities, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, School Facilities and Capital Outlay Management, § 160-5-4-.22.

RESEARCH REFERENCES

C.J.S. — 47B C.J.S., Internal Revenue, § 341.

50-37-1. Short title.

This chapter shall be known and may be cited as the "Guaranteed Energy Savings Performance Contracting Act."

History. — Code 1981, § 50-37-1, enacted by Ga. L. 2010, p. 1091, § 2/SB 194.

50-37-2. Definitions.

Unless otherwise provided, as used in this chapter, the term:

(1) "Allowable costs" means equipment and project costs that:

(A) The governmental unit reasonably believes will be incurred during the term of the guaranteed energy savings performance contract; and

(B) Are documented by industry engineering standards.

(2) "Authority" means the Georgia Environmental Finance Authority.

(3) "Director" means the executive director of the Georgia Environmental Finance Authority.

(4) "Energy conservation measure" means a program or facility alteration or technology upgrade designed to reduce energy, water, waste-water, or other consumption or operating costs to allow revenue generation measures. The term may include, without limitation:

(A) Insulation of the building structure or systems within the building;

(B) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

(C) Automated or computerized energy control systems;

(D) Heating, ventilating, or air-conditioning system modifications or replacements;

(E) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to applicable state or local building codes for the lighting system after the proposed modifications are made;

(F) Energy recovery ventilation systems;

(G) A training program or facility alteration that reduces energy consumption or reduces operating costs, including allowable costs, based on future reductions in costs for contracted services;

(H) A facility alteration which includes expenditures that are required to properly implement other energy conservation measures;

(I) A program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, or use of alternative suppliers as otherwise provided by law, such as, but not limited to:

(i) Changes to more favorable rate schedules;

(ii) Negotiation of lower rates, where applicable; and

(iii) Auditing of energy service billing and meters;

(J) The installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy using equipment;

(K) Indoor air quality improvements;

(L) Daylighting systems;

(M) Renewable generation systems owned by the governmental unit, such as solar photovoltaic, solar thermal, wind, and other technologies as identified in the project, provided that all metered distribution and deliveries of electric energy are made by an electric supplier authorized under Part 1 of Article 1 of Chapter 3 of Title 46, the "Georgia Territorial Electric Service Act";

(N) Geothermal HVAC systems;

(O) Water and sewer conservation measures, including, without limitation, plumbing fixtures and infrastructure;

(P) Equipment upgrades that improve accuracy of billable revenue generating systems; and

(Q) Automated, electronic, or remotely controlled systems or measures that reduce direct and other operating costs.

(5) "Guaranteed energy savings performance contract" means a contract between the governmental unit and a qualified energy service provider for evaluation, recommendation, and implementation of one or more energy conservation measures which shall include, at a minimum, the design and installation of equipment and, if applicable, operation and maintenance of any of the measures implemented, and guaranteed annual savings which must meet or exceed the total annual contract payments made by the governmental unit for such contract, including financing charges to be incurred by the governmental unit over the life of the contract.

(6) "Governmental unit" means any authority, board, bureau, commission, department, agency, or institution of state or local government, including, but not limited to, any state-aided institution, or any county, municipal corporation, or consolidated government which has the authority to contract for the construction, reconstruction, alteration, or repair of any public building or other public work.

(7) "Industry engineering standards" means:

(A) Life cycle costing;

(B) The R.S. Means-estimated costing method developed by the R.S. Means Company;

(C) Historical data;

(D) Manufacturer's data;

(E) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) standards;

(F) International Performance Measurement and Verification Protocol; and

(G) Other applicable technical performance standards established by nationally recognized standards authorities.

(8) "Investment grade energy audit" means a study by the qualified energy services provider selected for a particular guaranteed energy savings performance contract project which includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements, and the utility and operation and maintenance cost savings projected to result from the recommended improvements. The investment grade energy audit shall also include a detailed economic analysis of the project's performance over the life of the contract term.

(9) "Operational cost savings" means a measurable decrease in operation and maintenance costs that is a direct result of the implementation of one or more energy conservation measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

(10) "Qualified energy services provider" means a person or business with a record of documented guaranteed energy savings performance contract projects that is experienced in the design, implementation, and installation of energy conservation measures; has the technical capabilities to verify that such measures generate guaranteed energy and operational cost savings or enhanced revenues; has the ability to secure or arrange the financing necessary to support energy savings guarantees; and is approved by the authority for inclusion on the prequalifications list.

(11) "State agency" means every state agency, authority, board, bureau, commission, and department, including, without limitation, the Board of Regents of the University System of Georgia.

History. — Code 1981, § 50-37-2, enacted by Ga. L. 2010, p. 1091, § 2/SB 194; Ga. L. 2011, p. 752, § 50/HB 142; Ga. L. 2012, p. 59, § 2/SB 113; Ga. L. 2021, p. 266, § 2/SB 213.

The 2021 amendment, effective July 1, 2021, added "to allow revenue generation measures" at the end of the first sentence of paragraph (4), and substituted "corporation, or consolidated government which" for "corporation, consolidated government, or school district which" near the middle of paragraph (6).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "Georgia Environmental Finance Authority" was

substituted for "Georgia Environmental Facilities Authority" in paragraphs (2) and (3).

50-37-3. State agencies to enter into guaranteed energy savings performance contracts.

(a) Where not otherwise authorized by another provision of general law or local Act, a governmental unit may enter into a guaranteed energy savings performance contract with a qualified provider in accordance with the provisions of this chapter. The provisions of this chapter shall apply only to contracts entered into by a governmental unit pursuant to the authority granted by this chapter.

(b) Reserved.

(c) When a governmental unit is acting pursuant to the power granted by this chapter and not under any otherwise applicable law, the process of implementing guaranteed energy savings performance contracts for governmental units shall be subject to the following:

(1) The authority shall be authorized to assemble a list of prequalified energy services providers. The director shall attempt to use objective criteria in the selection process. The criteria for evaluation shall include the following factors to assess the capability of the qualified energy services provider in the areas of design, engineering, installation, maintenance, and repairs associated with guaranteed energy savings performance contracts: postinstallation project monitoring, data collection, and verification of and reporting of savings; overall project experience and qualifications; management capability; ability to access long-term sources of project financing; experience with projects of similar size and scope; and other factors determined by the director to be relevant and appropriate and relate to the ability to perform the project. The prequalification term of the established list of qualified energy services providers shall be three years. The director may add additional qualified energy services providers to the list of qualified energy services providers at any time during the prequalification term. A qualified energy services provider may be removed from the list upon a determination by the director that said qualified energy services provider fails to meet the criteria for continued inclusion; and

(2) Before entering into a guaranteed energy savings performance contract under this chapter, a governmental unit that is a state agency shall issue a request for proposals from at least three qualified energy services providers on the prequalifications list prepared and maintained by the director. Before entering into a guaranteed energy savings performance contract under this chapter, a governmental

unit that is a county, municipality, or other local governmental entity shall be required to issue a request for proposals from at least two qualified energy services providers if such providers are available. In addition, a local governmental entity shall publicly advertise the energy services contract opportunity and post notice of such opportunity in the local governmental entity's office and, if available, on the governmental entity's Internet website. A local governmental entity shall not be required to request proposals from providers on the prequalifications list maintained by the director or otherwise be required to utilize the authority's list of prequalified energy services providers.

(3) A governmental unit may thereafter award the guaranteed energy savings performance contract to the qualified energy services provider that best meets the needs of the governmental unit, which need not be the lowest cost provided. A preliminary technical proposal shall be prepared by the qualified energy services provider in response to the request for proposals. Factors to be included in selecting the most qualified energy services provider for award of the guaranteed energy savings performance contract shall include, but not be limited to, the experience of the provider, quality of the project approach, type of technology employed by the provider, overall benefits to the governmental unit, and other factors determined by the governmental unit to be relevant to the implementation of the project.

(d) The governmental unit shall select the qualified energy services provider that best meets the needs of the governmental unit in accordance with criteria established by the governmental unit.

(e) Before executing the guaranteed energy savings performance contract, the qualified energy services provider shall provide the governmental unit with an energy audit report summarizing recommendations for energy conservation measures based on anticipated energy, operational water, or waste-water cost savings or revenue increases resulting from the energy conservation measures. The energy audit report shall include estimates of all costs of installation, maintenance, repairs, and debt service and estimates of the amounts by which energy or operating costs will be reduced.

(f) A governmental unit may enter into guaranteed energy savings performance contracts with each qualified energy services provider selected in accordance with the provisions of this chapter. The governmental unit may elect to implement the energy conservation measures in one or more phases with the selected qualified energy services provider.

History. — Code 1981, § 50-37-3, enacted by Ga. L. 2010, p. 1091, § 2/SB 194; Ga. L. 2012, p. 59, § 3/SB 113.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, quotation marks were removed at the beginning of paragraph (c)(1).

50-37-4. Contracts provisions.

(a) A guaranteed energy savings performance contract may provide that all payments, except obligations on termination of the contract before its scheduled expiration, shall be made over a period of time. The contract shall require the energy performance contractor to provide to the governmental unit an annual reconciliation of the guaranteed energy cost savings. The energy performance contractor shall be liable for any annual savings shortfall which may occur. In the event that such reconciliation reveals an excess in annual energy cost savings, such excess savings shall not be used to cover potential energy cost savings shortages in subsequent contract years. The guaranteed energy savings performance contract shall be for a firm fixed price. The governmental unit may require the qualified energy services provider to provide a payment and performance bond relating to the installation of energy conservation measures in the amount equal to 100 percent of the guaranteed energy savings performance contract.

(b) A guaranteed energy savings performance contract shall include a written guarantee that energy, water, waste-water, or operating cost savings or revenue increases will meet or exceed the cost of the energy conservation measures to be evaluated, recommended, designed, implemented, or installed under the contract within a 20 year period from the date of final acceptance of installation or implementation. Calculation of the energy, water, waste-water, or operating cost savings or revenue increases may take into account rebates, grants, incentives, or similar payments available under published programs which are reasonably anticipated to be received by the governmental unit as a direct result of the work performed by the qualified energy services provider even though such payments are not included in the qualified energy services provider's contractual guarantee. Escalations and other financial considerations assumed in savings calculations shall be defined in the contract if they are included in the savings calculations and are required to meet the payback criteria and life cycle analysis. Performance guarantees with stipulated savings that have been measured in accordance with the International Performance Measurement and Verification Protocol or other recognized and documented industry engineering standard are allowable and shall be explicitly stated in the contract.

(c) A governmental unit may enter into a third-party installment payment or lease purchase agreement to finance the costs associated with the guaranteed energy savings performance contract and any

related hazardous materials abatement. The installment payment or lease purchase agreement may provide for payments over a period of time not to exceed 20 years.

(d) An improvement that is not causally connected to an energy conservation measure may be included in a guaranteed energy savings performance contract if:

(1) The total value of the improvement does not exceed 15 percent of the total value of the guaranteed energy savings performance contract; and

(2) Either:

(A) The improvement is necessary to conform to a law, a rule, or an ordinance; or

(B) An analysis within the guaranteed energy savings performance contract demonstrates that there is an economic advantage to the governmental unit implementing an improvement as part of the guaranteed energy savings performance contract, and the savings justification for the improvement is documented by industry engineering standards.

(e) A facility alteration which includes expenditures that are required to properly implement other energy conservation measures may be included as part of a guaranteed energy savings performance contract without being included in the savings guarantee. In such case, notwithstanding any other provision of law, the installation of these additional measures may be supervised by the contractor performing the guaranteed energy savings performance contract.

(f) The guaranteed energy savings performance contract shall include an agreement for the provision of measurement and verification services to be paid for from the energy and operational cost savings generated by the project for the term of the contract. It may include maintenance services for the measures installed under the contract. The measurement and verification services shall be performed in accordance with industry standard methods for measuring and verifying savings and equipment performance. Savings which are stipulated shall be specifically noted as such in the guaranteed energy savings performance contract.

(g) Upon execution of a guaranteed energy savings performance contract that reduces the governmental unit's annual electric usage by more than 100 megawatt hours, the governmental unit shall provide written notice to its utility providers describing the energy conservation measures to be installed. Additionally, the authority shall make publicly available an annual list of all guaranteed energy savings performance contracts that are signed in each calendar year.

History. — Code 1981, § 50-37-4, enacted by Ga. L. 2010, p. 1091, § 2/SB 194; Ga. L. 2012, p. 59, § 4/SB 113.

50-37-5. Funding for contracts.

(a) A governmental unit may use funds designated for operating, utilities, or capital expenditures for any guaranteed energy savings performance contract, including, without limitation, for purchases on an installment payment or lease purchase basis.

(b) During the life of the contract, grants, subsidies, or other payments from the state to a governmental unit shall not be reduced as a result of energy savings obtained as a result of a guaranteed energy savings performance contract.

History. — Code 1981, § 50-37-5, enacted by Ga. L. 2010, p. 1091, § 2/SB 194.

50-37-6. Review of capital improvement projects.

Every state agency shall periodically review all proposed capital improvement projects for potential applicability of this chapter and shall first consider proceeding with a guaranteed energy savings performance contract under this chapter where appropriate.

History. — Code 1981, § 50-37-6, enacted by Ga. L. 2010, p. 1091, § 2/SB 194; Ga. L. 2012, p. 59, § 5/SB 113.

50-37-7. Requirements for state agencies.

Requirements for state agencies:

(1) The director shall be authorized to promulgate any rules, regulations, stipulations, and policies necessary to carry out the terms and provisions of this Code section regarding contracting and procurement procedures for state agencies. Any rules, regulations, and policies as prescribed by the director shall be published, and state agencies shall be furnished with copies of the same. The director may fix, charge, and collect reasonable fees for any administrative support and technical assistance or other services provided by the director under this paragraph;

(2) The authority shall provide technical assistance to state agencies contracting for energy conservation measures and engage in other activities considered appropriate by the authority for promoting and facilitating guaranteed energy savings performance contracts by state agencies. The director shall develop model contractual and related documents for use by state agencies. Prior to entering

into a guaranteed energy savings performance contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency shall submit such proposed contract or lease to the director for review and approval;

(3) With regard to the authority's procedures for awarding multiyear guaranteed energy savings performance contracts, the Georgia State Financing and Investment Commission may establish a total multiyear contract value based upon the Governor's revenue estimate for subsequent fiscal years and other information as the Georgia State Financing and Investment Commission may require. In setting the multiyear guaranteed energy savings performance contract authority, the Georgia State Financing and Investment Commission shall take into consideration the known and anticipated obligations of the state agencies proposing to enter into multiyear guaranteed energy savings performance contracts, including, but not limited to, any multiyear guaranteed energy savings performance contracts the state agencies have entered into previously. The Georgia State Financing and Investment Commission may set a total multiyear contract value authority for the authority each fiscal year and may, during the fiscal year, revise such contract value authority as necessary as determined by the Georgia State Financing and Investment Commission. Any multiyear guaranteed energy savings performance contract entered into by state agencies that is not in compliance with the multiyear contract value authority set by the Georgia State Financing and Investment Commission shall be void and of no effect;

(4) At the beginning of each fiscal year, a governmental unit's appropriations shall be encumbered for the estimated payments for multiyear guaranteed energy savings performance contract work to be performed in the appropriation fiscal year. Payment for multiyear guaranteed energy savings performance contract work performed pursuant to contract in any fiscal year other than the current fiscal year shall be subject to appropriations by the General Assembly. Multiyear guaranteed energy savings performance contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the authority, provided funds are available. State agencies shall have the right to terminate without further obligation any multiyear guaranteed energy savings performance contract, provided that the cancellation is subject to the termination provisions of the multiyear guaranteed energy savings performance contract, if the state agency determines that adequate funds will not be available for all of the payment obligations of the state agency. The state agency's determination regarding the availability of funds for its obligations shall be conclusive and binding on all parties to the contract. In the event of

termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications;

(5) The provisions of paragraph (4) of this Code section shall be incorporated verbatim in all multiyear guaranteed energy savings performance contracts;

(6) The provisions of this Code section shall not apply to energy efficiency contracts awarded by the authority prior to July 1, 2010. No multiyear guaranteed energy savings performance contracts shall be entered into under the provisions of this Code section until the Georgia State Financing and Investment Commission has established the total multiyear contract value authority for the current and future fiscal years and adopted such fiscal policies regarding multiyear guaranteed energy savings performance contracts authorized under this Code section; and

(7) The authority shall approve any guaranteed energy savings performance contract containing the provisions of subsection (d) of Code Section 50-37-4, regarding improvements not causally connected to an energy conservation measures, or subsection (e) of Code Section 50-37-4, regarding facility alterations required to properly implement other energy conservation measures.

History. — Code 1981, § 50-37-7, enacted by Ga. L. 2010, p. 1091, § 2/SB 194; Ga. L. 2011, p. 752, § 50/HB 142.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "causally" was substituted for "casually" in paragraph (7).

Pursuant to Code Section 28-9-5, in 2011, "paragraph (4)" was substituted for "paragraph (6)" in paragraph (5).

50-37-8. Statutory construction.

This chapter, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes specified in this chapter.

History. — Code 1981, § 50-37-8, enacted by Ga. L. 2010, p. 1091, § 2/SB 194.

CHAPTER 38

COMPACT FOR A BALANCED BUDGET

Sec.
50-38-1. Compact enacted and entered into; provisions of compact.

Code Commission notes. — In 2014, the Georgia General Assembly passed HB 794 and SB 206, both relating to Article V Conventions. HB 794, codified at § 50-38-1, was signed by the Governor on April 12, 2014 (Act No. 475, Ga. L. 2014, p. 20/HB 794). SB 206, codified at § 28-6-8, was signed by the Governor on April 29, 2014 (Act. No. 641, Ga. L. 2014, p. 815, § 1/SB 206). The Code Revision Commission on May 15, 2014, directed that both Acts be published, although the effect of codifying both is unclear.

Editor's notes. — Ga. L. 2014, p. 20, § 1/HB 794, effective April 12, 2014, enacted this chapter, the Compact for a Balanced Budget. Pursuant to Sec. 7 of Art. X of the Compact, the Compact shall terminate upon the passage of a Balanced Budget Amendment to the United States Constitution, or after seven years. No such amendment to the United States Constitution occurred within seven years after the first state adopted the Compact, and the Compact was terminated effective April 12, 2021, per its own terms.

50-38-1. Compact enacted and entered into; provisions of compact.

The State of Georgia enacts, adopts, and agrees to be bound by the following compact:

"ARTICLE I

DECLARATION OF POLICY, PURPOSE, AND INTENT

Whereas, every State enacting, adopting, and agreeing to be bound by this Compact intends to ensure that their respective legislature's use of the power to originate a Balanced Budget Amendment under Article V of the Constitution of the United States will be exercised conveniently and with reasonable certainty as to the consequences thereof.

Now, therefore, in consideration of their expressed mutual promises and obligations, be it enacted by every State enacting, adopting, and agreeing to be bound by this Compact, and resolved by each of their respective legislatures, as the case may be, to exercise herewith all of their respective powers as set forth herein notwithstanding any law to the contrary.

ARTICLE II

DEFINITIONS

Section 1. 'Compact' means this 'Compact for a Balanced Budget.'

Section 2. 'Convention' means the convention for proposing amendments organized by this Compact under Article V of the Constitution of the United States and, where contextually appropriate to ensure the terms of this Compact are not evaded, any other similar gathering or body, which might be organized as a consequence of Congress receiving the application set out in this Compact and claim authority to propose or effectuate any amendment, alteration or revision to the Constitution of the United States. This term is not intended to pertain to any convention held under Article V of the Constitution of the United States which originates as a result of a separate and distinct application by any State.

Section 3. 'State' means one of the several states of the United States. Where contextually appropriate, the term 'State' shall be construed to include all of its branches, departments, agencies, political subdivisions, and officers and representatives acting in their official capacity.

Section 4. 'Member State' means a State that has enacted, adopted, and agreed to be bound to this Compact. For any State to qualify as a Member State with respect to any other State under this Compact, each such State must have enacted, adopted, and agreed to be bound by substantively identical compact legislation.

Section 5. 'Compact Notice Recipients' means the Archivist of the United States, the President of the United States, the President of the United States Senate, the Office of the Secretary of the United States Senate, the Speaker of the United States House of Representatives, the Office of the Clerk of the United States House of Representatives, the chief executive officer of each State, and the presiding officer(s) of each house of the Legislatures of the several States.

Section 6. Notice. All notices required by this Compact shall be by U.S. Certified Mail, return receipt requested, or an equivalent or superior form of notice, such as personal delivery documented by evidence of actual receipt.

Section 7. 'Balanced Budget Amendment' means the following:

ARTICLE —

Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered, or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

Section 6. For purposes of this article, 'debt' means any obligation backed by the full faith and credit of the government of the United States; 'outstanding debt' means all debt held in any account and by any entity at a given point in time; 'authorized debt' means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the

government of the United States from any source; 'total receipts of the government of the United States' means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; 'impoundment' means a proposal not to spend all or part of a sum of money appropriated by Congress; and 'general revenue tax' means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement.

ARTICLE III

COMPACT MEMBERSHIP AND WITHDRAWAL

Section 1. This Compact governs each Member State to the fullest extent permitted by their respective constitutions, superseding and repealing any conflicting or contrary law.

Section 2. By becoming a Member State, each such State offers, promises and agrees to perform and comply strictly in accordance with the terms and conditions of this Compact, and has made such offer, promise, and agreement in anticipation and consideration of, and in substantial reliance upon, such mutual and reciprocal performance and compliance by each other current and future Member State, if any. Accordingly, in addition to having the force of law in each Member State upon its respective effective date, this Compact and each of its Articles shall also be construed as contractually binding each Member State when: (a) at least one other State has likewise become a Member State by enacting substantively identical legislation adopting and agreeing to be bound by this Compact; and (b) notice of such State's Member State status is or has been seasonably received by the Compact Administrator, if any, or otherwise by the chief executive officer of each other Member State.

Section 3. For purposes of determining Member State status under this Compact, as long as all other provisions of the Compact remain identical and operative on the same terms, legislation enacting, adopting and agreeing to be bound by this Compact shall be deemed and regarded as 'substantively identical' with respect to such other legislation enacted by another State notwithstanding: (a) any difference in section 2 of Article IV with specific regard to the respectively enacting State's own method of appointing its member to the Commission; (b) any difference in section 5 of Article IV with specific regard to the respectively enacting State's own obligation to fund the Commission; (c) any difference in sections 1 and 2 of Article VI with specific regard to the number and identity of each delegate respectively appointed on behalf

of the enacting State, provided that no more than three delegates may attend and participate in the Convention on behalf of any State; or (d) any difference in section 7 of Article X with specific regard to the respectively enacting State as to whether section 1 of Article V of this Compact shall survive termination of the Compact, and thereafter become a continuing resolution of the Legislature of such State applying to Congress for the calling of a convention of the states under Article V of the Constitution of the United States, under such terms and limitations as may be specified by such State.

Section 4. When fewer than three-fourths of the States are Member States, any Member State may withdraw from this Compact by enacting appropriate legislation, as determined by state law, and giving notice of such withdrawal to the Compact Administrator, if any, or otherwise to the chief executive officer of each other Member State. A withdrawal shall not affect the validity or applicability of the compact with respect to remaining Member States, provided that there remain at least two such States. However, once at least three-fourths of the States are Member States, then no Member State may withdraw from the Compact prior to its termination absent unanimous consent of all Member States.

ARTICLE IV

COMPACT COMMISSION AND COMPACT ADMINISTRATOR

Section 1. Nature of the Compact Commission. The Compact Commission ('Commission') is hereby established. It has the power and duty: (a) to appoint and oversee a Compact Administrator; (b) to encourage States to join the Compact and Congress to call the Convention in accordance with this Compact; (c) to coordinate the performance of obligations under the Compact; (d) to oversee the Convention's logistical operations, as appropriate to ensure this Compact governs its proceedings; (e) to oversee the defense and enforcement of the Compact in appropriate legal venues; (f) to request funds and to disburse those funds to support the operations of the Commission, Compact Administrator, and Convention; and (g) to cooperate with any entity that shares a common interest with the Commission and engages in policy research, public interest litigation, or lobbying in support of the purposes of the Compact. The Commission shall only have such implied powers as are essential to carrying out these express powers and duties. It shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. It may adopt and publish corresponding bylaws and policies.

Section 2. Commission Membership. The Commission initially consists of three unpaid members. Each Member State may appoint one member to the Commission through an appointment process to be

determined by their respective chief executive officer until all positions on the Commission are filled. Positions shall be assigned to appointees in the order in which their respective appointing States became Member States. The bylaws of the Commission may expand its membership to include representatives of additional Member States and to allow for modest salaries and reimbursement of expenses if adequate funding exists.

Section 3. Commission Action. Each Commission member is entitled to one vote. The Commission shall not act unless a majority of its appointed membership is present, and no action shall be binding unless approved by a majority of the Commission's appointed membership. The Commission shall meet at least once a year, and may meet more frequently.

Section 4. First Order of Business. The Commission shall at the earliest possible time elect from among its membership a Chairperson, determine a primary place of doing business, and appoint a Compact Administrator.

Section 5. Funding. The Commission and the Compact Administrator's activities shall be funded exclusively by each Member State, as determined by their respective state law, or by voluntary donations.

Section 6. Compact Administrator. The Compact Administrator has the power and duty: (a) to timely notify the States of the date, time, and location of the Convention; (b) to organize and direct the logistical operations of the Convention; (c) to maintain an accurate list of all Member States, their appointed delegates, including contact information; and (d) to formulate, transmit, and maintain all official notices, records, and communications relating to this Compact. The Compact Administrator shall only have such implied powers as are essential to carrying out these express powers and duties; and shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. The Compact Administrator serves at the pleasure of the Commission and must keep the Commission seasonably apprised of the performance or nonperformance of the terms and conditions of this Compact. Any notice sent by a Member State to the Compact Administrator concerning this Compact shall be adequate notice to each other Member State provided that a copy of said notice is seasonably delivered by the Compact Administrator to each other Member State's respective chief executive officer.

Section 7. Notice of Key Events. Upon the occurrence of each of the following described events, or otherwise as soon as possible, the Compact Administrator shall immediately send the following notices to all Compact Notice Recipients, together with certified conforming copies of the chaptered version of this Compact as maintained in the

statutes of each Member State: (a) whenever any State becomes a Member State, notice of that fact shall be given; (b) once at least three-fourths of the States are Member States, notice of that fact shall be given together with a statement declaring that the legislatures of at least two-thirds of the several states have applied for a convention for proposing amendments under Article V of the Constitution of the United States, petitioning Congress to call the Convention contemplated by this Compact, and further requesting cooperation in organizing the same in accordance with this Compact; (c) once Congress has called the Convention contemplated by this Compact, and whenever the date, time, and location of the Convention has been determined, notice of that fact shall be given together with the date, time, and location of the Convention and other essential logistical matters; (d) upon approval of the Balanced Budget Amendment by the Convention, notice of that fact shall be given together with the transmission of certified copies of such approved proposed amendment and a statement requesting Congress to refer the same for ratification by three-fourths of the legislatures of the several states under Article V of the Constitution of the United States (however, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted); and (e) when any Article of this Compact prospectively ratifying the Balanced Budget Amendment is effective in any Member State, notice of the same shall be given together with a statement declaring such ratification and further requesting cooperation in ensuring that the official record confirms and reflects the effective corresponding amendment to the Constitution of the United States. However, whenever any Member State enacts appropriate legislation, as determined by the laws of the respective state, withdrawing from this Compact, the Compact Administrator shall immediately send certified conforming copies of the chaptered version of such withdrawal legislation as maintained in the statutes of each such withdrawing Member State, solely to each chief executive officer of each remaining Member State, giving notice of such withdrawal.

Section 8. Cooperation. The Commission, Member States, and Compact Administrator shall cooperate with each other and give each other mutual assistance in enforcing this Compact and shall give the chief law enforcement officer of each other Member State any information or documents that are reasonably necessary to facilitate the enforcement of this Compact.

Section 9. This Article does not take effect until there are at least two Member States.

ARTICLE V

RESOLUTION APPLYING FOR CONVENTION

Section 1. Be it resolved, as provided for in Article V of the Constitution of the United States, the Legislature of each Member State

herewith applies to Congress for the calling of a convention for proposing amendments limited to the subject matter of proposing for ratification the Balanced Budget Amendment.

Section 2. Congress is further petitioned to refer the Balanced Budget Amendment to the States for ratification by three-fourths of their respective Legislatures.

Section 3. This Article does not take effect until at least three-fourths of the several States are Member States.

ARTICLE VI

DELEGATE APPOINTMENT, LIMITATIONS, AND INSTRUCTIONS

Section 1. Number of Delegates. This Member State shall be entitled to three delegates to represent its sovereign interests at the Convention.

Section 2. Identity. The Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate of this Member State, or their respective designee, as identified in a sworn affidavit executed by such officer, are each appointed in an individual capacity to represent this Member State at the Convention as its sole and exclusive delegates. A majority vote of this delegation shall serve to decide any issue at the Convention on behalf of this Member State.

Section 3. Replacement or Recall of Delegates. A delegate appointed hereunder may be replaced or recalled by the legislature of his or her respective state at any time for good cause, such as criminal misconduct or the violation of this Compact. If replaced or recalled, any delegate previously appointed hereunder must immediately vacate the Convention and return to their respective State's capitol.

Section 4. Oath. The power and authority of a delegate under this Article may only be exercised after the Convention is first called by Congress in accordance with this Compact and such appointment is duly accepted by such appointee publicly taking the following oath or affirmation: 'I do solemnly swear (or affirm) that I accept this appointment and will act strictly in accordance with the terms and conditions of the Compact for a Balanced Budget, the Constitution of the State I represent, and the Constitution of the United States. I understand that violating this oath (or affirmation) forfeits my appointment and may subject me to other penalties as provided by law.'

Section 5. Term. The term of a delegate hereunder commences upon acceptance of appointment and terminates upon the permanent adjournment of the Convention, unless shortened by recall, replacement, or forfeiture under this Article. Upon expiration of such term, any

person formerly serving as a delegate must immediately withdraw from and cease participation at the Convention, if any is proceeding.

Section 6. Delegate Authority. The power and authority of any delegate appointed hereunder is strictly limited: (a) to introducing, debating, voting upon, proposing, and enforcing the Convention Rules specified in this Compact, as needed to ensure those rules govern the Convention; and (b) to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment. All actions taken by any delegate in violation of this section are void ab initio.

Section 7. Delegate Authority. No delegate of any Member State may introduce, debate, vote upon, reject, or propose for ratification any constitutional amendment at the Convention unless: (a) the Convention Rules specified in this Compact govern the Convention and their actions; and (b) the constitutional amendment is the Balanced Budget Amendment.

Section 8. Delegate Authority. The power and authority of any delegate at the Convention does not include any power or authority associated with any other public office held by the delegate. Any person appointed to serve as a delegate shall take a temporary leave of absence from any other public office held by the delegate while attending the Convention, and may not exercise any power or authority associated with any other public office held by the delegate while attending the Convention. All actions taken by any delegate in violation of this section are void ab initio.

Section 9. Order of Business. Before introducing, debating, voting upon, rejecting, or proposing for ratification any constitutional amendment at the Convention, each delegate of every Member State must first ensure the Convention Rules in this Compact govern the Convention and their actions. Every delegate and each Member State must immediately vacate the Convention and notify the Compact Administrator by the most effective and expeditious means if the Convention Rules in this Compact are not adopted to govern the Convention and their actions.

Section 10. Forfeiture of Appointment. If any Member State or delegate violates any provision of this Compact, then every delegate of that Member State immediately forfeits his or her appointment, and shall immediately cease participation at the Convention, vacate the Convention, and return to his or her respective State's capitol.

Section 11. Expenses. A delegate appointed hereunder is entitled to reimbursement of reasonable expenses for attending the Convention from his or her respective Member State. No delegate may accept any other form of remuneration or compensation for service under this Compact.

ARTICLE VII

CONVENTION RULES

Section 1. Nature of the Convention. The Convention shall be organized, construed, and conducted as a body exclusively representing and constituted by the several States.

Section 2. Agenda of the Convention. The agenda of the Convention shall be entirely focused upon and exclusively limited to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment under the Convention Rules specified in this Article and in accordance with the Compact. It shall not be in order for the Convention to consider any matter that is outside the scope of this agenda.

Section 3. Delegate Identity and Procedure. States shall be represented at the Convention through duly appointed delegates. The number, identity, and authority of delegates assigned to each State shall be determined by this Compact in the case of Member States or, in the case of states that are not Member States, by their respective state laws. However, to prevent disruption of proceedings, no more than three delegates may attend and participate in the Convention on behalf of any State. A certified chaptered conforming copy of this Compact, together with government-issued photographic proof of identification, shall suffice as credentials for delegates of Member States. Any commission for delegates of states that are not Member States shall be based on their respective state laws, but it shall furnish credentials that are at least as reliable as those required of Member States.

Section 4. Voting. Each state represented at the Convention shall have one vote, exercised by the vote of that State's delegate in the case of states represented by one delegate, or, in the case of any State that is represented by more than one delegate, by the majority vote of that state's respective delegates.

Section 5. Quorum. A majority of the several states of the United States, each present through its respective delegate in the case of any State that is represented by one delegate, or through a majority of its respective delegates, in the case of any state that is represented by more than one delegate, shall constitute a quorum for the transaction of any business on behalf of the Convention.

Section 6. Action by the Convention. The Convention shall only act as a committee of the whole chaired by the delegate representing the first state to have become a Member State, if that state is represented by one delegate, or otherwise by the delegate chosen by the majority vote of that state's respective delegates. The transaction of any business on behalf of the Convention, including the designation of a secretary, the

adoption of parliamentary procedures, and the rejection or proposal of any constitutional amendments, requires a quorum to be present and a majority affirmative vote of those states constituting the quorum.

Section 7. Emergency Suspension and Relocation of the Convention. In the event that the Chair of the Convention declares an emergency due to disorder or an imminent threat to public health and safety prior to the completion of the business on the Agenda, and a majority of the States present at the Convention do not object to such declaration, further Convention proceedings shall be temporarily suspended, and the Commission shall subsequently relocate or reschedule the Convention to resume proceedings in an orderly fashion in accordance with the terms and conditions of this Compact with prior notice given to the Compact Notice Recipients.

Section 8. Parliamentary Procedure. In adopting, applying, and formulating parliamentary procedure, the Convention shall exclusively adopt, apply, or appropriately adapt provisions of the most recent editions of Robert's Rules of Order and the American Institute of Parliamentarians Standard Code of Parliamentary Procedure. In adopting, applying, or adapting parliamentary procedure, the Convention shall exclusively consider analogous precedent arising within the jurisdiction of the United States. Parliamentary procedures adopted, applied, or adapted pursuant to this section shall not obstruct, override, or otherwise conflict with this Compact.

Section 9. Transmittal. Upon approval of the Balanced Budget Amendment by the Convention to propose for ratification, the chair of the Convention shall immediately transmit certified copies of such approved proposed amendment to the Compact Administrator and all Compact Notice Recipients, notifying them respectively of such approval and requesting Congress to refer the same for ratification by the States under Article V of the Constitution of the United States. However, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted as aforesaid.

Section 10. Transparency. Records of the Convention, including the identities of all attendees and detailed minutes of all proceedings, shall be kept by the chair of the Convention or secretary designated by the Convention. All proceedings and records of the Convention shall be open to the public upon request subject to reasonable regulations adopted by the Convention that are closely tailored to preventing disruption of proceedings under this Article.

Section 11. Adjournment of the Convention. The Convention shall permanently adjourn upon the earlier of twenty-four (24) hours after commencing proceedings under this Article or the completion of the business on its Agenda.

ARTICLE VIII

PROHIBITION ON ULTRA VIRES CONVENTION

Section 1. Member States shall not participate in the Convention unless: (a) Congress first calls the Convention in accordance with this Compact; and (b) the Convention Rules of this Compact are adopted by the Convention as its first order of business.

Section 2. Any proposal or action of the Convention is void ab initio and issued by a body that is conducting itself in an unlawful and ultra vires fashion if that proposal or action: (a) violates or was approved in violation of the Convention Rules or the delegate instructions and limitations on delegate authority specified in this Compact; (b) purports to propose or effectuate a mode of ratification that is not specified in Article V of the Constitution of the United States; or (c) purports to propose or effectuate the formation of a new government. All Member States are prohibited from advancing or assisting in the advancement of any such proposal or action.

Section 3. Member States shall not ratify or otherwise approve any proposed amendment, alteration, or revision to the Constitution of the United States, which originates from the Convention, other than the Balanced Budget Amendment.

ARTICLE IX

RESOLUTION PROSPECTIVELY RATIFYING THE BALANCED BUDGET AMENDMENT

Section 1. Each Member State, by and through its respective legislature, hereby adopts and ratifies the Balanced Budget Amendment.

Section 2. This Article does not take effect until Congress effectively refers the Balanced Budget Amendment to the states for ratification by three-fourths of the legislatures of the several states under Article V of the Constitution of the United States.

ARTICLE X

CONSTRUCTION, ENFORCEMENT, VENUE, AND SEVERABILITY

Section 1. To the extent that the effectiveness of this Compact or any of its Articles or provisions requires the alteration of local legislative rules, drafting policies, or procedure to be effective, the enactment of legislation enacting, adopting, and agreeing to be bound by this Compact shall be deemed to waive, repeal, supersede, or otherwise amend and conform all such rules, policies, or procedures to allow for the effectiveness of this Compact to the fullest extent permitted by the constitution of any affected Member State.

Section 2. Date and Location of the Convention. Unless otherwise specified by Congress in its call, the Convention shall be held in Dallas, Texas and commence proceedings at 9:00 a.m. Central Standard Time on the sixth Wednesday after the latter of the effective date of Article V of this Compact or the enactment date of the Congressional resolution calling the Convention.

Section 3. In addition to all other powers and duties conferred by state law which are consistent with the terms and conditions of this Compact, the chief law enforcement officer of each Member State is empowered to defend the Compact from any legal challenge, as well as to seek civil mandatory and prohibitory injunctive relief to enforce this Compact; and shall take such action whenever the Compact is challenged or violated.

Section 4. The exclusive venue for all actions in any way arising under this Compact shall be in the United States District Court for the Northern District of Texas or the courts of the State of Texas within the jurisdictional boundaries of the foregoing district court. Each Member State shall submit to the jurisdiction of said courts with respect to such actions. However, upon written request by the chief law enforcement officer of any Member State, the Commission may elect to waive this provision for the purpose of ensuring an action proceeds in the venue that allows for the most convenient and effective enforcement or defense of this Compact. Any such waiver shall be limited to the particular action to which it is applied and not construed or relied upon as a general waiver of this provision. The waiver decisions of the Commission under this provision shall be final and binding on each Member State.

Section 5. The effective date of this Compact and any of its Articles is the latter of: (a) the date of any event rendering the same effective according to its respective terms and conditions; or (b) the earliest date otherwise permitted by law.

Section 6. Article VIII of this Compact is hereby deemed non-severable prior to termination of the Compact. However, if any other phrase, clause, sentence, or provision of this Compact, or the applicability of any other phrase, clause, sentence, or provision of this Compact to any government, agency, person, or circumstance, is declared in a final judgment to be contrary to the Constitution of the United States, contrary to the state constitution of any Member State, or is otherwise held invalid by a court of competent jurisdiction, such phrase, clause, sentence, or provision shall be severed and held for naught, and the validity of the remainder of this Compact and the applicability of the remainder of this Compact to any government, agency, person, or circumstance shall not be affected. Furthermore, if this Compact is declared in a final judgment by a court of competent

jurisdiction to be entirely contrary to the state constitution of any Member State or otherwise entirely invalid as to any Member State, such Member State shall be deemed to have withdrawn from the Compact, and the Compact shall remain in full force and effect as to any remaining Member State. Finally, if this Compact is declared in a final judgment by a court of competent jurisdiction to be wholly or substantially in violation of Article I, Section 10, of the Constitution of the United States, then it shall be construed and enforced solely as reciprocal legislation enacted by the affected Member State(s).

Section 7. Termination. This Compact shall terminate and be held for naught when it is fully performed and the Constitution of the United States is amended by the Balanced Budget Amendment. However, notwithstanding anything to the contrary set forth in this Compact, in the event such amendment does not occur within seven (7) years after the first State passes legislation enacting, adopting, and agreeing to be bound to this Compact, the Compact shall terminate as follows: (a) the Commission shall dissolve and wind up its operations within ninety (90) days thereafter, with the Compact Administrator giving notice of such dissolution and the operative effect of this section to the Compact Notice Recipients; (b) upon the completed dissolution of the Commission, Articles I, II, III, IV, VI, VII, VIII, and IX, as well as sections 2 and 3 of Article V and sections 1 through 6 of Article X, of this Compact for this Member State shall be deemed terminated, repealed, and held for naught; and (c) section 1 of Article V of this Compact, together with the constructional rule of this subsection, both of which shall survive termination of the Compact, shall thereafter become and be construed as an immediately effective freestanding continuing resolution, passed by the Legislature of this Member State, applying to Congress for the calling of a convention for proposing amendments under Article V of the Constitution of the United States, limited to proposing amendments such as a balanced budget amendment, which shall be capable of aggregation with any other similar application."

History. — Code 1981, § 50-38-1, enacted by Ga. L. 2014, p. 20, § 1/HB 794.

CHAPTER 39

ATLANTA-REGION TRANSIT LINK "ATL" AUTHORITY

Article 1

Creation and Organization

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Article 5

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50-39-60. Liberal construction.
50-39-61. Application of Chapter 1 of Title 40.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, the chapter as enacted by Ga. L. 2018, p. 629, § 6-1/SB 402, was redesignated as Chapter 40.

Editor's notes. — Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

Administrative rules and regulations. — Standards and procedures for local comprehensive planning local planning requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Minimum Standards and Procedures, Subject 110-12-1.

ARTICLE 1

CREATION AND ORGANIZATION

50-39-1. Short title.

This chapter shall be known and may be cited as the "Atlanta-region Transit Link 'ATL' Authority Act."

History. — Code 1981, § 50-39-1, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-2. Definitions.

As used in this chapter, the term:

(1) "Authority" means the Atlanta-region Transit Link "ATL" Authority.

(2) "Bond" includes any revenue bond, bond, note, or other obligation.

(3) "Clean Air Act" means the federal Clean Air Act, as amended in 1990 and codified at 42 U.S.C.A. Sections 7401 through 7671q.

(4) "Cost of project" or "cost of any project" means:

(A) All costs of acquisition, by purchase or otherwise, construction, assembly, installation, modification, renovation, extension, rehabilitation, operation, or maintenance incurred in connection with any project, facility, or undertaking of the authority or any part thereof;

(B) All costs of real property or rights in property, fixtures, or personal property used in or in connection with or necessary for any project, facility, or undertaking of the authority or for any facilities related thereto, including but not limited to the cost of all

land, interests in land, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in or in connection with or necessary for any project, facility, or undertaking of the authority;

(C) All financing charges, bond insurance or other credit enhancement fee, and loan or loan guarantee fees and all interest on revenue bonds, notes, or other obligations of the authority which accrue or are paid prior to and during the period of construction of a project, facility, or undertaking of the authority and during such additional period as the authority may reasonably determine to be necessary to place such project, facility, or undertaking of the authority in operation;

(D) All costs of engineering, surveying, planning, environmental assessments, financial analyses, and architectural, legal, and accounting services and all expenses incurred by engineers, surveyors, planners, environmental scientists, fiscal analysts, architects, attorneys, accountants, and any other necessary technical personnel in connection with any project, facility, or undertaking of the authority or the issuance of any bonds, notes, or other obligations for such project, facility, or undertaking;

(E) All expenses for inspection of any project, facility, or undertaking of the authority;

(F) All fees of fiscal agents, paying agents, and trustees for bond owners under any bond resolution, trust agreement, indenture of trust, or similar instrument or agreement; all expenses incurred by any such fiscal agents, paying agents, bond registrar, and trustees; and all other costs and expenses incurred relative to the issuance of any bonds, revenue bonds, notes, or other obligations for any project, facility, or undertaking of the authority, including bond insurance or credit enhancement fee;

(G) All fees of any type charged by the authority in connection with any project, facility, or undertaking of the authority;

(H) All expenses of or incidental to determining the feasibility or practicability of any project, facility, or undertaking of the authority;

(I) All costs of plans and specifications for any project, facility, or undertaking of the authority;

(J) All costs of title insurance and examinations of title with respect to any project, facility, or undertaking of the authority;

(K) Repayment of any loans for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(L) Administrative expenses of the authority and such other expenses as may be necessary or incidental to any project, facility, or undertaking of the authority or the financing thereof or the placing of any project, facility, or undertaking of the authority in operation; and

(M) The establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, or such other funds or reserves as the authority may approve with respect to the financing and operation of any project, facility, or undertaking of the authority and as may be authorized by any bond resolution, trust agreement, indenture, or trust or similar instrument or agreement pursuant to the provisions of which the issuance of any revenue bonds, notes, or other obligations of the authority may be authorized.

Any cost, obligation, or expense incurred for any of the purposes specified in this paragraph shall be a part of the cost of the project, facility, or undertaking of the authority and may be paid or reimbursed as such out of the proceeds of revenue bonds, notes, or other obligations issued by the authority or as otherwise authorized by this chapter.

(5) "County" means any county created under the Constitution or laws of this state.

(6) "Facility" shall have the same meaning as "project."

(7) "Local government" or "local governing authority" means any municipal corporation or county or any state or local authority, board, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of this state.

(8) "May" means permission and not command.

(9) "Metropolitan planning organization" means the forum for cooperative transportation decision making for a metropolitan planning area.

(10) "Metropolitan transportation plan" means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for a metropolitan planning area.

(11) "Municipal corporation" or "municipality" means any city or town in this state.

(12) "Obligation" means any bond, revenue bond, note, lease, contract, evidence of indebtedness, debt, or other obligation of the authority, the state, or local governments which is authorized to be issued under this chapter or under the Constitution or other laws of this state, including refunding bonds.

(13) "Office of profit or trust under the state" means any office created by or under the provisions of the Constitution, but does not include elected officials of county or local governments.

(14) "Project" means the acquisition, construction, installation, modification, renovation, repair, extension, renewal, replacement, or rehabilitation of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of providing facilities and services to meet transit needs and environmental standards and to aid in the accomplishment of the purposes of the authority.

(15) "Regional transit plan" means the official multiyear plan adopted by the authority for the provision of transit services throughout the jurisdiction of the authority pursuant to Code Section 50-39-12.

(16) "Revenue bond" includes any bond, note, or other obligation payable from revenues derived from any project, facility, or undertaking of the authority.

(17) "State implementation plan" means the portion or portions of an applicable implementation plan approved or promulgated, or the most recent revision thereof, under Sections 110, 301(d), and 175A of the Clean Air Act.

(18) "Transit" means regular, continuing shared-ride or shared-use surface transportation services that are made available by or funded by a public entity or quasi-public entity and are open to the general public or open to a segment of the general public defined by age, disability, or low income. Such term includes services or systems operated by or under contract with the state, a state agency or authority, a local government, a community improvement district, or any other similar entity of this state and all accompanying infrastructure and services necessary to provide access to these modes of transportation. Such term excludes charter or sightseeing services; school bus services; courtesy shuttle and intrafacility or terminal services; limousine carriers; and ride share network services, trans-

portation referral services, and taxi services as such terms are defined in Chapter 1 of Title 40 and which are not paid for by a public entity.

(19) "Transportation improvement program" means a staged, multiyear, intermodal program as defined in 23 C.F.R. Section 450.104 and consisting of transportation projects which is consistent with the metropolitan transportation plan.

(20) "Undertaking" shall have the same meaning as the term "project."

History. — Code 1981, § 50-39-2, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930; Ga. L. 2019, p. 1056, § 50/SB 52; Ga. L. 2020, p. 493, § 50/SB 429; Ga. L. 2020, p. 685, § 1/HB 511.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, in the last sentence of paragraph (18), substituted "intrafacility" for "intra-facility" and inserted "and" preceding "ride share".

The 2020 amendments. — The first 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "Sections 7401 through 7671q" for "Sections 7401 to 7671q" in paragraph (3). The second 2020 amendment, effective January 1, 2021, rewrote paragraph (18), which read: "'Transit' means regular, continuing shared-ride or shared-use surface transportation services that are made available by a public entity and are open to the general public or open to a segment of the general public defined by age, disability, or low income. Such term includes services or systems operated by or under contract with the state, a public agency or authority, a county or municipality, a community improvement district, or any other similar public entity of this state and all accompanying infrastructure and services necessary to provide access to these modes of transportation. Such term excludes charter or sightseeing services, school bus services, courtesy shuttle and intrafacility or terminal services, limousine carriers, and ride share network services, transportation referral services, and taxi services not paid for by a public entity."

50-39-3. Creation of authority; board of directors.

(a) There is created the Atlanta-region Transit Link "ATL" Authority as a body corporate and politic, which shall be deemed an instrumentality of the State of Georgia and a public corporation thereof, for purposes of managing or causing to be managed transit and air quality within certain areas of this state; and by that name, style, and title such body may contract and be contracted with and bring and defend actions in all courts of this state. Such authority shall serve as the sole entity for coordination and planning and the dispersing of federal and state funding for transit within the jurisdiction of the authority. Such authority shall work with counties, municipalities, and operators of transit services within the jurisdiction of the authority to provide a consistent and integrated vision for transit through transparent decision making and execution. This Code section shall not be deemed to impair or interfere in any manner with any existing rights under a contract entered into prior to December 1, 2018, or any federal grants or agreements awarded or entered into prior to December 1, 2018. This

Code section shall not be applicable to projects or services provided for under the terms of a contract entered into as of December 1, 2018, under the authority granted pursuant to a local constitutional amendment set out at Ga. L. 1964, p. 1008, and the planning, funding, coordination, and delivery of such projects or services shall be as provided for by such contract or contracts.

(b) The management of the business and affairs of the authority shall be vested in a board of directors, subject to the provisions of this chapter and to the provisions of bylaws adopted by the board as authorized by this chapter. The board of directors shall make bylaws governing its own operation and shall have the power to make bylaws, rules, and regulations for the government of the authority and the operation, management, and maintenance of such projects as the board may determine appropriate to undertake from time to time.

(c) Except as otherwise provided in this chapter, a majority of the members of the board then in office shall constitute a quorum for the transaction of business. The vote of a majority of the members of the board present at the time of the vote, if a quorum is present at such time, shall be the act of the board unless the vote of a greater number is required by law or by the bylaws of the board of directors. The board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members one or more committees, each consisting of two or more members of the board, which shall have and exercise such authority as the board may delegate to it under such procedures as the board may direct by resolution establishing such committee or committees.

(d) No vacancy on the authority shall impair the right of a majority of the appointed members from exercising all rights and performing all duties of the authority. The authority shall have perpetual existence. Any change in the name or composition of the authority shall in no way affect the vested rights of any person under this chapter or impair the obligations of any contracts existing under this chapter.

History. — Code 1981, § 50-39-3, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-4. Membership; structure; operation; appointment of executive director; annual reporting.

(a)(1) The board of directors of the authority shall consist of 16 members, ten of whom shall be appointed from the authority districts described in paragraph (2) of this subsection, five of whom shall be appointed as described in paragraph (3) of this subsection, and the commissioner of transportation who shall serve ex officio and be a nonvoting member. The members appointed from such authority

districts shall be chosen by a majority vote of a caucus of the members of the House of Representatives and Senate whose respective districts include any portion of such authority district, the chairpersons of the county board of commissioners whose counties are located within such authority districts, and one mayor from the municipalities located within such authority districts who shall be chosen by a caucus of all mayors from the municipalities located within such authority districts; provided that if any authority district is wholly or partially located within the City of Atlanta, the mayor of the City of Atlanta shall be entitled to his or her own vote in addition to the vote by the mayor outside the limits of such city selected by the caucus of mayors to cast a vote. Each such appointee shall be a resident of the authority district which he or she represents and possess significant experience or expertise in a field that would be beneficial to the accomplishment of the function and purpose of this chapter. No later than December 1, 2018, the respective caucuses appointing board members from the authority districts shall meet and appoint their respective board members of said board of directors. A majority of eligible caucus members shall constitute a quorum for purposes of any meeting provided for in this Code section. Selection of an individual to serve as an appointee from an authority district shall be chosen by a majority vote of the quorum present at any meeting called in compliance with the notice requirements set forth in this Code section. Beginning in 2021, the respective caucuses appointing board members from the authority districts shall meet during the regular session of the General Assembly immediately preceding the expiration of the term of office of each member appointed by an authority district. All such meetings shall be called by the chairperson of the authority and be held at the state capitol. Notice of such meeting shall be sent by email to all appointing members of any respective caucus at least seven calendar days prior and shall state the time, place, and purpose for such meeting. Voting shall be in person by secret ballot, and use of proxies, teleconference, or other technology where an appointing member is not physically present at such meeting shall be prohibited.

(2)(A) For purposes of appointing members of the board other than those members appointed pursuant to paragraph (3) of this subsection, there are hereby created ten authority districts, which shall be as described in the plan attached to and made part of this Act and further identified as "Plan: transit-dist-2018 Plan Type: Regional Administrator: H009 User: Gina."

(B) When used in such attachment, the term "VTD" (voting tabulation district) shall mean and describe the same geographical boundaries as provided in the report of the Bureau of the Census for the United States decennial census of 2010 for the State of Georgia.

(C) The separate numeric designations in an authority district description which are underneath a VTD heading shall mean and describe individual blocks within a VTD as provided in the report of the Bureau of the Census for the United States decennial census of 2010 for the State of Georgia.

(D) Any part of the jurisdiction of the authority which is not included in any such authority district described in that attachment shall be included within that authority district contiguous to such part which contains the least population according to the United States decennial census of 2010 for the State of Georgia.

(E) Any part of the jurisdiction of the authority which is described in that attachment as being in a particular authority district shall nevertheless not be included within such authority district if such part is not contiguous to such authority district. Such noncontiguous part shall instead be included within that authority district contiguous to such part which contains the least population according to the United States decennial census of 2010 for the State of Georgia.

(F) Except as otherwise provided in the description of any authority district, whenever the description of such authority district refers to a named city, it shall mean the geographical boundaries of that city as shown on the census map for the United States decennial census of 2010 for the State of Georgia.

(G) The plan attached shall be reviewed by the Senate and House Transportation Committees after the report of the Bureau of the Census for the United States decennial census of 2020 or any future such census.

(3) The Lieutenant Governor and Speaker of the House of Representatives shall each appoint two board members. The Governor shall appoint one member who shall serve as the chairperson.

(b) All members of the board and their successors shall each be appointed for terms of four years, except that those members appointed from even-numbered authority districts shall serve an initial term that expires on April 15, 2023, and those members appointed from odd-numbered authority districts shall each serve an initial term that expires on April 15, 2021. After such initial term, that caucus which appointed such member for such initial term shall appoint successors thereto for terms of office of four years. All members of the board shall serve until the appointment and qualification of a successor except as otherwise provided in this Code section. Other than the commissioner of transportation, no person holding any other office of profit or trust under the state shall serve upon the board. The chairperson of the board of directors shall be appointed by the Governor, and a vice

chairperson shall be selected annually from among the members by majority vote of those members present and voting.

(c) Vacancies in office of members appointed pursuant to paragraph (3) of subsection (a) of this Code section shall be filled in the same manner as original appointments. If a vacancy in office of a member appointed by an authority district pursuant to paragraph (1) of subsection (a) of this Code section occurs during any regular session of the General Assembly, the election for such vacancy shall be held in the same manner as provided in paragraph (1) of subsection (a) of this Code section. For all other vacancies in office of a member appointed by an authority district, the remainder of the unexpired term shall be filled by a member elected at a meeting called by the chairperson of the authority at a location designated by such chairperson, which shall be at the state capitol or a location within the authority district where such vacancy occurs. Notice of such meeting shall be sent by email to all appointing members of any respective caucus at least seven calendar days prior and shall state the time, place, and purpose for such meeting. A person appointed to fill a vacancy shall serve for the unexpired term. No vacancy on the board shall impair the right of the quorum of the remaining members then in office to exercise all rights and perform all duties of the board.

(d) The members of the board of directors shall be entitled to and shall be reimbursed for their actual travel expenses necessarily incurred in the performance of their duties and, for each day actually spent in the performance of their duties, shall receive the same per diem as do members of the General Assembly.

(e) Members of the board of directors shall be subject to removal by the appointing authority or a majority vote of the appointing caucus for misfeasance, malfeasance, nonfeasance, failure to attend three successive meetings of the board without good and sufficient cause, abstention from voting unless authorized under subsection (h) of this Code section, or upon a finding of a violation of Code Section 45-10-3 pursuant to the procedures applicable to such Code section. A violation of Code Section 45-10-3 may also subject a member to the penalties provided in subparagraphs (a)(1)(A), (a)(1)(B), and (a)(1)(C) of Code Section 45-10-28, pursuant to subsection (b) of such Code section. In the event that a vacancy or vacancies on the board render the board able to obtain a quorum but unable to obtain the attendance of a number of members sufficient to constitute such supermajorities as may be required by this chapter, the board shall entertain no motion or measure requiring such a supermajority until a number of members sufficient to constitute such supermajority is present.

(f) The members of the authority shall be subject to the applicable provisions of Chapter 10 of Title 45, including without limitation Code

Sections 45-10-3 through 45-10-5. Members of the authority shall be public officers who are members of a state board for purposes of the financial disclosure requirements of Article 3 of Chapter 5 of Title 21. The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable books and records of all actions and transactions and shall submit such books together with a statement of the authority's financial position to the state auditor on or about the close of the state's fiscal year. The books and records shall be inspected and audited by the state auditor at least once in each year.

(g) Meetings of the board of directors, regular or special, shall be held at the time and place fixed by or under the bylaws, with no less than five days' public notice for regular meetings as prescribed in the bylaws and such notice as the bylaws may prescribe for special meetings. Each member shall be given written notice of all meetings as prescribed in the bylaws. Meetings of the board may be called by the chairperson or by such other person or persons as the bylaws may authorize.

(h) No member may abstain from a vote other than for reasons constituting disqualification to the satisfaction of a majority of a quorum of the board on a record vote.

(i) The board may, in its discretion, appoint an executive director as the administrative head of the authority and shall set his or her salary. The authority is assigned to the Department of Transportation for administrative purposes only.

(j) The authority shall annually submit a report of projects of regional and state significance from the regional transit plan to the Office of Planning and Budget, the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives for consideration by such parties for inclusion in the bond package for the upcoming fiscal year budget. The required date of submission of such report shall coincide with the required submission date of estimates of financial requirements of a budget unit pursuant to Code Section 45-12-78.

History. — Code 1981, § 50-39-4, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930; Ga. L. 2019, p. 1056, § 50/SB 52; Ga. L. 2020, p. 685, § 2/HB 511.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, deleted "are" following "respective districts" in the second sentence of paragraph (a)(1); revised capitalization in subparagraph (a)(2)(C); and revised punctuation in subsection (b).

The 2020 amendment, effective January 1, 2021, in paragraph (a)(1), substituted "chosen" for "appointed" in the second sentence, added the fifth, sixth, and seventh sentences, substituted "All such meetings" for "Such meeting", substituted "authority and be held at the state capitol." for "board of commissioners from the county with the largest population represented in the authority district" and added the last two sentences; in subsection (b), in the first sentence, inserted "even-numbered authority districts shall serve an initial term that expires on April 15, 2023, and those members appointed from" and substituted "that expires on April 15, 2021" for "of two years", and deleted "two-year" following "initial" in the second sentence; in subsection (c) de-

leted the former first sentence, which read: "All successors shall be appointed in the same manner a original appointments.", inserted "of members appointed pursuant to paragraph (3) of subsection (a) of this Code section" in the present first sentence and added the second through fourth sentences; deleted the former last sentence of subsection (i), which read: "The executive director of the Georgia Regional Transportation Authority shall serve as a temporary director until the board is constituted and an executive director is appointed by such board."; deleted the former subsection (j) designation; substituted "Department of Transportation" for "Georgia Regional Transportation Authority"; and redesignated former subsection (k) as present subsection (j).

Editor's notes. — Ga. L. 2018, p. 377, § 2-1/HB 930, and the attachment thereto identified as "Plan: transit-dist-2018 Plan Type: Regional Administrator: H009 User: Gina", not codified by the General Assembly, contains the description of the authority districts and related definitions, effectiveness, and applicability provisions.

50-39-5. Continuation of the development of the Atlanta region's Concept 3 transit proposal.

The Atlanta Regional Commission in conjunction with the authority and the director of planning for the Department of Transportation shall utilize federal and state planning funds to continue the development of the Atlanta region's Concept 3 transit proposal, including assessment of potential economic benefit to the region and the state, prioritization of corridors based on highest potential economic benefit and lowest environmental impact, and completion of environmental permitting.

History. — Code 1981, § 50-39-5, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

ARTICLE 2

OPERATION OF AUTHORITY

50-39-10. Uniform operation; jurisdictional issues.

(a)(1) This chapter shall operate uniformly throughout the state.

(2)(A) The initial jurisdiction of the authority for purposes of this chapter shall encompass the territory of every county which was designated by the United States Environmental Protection Agency (USEPA) in the *Code of Federal Regulations* as of December 31, 1998, as a county included in whole or in part within a nonattainment area under the Clean Air Act and which the board designates, through resolution or regulation, as a county having excess levels of ozone, carbon monoxide, or particulate matter.

(B) The jurisdiction of the authority for purposes of this chapter shall also encompass the territory of every county designated by the USEPA in the *Code of Federal Regulations* after December 31, 1998, as a county included in whole or in part within a

nonattainment area under the Clean Air Act and which the board designates, through resolution or regulation, as a county having excess levels of ozone, carbon monoxide, or particulate matter, provided that the jurisdictional area encompassed under this subparagraph shall be contiguous with the jurisdictional area encompassed under subparagraph (A) of this paragraph.

(b)(1) By December 1, 2018, the director of the Environmental Protection Division shall report and certify to the authority those counties which were designated by the USEPA as included in whole or in part within a nonattainment area pursuant to subsection (a) of this Code section and, pursuant to criteria established by that division, counties which are reasonably expected to become nonattainment areas under the Clean Air Act within three years from the date of such report and certification. Such report and certification shall be updated annually thereafter. Within the geographic territory of any county so designated, the board shall provide, by resolution or regulation, that the funding, planning, design, construction, contracting, leasing, and other related facilities of the authority shall be made available to county and local governments for the purpose of planning, designing, constructing, operating, and maintaining transit systems and transit projects, air quality installations, and all facilities necessary and beneficial thereto, and for the purpose of designing and implementing designated metropolitan planning organizations' transit plans and transportation improvement programs and the authority's regional transit plan, on such terms and conditions as may be agreed to between the authority and such county or local governments.

(2) The jurisdiction of the authority for purposes of this chapter shall be extended to any county the territory of which is contiguous with the jurisdiction established by subsection (a) of this Code section which is designated by the USEPA in the *Code of Federal Regulations* as a county included in whole or in part within a nonattainment area under the Clean Air Act and which the board deems as a county having excess levels of ozone, carbon monoxide, or particulate matter. A majority vote of the board and passage of a resolution by the board of commissioners of such county shall be required for the extension of the jurisdiction to include such a contiguous county.

(3) The jurisdiction of the authority for purposes of this chapter may be extended to any county, the territory of which is not contiguous with the jurisdiction established by subsection (a) of this Code section, which is designated by the USEPA in the *Code of Federal Regulations* as a county included in whole or in part within a nonattainment area under the Clean Air Act and which the board designates as a county having excess levels of ozone, carbon monox-

ide, or particulate matter. Such county may be brought within the jurisdiction of the authority by a majority vote of the board and upon the effective date of a local law enacted by the General Assembly for such purpose.

(c) Upon acquiring jurisdiction over the territory of any county, the authority's jurisdiction over such territory shall continue until 20 years have elapsed since the later of the date such county was redesignated by the USEPA as in attainment under the Clean Air Act or such designation by the USEPA is no longer made.

(d)(1) Upon the lapse of the authority's jurisdiction over a geographic area pursuant to the provisions of this Code section, the authority shall have the power to enter into such contracts, lease agreements, and other instruments necessary or convenient to manage and dispose of real property and facilities owned or operated by the authority within such geographic area, and shall dispose of all such property not more than five years after the lapse of such jurisdiction, but shall retain jurisdiction for the purpose of operating and managing such property and facilities until their final disposition.

(2) The provisions of this subsection shall be implemented consistent with the terms of such contracts, lease agreements, or other instruments or agreements as may be necessary or required to protect federal interests in assets purchased, leased, or constructed, utilizing federal funding in whole or in part, and the authority is empowered to enter into such contracts, lease agreements, or other instruments or agreements with appropriate federal agencies or other representatives or instrumentalities of the federal government from time to time as necessary to achieve the purposes of this chapter and the protection of federal interests.

(e) Except for the purpose of reviewing proposed regional transit plans and transportation improvement programs prepared by metropolitan planning organizations in accordance with requirements specifically placed upon the Governor by federal law, the jurisdiction of the authority shall not extend to the territory and facilities of any airport as defined in Code Section 6-3-20.1 and which is certified under 14 C.F.R. Part 139. In no event shall the authority have jurisdiction to design, construct, repair, improve, expand, own, maintain, or operate any such airport or any facilities of such airport.

(f) Any county within the jurisdiction of the authority which provided no transit services or was provided no transit services by a state authority on or before July 1, 2018, shall be prohibited from initiating any transit services within such county without prior approval from the voters in a county-wide referendum called for such purpose.

History. — Code 1981, § 50-39-10, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930; Ga. L. 2019, p. 1056, § 50/SB 52; Ga. L. 2020, p. 685, § 3/HB 511.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraphs (b)(3) and (d)(2); and substituted "county-wide" for "county wide" near the end of subsection (f).

The 2020 amendment, effective January 1, 2021, inserted "resolution or" in subparagraphs (a)(2)(A) and subparagraph (a)(2)(B) and, in paragraph (b)(1), substituted "three years" for "seven years" in the first sentence and substituted "annually" for "every six months" in the second sentence.

50-39-11. General powers of authority; construction with provisions on coordination and comprehensive planning and service delivery by counties and municipalities.

(a) The authority shall have the following general powers:

(1) To sue and be sued in all courts of this state, the original jurisdiction and venue of any such action being the superior court of any county wherein a substantial part of the business was transacted, the tortious act, omission, or injury occurred, or the real property is located, except that venue and jurisdiction for bond validation proceedings shall be as provided by paragraph (9) of subsection (e) of Code Section 50-39-32;

(2) To have a seal and alter the same at its pleasure;

(3) To plan, design, acquire, construct, add to, extend, improve, equip, operate, and maintain or cause to be operated and maintained transit systems and transit projects, and all facilities and appurtenances necessary or beneficial thereto, within the geographic area over which the authority has jurisdiction or which are included within a regional transit plan or transportation improvement program and provide transit services within the geographic jurisdiction of the authority, and to contract with any state, regional, or local government, authority, or department, or with any private person, firm, or corporation, for those purposes, and to enter into contracts and agreements with the Georgia Department of Transportation, county and local governments, and transit system operators for those purposes;

(4) To plan, design, acquire, construct, add to, extend, improve, equip, operate, and maintain or cause to be operated and maintained air quality control installations, and all facilities and appurtenances necessary or beneficial thereto, within the geographic area over which the authority has jurisdiction for such purposes pursuant to this chapter, and to contract with any state, regional, or local government, authority, or department, or with any private person, firm, or corporation, for those purposes; provided, however, that where such air quality control measures are included in an applicable

implementation plan, they shall be approved by the Environmental Protection Division of the state Department of Natural Resources and by the United States Environmental Protection Agency where necessary to preserve their protected status during any conformity lapse;

(5) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, such contracts, leases, or instruments to include contracts for acquisition, construction, operation, management, or maintenance of projects and facilities owned by local government, the authority, or by the state or any political subdivision, department, agency, or authority thereof, and to include contracts relating to the execution of the powers of the authority and the disposal of the property of the authority from time to time; and any and all local governments, departments, institutions, authorities, or agencies of the state are authorized to enter into contracts, leases, agreements, or other instruments with the authority upon such terms and to transfer real and personal property to the authority for such consideration and for such purposes as they deem advisable;

(6) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority, in compliance, where required, with applicable federal law including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. Section 4601, et seq., 23 C.F.R. Section 1.23, and 23 C.F.R. Section 713(c);

(7) To appoint an executive director who shall be executive officer and administrative head of the authority. The executive director shall be appointed and serve at the pleasure of the board. The executive director shall hire officers, agents, and employees, prescribe their duties and qualifications and fix their compensation, and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director;

(8) To finance projects, facilities, and undertakings of the authority for the furtherance of the purposes of the authority within the geographic area over which the authority has jurisdiction by loan, loan guarantee, grant, lease, or otherwise, and to pay the cost of such from the proceeds of bonds, revenue bonds, notes, or other obligations of the authority or any other funds of the authority or from any contributions or loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the

authority is authorized to receive, accept, and use; provided that such debt is consistent with the state debt management plan as established by the Georgia State Financing and Investment Commission pursuant to Chapter 17 of this title, the "Georgia State Financing and Investment Commission Act";

(9) To extend credit or make loans or grants for all or part of the cost or expense of any project, facility, or undertaking of a political subdivision or other entity for the furtherance of the purposes of the authority within the geographic area over which the authority has jurisdiction upon such terms and conditions as the authority may deem necessary or desirable; and to adopt rules, regulations, and procedures for making such loans and grants;

(10) To borrow money to further or carry out its public purpose and to issue guaranteed revenue bonds, revenue bonds, notes, or other obligations to evidence such loans and to execute leases, trust indentures, trust agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable in the judgment of the authority, and to evidence and to provide security for such loans;

(11) To issue guaranteed revenue bonds, revenue bonds, bonds, notes, or other obligations of the authority, to receive payments from the Department of Transportation, and to use the proceeds thereof for the purposes of:

(A) Paying or loaning the proceeds thereof to pay, all or any part of, the cost of any project or the principal of and premium, if any, and interest on the revenue bonds, bonds, notes, or other obligations of any local government issued for the purpose of paying in whole or in part the cost of any project and having a final maturity not exceeding three years from the date of original issuance thereof;

(B) Paying all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out the purposes of the authority; and

(C) Paying all costs of the authority incurred in connection with the issuance of the guaranteed revenue bonds, revenue bonds, bonds, notes, or other obligations;

(12) To collect fees and charges in connection with its loans, commitments, management services, and servicing including, but not limited to, reimbursements of costs of financing, as the authority shall determine to be reasonable and as shall be approved by the authority;

(13) Subject to any agreement with bond owners, to invest moneys of the authority not required for immediate use to carry out the purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks or federal savings and loan associations located within the state which have deposits insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation and certificates of deposit of state building and loan associations located within the state which have deposits insured by any Georgia deposit insurance corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank located within the state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least $50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least $50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys; and

(G) State operated investment pools;

(14) To acquire or contract to acquire from any person, firm, corporation, local government, federal or state agency, or corporation by grant, purchase, or otherwise, leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and local government is authorized to grant, sell, or otherwise alienate leaseholds, real and personal property, or any interest therein to the authority;

(15) Subject to applicable covenants or agreements related to the issuance of bonds, to invest any moneys held in debt service funds or sinking funds not restricted as to investment by the Constitution or laws of this state or the federal government or by contract not required for immediate use or disbursement in obligations of the types specified in paragraph (13) of this subsection, provided that, for the purposes of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service, which debt service shall be the principal installments and interest payments, schedule for which such moneys are to be applied;

(16) To provide advisory, technical, consultative, training, educational, and project assistance services to the state and local govern-

ment and to enter into contracts with the state and local government to provide such services. The state and local governments are authorized to enter into contracts with the authority for such services and to pay for such services as may be provided them;

(17) To make loan commitments and loans to local governments and to enter into option arrangements with local governments for the purchase of said bonds, revenue bonds, notes, or other obligations;

(18) To sell or pledge any bonds, revenue bonds, notes, or other obligations acquired by it whenever it is determined by the authority that the sale thereof is desirable;

(19) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(20) To lease to local governments any authority owned facilities or property or any state owned facilities or property which the authority is managing under contract with the state;

(21) To contract with state agencies or any local government for the use by the authority of any property or facilities or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the authority, and such state agencies and local governments are authorized to enter into such contracts;

(22) To extend credit or make loans, including the acquisition of bonds, revenue bonds, notes, or other obligations of the state, any local government, or other entity, including the federal government, for the cost or expense of any project or any part of the cost or expense of any project, which credit or loans may be evidenced or secured by trust indentures, loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, or assignments, on such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such trust indentures, loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project and such other terms and conditions as the authority may deem necessary or desirable;

(23) As security for repayment of any bonds, revenue bonds, notes, or other obligations of the authority, to pledge, lease, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority including, but not limited to, real property, fixtures, personal property, and revenues or other funds and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds, notes or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument;

(24) To receive and use the proceeds of any tax levied to pay all or any part of the cost of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(25) To use income earned on any investment for such corporate purposes of the authority as the authority in its discretion shall determine, including, but not limited to, the use of repaid principal and earnings on funds, the ultimate source of which was an appropriation to a budget unit of the state to make loans for projects;

(26) To cooperate and act in conjunction with industrial, commercial, medical, scientific, public interest, or educational organizations; with agencies of the federal government and this state and local government; with other states and their political subdivisions; and with joint agencies thereof, and such state agencies, local government, and joint agencies are authorized and empowered to cooperate and act in conjunction and to enter into contracts or agreements with the authority and local government to achieve or further the purposes of the authority;

(27) To coordinate, cooperate, and contract with any metropolitan planning organization for a standard metropolitan statistical area which is primarily located within an adjoining state but which includes any territory within the jurisdiction of the authority to achieve or further the purposes of the authority as provided by this chapter;

(28) To coordinate and assist in planning for transit and air quality purposes within the geographic area over which the authority has jurisdiction pursuant to this chapter, between and among all state, regional, and local authorities charged with planning responsibilities

for such purposes by state or federal law, and to adopt a regional plan or plans based in whole or in part on such planning;

(29) To review and make recommendations to the Governor, Lieutenant Governor, and Speaker of the House of Representatives concerning all transit plans and transportation improvement programs prepared by the Department of Transportation involving design, construction, or operation of transit facilities wholly or partly within the geographic area over which the authority has jurisdiction pursuant to this chapter, and to negotiate with that department concerning changes or amendments to such plans which may be recommended by the authority consistent with applicable federal law and regulation, and to adopt such plans as all or a portion of its own regional plans;

(30) To acquire by the exercise of the power of eminent domain any real property or rights in property which it may deem necessary for its purposes under this chapter pursuant to the procedures set forth in this chapter, and to purchase, exchange, sell, lease, or otherwise acquire or dispose of any property or any rights or interests therein for the purposes authorized by this chapter or for any facilities or activities incident thereto, subject to and in conformity with applicable federal law and regulation;

(31) To the extent permissible under federal law, to operate as a receiver of federal grants, loans, and other moneys intended to be used within the geographic area over which the authority has jurisdiction pursuant to this chapter for inter-urban and intra-urban transit, transit plans, air quality and air pollution control, and other purposes related to the alleviation of congestion and air pollution;

(32) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(33) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(34) To procure insurance against any loss in connection with its property and other assets or obligations or to establish cash reserves to enable it to act as self-insurer against any and all such losses;

(35) To accept and use federal funds; to enter into any contracts or agreements with the United States or its agencies or subdivisions relating to the planning, financing, construction, improvement, operation, and maintenance of any transit services or transit projects; and to do all things necessary, proper, or expedient to achieve compliance with the provisions and requirements of all applicable federal-aid acts and programs. Nothing in this chapter is intended to conflict

with any federal law; and, in case of such conflict, such portion as may be in conflict with such federal law is declared of no effect to the extent of the conflict;

(36) To ensure that any project funded by the authority in whole or in part with federal-aid funds is included in approved transportation improvement programs adopted and approved by designated metropolitan planning organizations and the Governor and in any transit plan adopted and approved by the designated metropolitan planning organization and is in compliance with the requirements of relevant portions of the regulations implementing the Clean Air Act including without limitation 40 C.F.R. Section 93.105(c)(1)(ii) and 40 C.F.R. Section 93.122(a)(1), where such inclusion, approval, designation, or compliance is required by applicable federal law or regulation; and

(37) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts and attorneys, and to fix their compensation.

(b) The provision of local government services and the utilization of funding mechanisms therefor consistent with the terms of this chapter shall not be subject to the provisions of Chapter 70 of Title 36; provided, however, that the authority shall, where practicable, provide for coordination and consistency between the provision of such services pursuant to the terms of this chapter and the provision of such services pursuant to Chapter 70 of Title 36.

History. — Code 1981, § 50-39-11, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930; Ga. L. 2019, p. 1056, § 50/SB 52; Ga. L. 2020, p. 685, § 4/HB 511.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, substituted "for the purposes of" for "for the purpose of" at the end of paragraph (a)(11).

The 2020 amendment, effective January 1, 2021, in paragraph (a)(11), substituted "Transportation" for "Community Affairs" and deleted "purpose" preceding "purposes".

50-39-12. Development, review, and amendment of regional transit plan; coordination with federal priorities; branding.

(a) In consultation with the metropolitan planning organization, as such term is defined in Code Section 48-8-242, which jurisdiction is located wholly or partially within the jurisdiction of the authority, the authority shall develop, annually review, and amend, as necessary, a regional transit plan. Such plan shall include, but not be limited to, transit projects based upon a region-wide approach to the provision of transit services through buses and rail, the establishment of multimodal stations within the jurisdiction of the authority, enhancement of connectivity throughout the region, cost-effective expansion of existing transit systems, and the coordination of schedules and meth-

ods of payment for transit service providers. In developing such plan, the authority may consider both macro level planning in order to efficiently coordinate transit services across jurisdictional lines, as well as micro level planning of services being delivered by local governments and transit service operators, including the Metropolitan Atlanta Rapid Transit Authority, in order to ensure continuation of current services or routes. Such plan shall provide that the Metropolitan Atlanta Rapid Transit Authority shall serve as the sole operator of any system of transportation which utilizes heavy rail within the jurisdiction of the authority.

(b) The plan developed pursuant to this Code section shall include, at a minimum, a six year and 20 year component which shall reflect the federal priorities set forth in 23 U.S.C. Section 134(i)(2)(A)(ii) and 23 U.S.C. Section 134(j)(2)(A) and shall serve as the plans to be submitted for federal funding pursuant to such federal requirements.

(c) In addition to amendments made to the plan developed pursuant to this Code section upon the initiative of the authority based upon changing conditions, the authority may amend the plan upon request from a local governing authority to include a certain project or assist with a specific transit need.

(d) Such plan shall further include the creation of a unified logo and brand to encompass all transit service providers within the jurisdiction of the authority which shall include the acronym "ATL." On and after January 1, 2023, all transit service providers within the jurisdiction of the authority shall utilize such logo and brand as a prominent feature upon any property used for the purpose of transit.

History. — Code 1981, § 50-39-12, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930; Ga. L. 2019, p. 1056, § 50/SB 52; Ga. L. 2020, p. 685, § 5/HB 511.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in the third sentence of subsection (a).

The 2020 amendment, effective January 1, 2021, in subsection (d), in the first sentence, inserted "logo and" and added "which shall include the acronym 'ATL.'" and added the second sentence.

50-39-13. Delegation of authority by Governor; formulation of measurable targets; annual reporting.

(a) The Governor may delegate to the authority, by executive order, his or her powers under applicable federal transportation planning and air quality laws and regulations, including without limitation the power to resolve revision disputes between metropolitan planning organizations and the Department of Transportation under 40 C.F.R. Section 93.105, the power of approval and responsibilities for public involvement under 23 C.F.R. Section 450.216(a), and any power to serve as the designated recipient of federal funds for purposes of transit

funding for capital projects and for financing and directly providing public transportation under 49 U.S.C. Sections 5302 through 5304.

(b) The authority shall formulate measurable targets for air quality improvements and standards within the geographic area over which the authority has jurisdiction pursuant to this chapter, and annually shall report such targets to the Governor, Lieutenant Governor, and Speaker of the House of Representatives, together with an assessment of progress toward achieving such targets and projected measures and timetables for achieving such targets. The authority shall formulate an annual report and audit of all transit planning, funding, and operations within the jurisdiction of the authority which shall be presented by December 1 of each year to the Senate and House Transportation Committees and the local governing authorities of those counties within the jurisdiction of the authority.

History. — Code 1981, § 50-39-13, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-14. Approval of projects; issuance of bonds or other financing issues; subordination of Georgia Environmental Finance Authority.

(a) In furtherance of the purposes of the authority, no project of the Georgia Rail Passenger Authority created by Article 9 of Chapter 9 of Title 46 which is located wholly or partly within the geographic area over which the authority has jurisdiction shall be commenced after May 6, 1999, unless such project is approved by the affirmative vote of two-thirds of the authorized membership of the board of directors of the authority pursuant to a motion made for that purpose; provided, however, that where such project is an approved transportation control measure pursuant to an approved state implementation plan, such project may proceed consistent with applicable federal law and regulation.

(b) From time to time, by the affirmative vote of two-thirds of the authorized membership of the board of directors of the authority, the authority may direct the Georgia Environmental Finance Authority to issue revenue bonds, bonds, notes, loans, credit agreements, or other obligations or facilities to finance, in whole or in part, any project or the cost of any project of the authority wholly or partly within the geographic area over which the authority has jurisdiction, by means of a loan, extension of credit, or grant from the Georgia Environmental Finance Authority to the authority, on such terms or conditions as shall be concluded between the two authorities; provided that such debt is consistent with the state debt management plan as established by the Georgia State Financing and Investment Commission pursuant to

Chapter 17 of this title, the "Georgia State Financing and Investment Commission Act."

(c) The Georgia Environmental Finance Authority shall be subordinate to the authority in all respects, with respect to authority projects, within the geographic area over which the authority has jurisdiction; and, in the event of any conflict with the provisions of Chapter 23 of this title, the provisions of this chapter shall prevail in all respects. It is expressly provided, however, that nothing in this Code section and nothing in this chapter shall be construed to permit in any manner the alteration, elimination, or impairment of any term, provision, covenant, or obligation imposed on any state authority, including but not limited to this authority, the Georgia Environmental Finance Authority, the Georgia Regional Transportation Authority, or the Georgia Rail Passenger Authority, for the benefit of any owner or holder of any bond, note, or other obligation of any such authority.

History. — Code 1981, § 50-39-14, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-15. Power of eminent domain; limitations.

(a) After the adoption by the authority of a resolution declaring that the acquisition of the real property described therein is necessary for the purposes of this chapter, the authority may exercise the power of eminent domain in the manner provided in Title 22; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of such power; provided, however, that the provisions of Article 7 of Chapter 16 of this title shall not be applicable to the exercise of the power of eminent domain by the authority. Property already devoted to public use may be acquired, except that no real property belonging to the state other than property acquired by or for the purposes of the Department of Transportation may be acquired without the consent of the state.

(b) Real property acquired by the authority in any manner for the purposes of this chapter shall not be subject to the exercise of eminent domain by any state department, division, board, bureau, commission, authority, or other agency or instrumentality of the executive branch of state government, or by any political subdivision of the state or any agency, authority, or instrumentality thereof, without the consent of the authority.

History. — Code 1981, § 50-39-15, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-16. United States' constitutional rights not limited.

The authority shall have all rights afforded the state by virtue of the Constitution of the United States, and nothing in this chapter shall be construed to remove any such rights.

History. — Code 1981, § 50-39-16, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-17. Limitation on liability.

Neither the members of the authority nor any officer or employee of the authority acting on behalf thereof, while acting within the scope of his or her authority, shall be subject to any liability resulting from:

(1) The construction, ownership, maintenance, or operation of any project financed with the assistance of the authority;

(2) The construction, ownership, maintenance, or operation of any project, facility, or undertaking authorized by the authority and owned by a local government; or

(3) Carrying out any of the powers expressly given in this chapter.

History. — Code 1981, § 50-39-17, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-18. Record and resource sharing between governmental entities.

(a) Upon request of the board of the authority, the Department of Transportation and the Department of Natural Resources shall provide to the authority and its authorized personnel and agents access to all books, records, and other information resources available to those departments which are not of a commercial proprietary nature and shall assist the authority in identifying and locating such information resources. Reimbursement for costs of identification, location, transfer, or reproduction of such information resources, including personnel costs incurred by the respective departments for such purposes, shall be made by the authority to those respective departments.

(b) The authority may request from time to time, and the Department of Transportation and the Department of Natural Resources shall provide as permissible under the Constitution and laws of this state, the assistance of personnel and the use of facilities, vehicles, aircraft, and equipment of those departments, and reimbursement for all costs and salaries thereby incurred by the respective departments shall be made by the authority to those respective departments.

History. — Code 1981, § 50-39-18, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

ARTICLE 3

FUNDING

50-39-30. Utilization of funding resources.

In accomplishing its purposes pursuant to the provisions of this chapter, the authority may utilize, unless otherwise prohibited by law, any combination of the following funding resources:

(1) Revenue bonds as authorized by this chapter;

(2) Guaranteed revenue bonds as authorized by this chapter;

(3) Funds obtained in a special district, for the purposes of providing transit services, transit projects, and air quality services within such district or, by contract with, between, and among local governments within such special districts, throughout such districts;

(4) Moneys borrowed by the authority pursuant to the provisions of this chapter;

(5) Such federal funds as may from time to time be made available to the authority or for purposes coincident with the purposes of the authority within the territory over which the authority has jurisdiction; and

(6) Such grants or contributions from persons, firms, corporations, or other entities as the authority may receive from time to time.

History. — Code 1981, § 50-39-30, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-31. Responsibility for use of federal funds.

The authority may serve as the entity to discharge all duties imposed on the state by any act of Congress allotting federal funds to be expended for transit projects and purposes within the jurisdiction of the authority. Unless designated otherwise by the federal government, the authority shall be designated as the proper and sole authority to receive any of the federal aid funds apportioned by the federal government for use within the jurisdiction of the authority and may disburse such funds in accordance with the purposes of this article. This Code section shall not be deemed to impair or interfere in any manner with any existing rights under a contract entered into prior to December 1, 2018, or any federal grants or agreements awarded or entered into prior to

December 1, 2018. This Code section shall not be applicable to projects or services provided for under the terms of a contract entered into as of December 1, 2018, under the authority granted pursuant to a local constitutional amendment set out at Ga. L. 1964, p. 1008; and the planning, funding, coordination, and delivery of such projects or services shall be as provided for by such contract or contracts.

History. — Code 1981, § 50-39-31, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930; Ga. L. 2019, p. 1056, § 50/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in the last sentence of this Code section.

50-39-32. Revenue bonds.

(a)(1) The authority shall have the power and is authorized at one time or from time to time to provide by one or more authorizing resolutions for the issuance of revenue bonds, but the authority shall not have the power to incur indebtedness under this subsection in excess of the cumulative principal sum of $1 billion, but excluding from such limit bonds issued for the purpose of refunding bonds which have been previously issued. The authority shall have the power to issue such revenue bonds and the proceeds thereof for the purpose of paying all or part of the costs of any project or undertaking, which is for the purpose of exercising the powers delegated to it by this chapter, and the construction and provision of such installations and facilities as the authority may from time to time deem advisable to construct or contract for those purposes, as such undertakings and facilities shall be designated in the resolution of the board of directors authorizing the issuance of such bonds; provided that such debt is consistent with the state debt management plan as established by the Georgia State Financing and Investment Commission pursuant to Chapter 17 of this title, the "Georgia State Financing and Investment Commission Act."

(2) The revenue bonds and the interest payable thereon shall be exempt from all taxation within the state imposed by the state or any county, municipal corporation, or other political subdivision of the state.

(b) In addition, the authority shall have the power and is authorized to issue bonds in such principal amounts as the authority deems appropriate, such bonds to be primarily secured by a pool of obligations issued by local governments when the proceeds of the local government obligations are applied to projects of the authority.

(c) The authority shall have the power from time to time to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to

refund bonds then outstanding and partly for any other corporate purpose.

(d) Bonds issued by the authority may be general or limited obligations payable solely out of particular revenues or other moneys of the authority as may be designated in the proceedings of the authority under which the bonds shall be authorized to be issued, subject to any agreements entered into between the authority and state agencies, local government, or private parties and subject to any agreements with the owners of outstanding bonds pledging any particular revenues or moneys.

(e)(1) The authority is authorized to obtain from any department, agency, or corporation of the United States of America or governmental insurer, including the state, any insurance or guaranty, to the extent now or hereafter available, as to or for the payment or repayment of interest or principal, or both, or any part thereof on any bonds or notes issued by the authority or on any obligations of federal, state, or local governments purchased or held by the authority; and to enter into any agreement or contract with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the authority to perform and fulfill the terms of any agreement made with the owners of the bonds or notes of the authority.

(2) Bonds issued by the authority shall be authorized by resolution of the authority, be in such denominations, bear such date or dates, and mature at such time or times as the authority determines to be appropriate, except that bonds and any renewal thereof shall mature within 25 years of the date of their original issuance. Such bonds shall be subject to such terms of redemption, bear interest at such rate or rates payable at such times, be in registered form or book-entry form through a securities depository, or both, as to principal or interest or both principal and interest, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution of the authority may provide; provided, however, in lieu of specifying the rate or rates of interest which the bonds to be issued by an authority are to bear, the resolution of the authority may provide that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest which may be fixed or may fluctuate or otherwise change from time to time as specified in the resolution or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate, which rate may be fixed or may fluctuate or otherwise change from time to time, as specified. Bonds may be sold at public or private sale for such price or prices as the authority shall determine.

(3) Any resolution or resolutions authorizing bonds or any issue of bonds may contain provisions which may be a part of the contract with the owners of the bonds thereby authorized as to:

(A) Pledging all or part of its revenues, together with any other moneys, securities, contracts, or property, to secure the payment of the bonds, subject to such agreements with bond owners as may then exist;

(B) Setting aside of reserves and the creation of sinking funds and the regulation and disposition thereof;

(C) Limiting the purpose to which the proceeds from the sale of bonds may be applied;

(D) Limiting the right of the authority to restrict and regulate the use of any project or part thereof in connection with which bonds are issued;

(E) Limiting the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(F) Setting the procedure, if any, by which the terms of any contract with bond owners may be amended or abrogated, including the proportion of bond owners which must consent thereto and the manner in which such consent may be given;

(G) Creating special funds into which any revenues or other moneys may be deposited;

(H) Setting the terms and provisions of any trust, deed, or indenture or other agreement under which the bonds may be issued;

(I) Vesting in a trustee or trustees such properties, rights, powers, and duties in trust as the authority may determine;

(J) Defining the acts or omissions to act which may constitute a default in the obligations and duties of the authority to the bond owners and providing for the rights and remedies of the bond owners in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this chapter;

(K) Limiting the power of the authority to sell or otherwise dispose of any environmental facility or any part thereof or other property, including municipal bonds held by it;

(L) Limiting the amount of revenues and other moneys to be expended for operating, administrative, or other expenses of the authority;

(M) Providing for the payment of the proceeds of bonds, obligations, revenues, and other moneys to a trustee or other depository and for the method of disbursement thereof with such safeguards and restrictions as the authority may determine; and

(N) Establishing any other matters of like or different character which in any way affect the security for the bonds or the rights and remedies of bond owners.

(4) In addition to the powers conferred upon the authority to secure its bonds, the authority shall have power in connection with the issuance of bonds to enter into such agreements as the authority may deem necessary, consistent, or desirable concerning the use or disposition of its revenues or other moneys or property, including the mortgaging of any property and the entrusting, pledging, or creation of any other security interest in any such revenues, moneys, or property and the doing of any act, including refraining from doing any act, which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this chapter and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the owners of bonds of the authority.

(5) Any pledge of or other security interest in revenues, moneys, accounts, contract rights, general intangibles, or other personal property made or created by the authority shall be valid, binding, and perfected from the time when such pledge is made or other security interest attaches without any physical delivery of the collateral or further act, and the lien of any such pledge or other security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

(6) All bonds issued by the authority shall be executed in the name of the authority by the chairperson and secretary of the authority and shall be sealed with the official seal or a facsimile thereof. The facsimile signature of the chairperson and the secretary of the authority may be imprinted in lieu of the manual signature if the authority so directs. Bonds bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid, notwithstanding the fact that before or after delivery thereof such person ceased to hold such office.

(7) Prior to the preparation of definitive bonds, the authority may issue interim receipts, interim certificates, or temporary bonds ex-

changeable for definitive bonds upon the issuance of the latter; the authority may provide for the replacement of any bond which shall become mutilated or be destroyed or lost.

(8) All bonds issued by the authority under this chapter may be executed, confirmed, and validated under and in accordance with Article 3 of Chapter 82 of Title 36, except as otherwise provided in this chapter.

(9) The venue for all bond validation proceedings pursuant to this chapter shall be Fulton County, and the Superior Court of Fulton County shall have exclusive final court jurisdiction over such proceedings.

(10) Bonds issued by the authority shall have a certificate of validation bearing the facsimile signature of the clerk of the Superior Court of Fulton County and shall state the date on which said bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court of this state.

(11) The authority shall reimburse the district attorney for his or her actual costs, if any, associated with the bond validation proceedings. The fees payable to the clerk of the Superior Court of Fulton County for validation shall be as follows for each bond, regardless of the denomination of such bond:

(A) Fifty cents each for the first 100 bonds;

(B) Twenty-five cents each for the next 400 bonds; and

(C) Ten cents for each such bond over 500.

(12) Whether or not the bonds of the authority are of such form and character as to be negotiable instruments, the bonds are made negotiable instruments within the meaning of and for all the purposes of Georgia law subject only to the provisions of the bonds for registration.

(13) Neither the members of the authority nor any person executing bonds shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof.

(14) The authority, subject to such agreements with bond owners as then may exist, shall have power out of any moneys available therefor to purchase bonds of the authority, which shall thereupon be canceled, at a price not in excess of the following:

(A) If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date; or

(B) If the bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the bonds become subject to redemption, plus accrued interest to the next interest payment date.

(15) In lieu of specifying the rate or rates of interest which bonds to be issued by the authority are to bear, the notice to the district attorney or the Attorney General, the notice to the public of the time, place, and date of the validation hearing, and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest, which rate may be fixed or may fluctuate or otherwise change from time to time, specified in such notices and petition and complaint or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate, which rate may be fixed or may fluctuate or otherwise change from time to time, so specified; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint.

History. — Code 1981, § 50-39-32, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930; Ga. L. 2019, p. 1056, § 50/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(1) and subsection (c).

50-39-33. Guaranteed revenue bonds; exemption from taxation.

(a) The authority shall have the power and is authorized to issue guaranteed revenue bonds in a maximum aggregate principal amount not to exceed $1 billion, under the terms and conditions set forth in this chapter, pursuant to the provisions of Article 2 of Chapter 17 of this title, which bonds shall constitute guaranteed revenue debt under Article VII, Section IV, Paragraph III of the Constitution of this state; provided that such debt is consistent with the state debt management plan as established by the Georgia State Financing and Investment Commission pursuant to Chapter 17 of this title, the "Georgia State Financing and Investment Commission Act." The General Assembly hereby finds and determines that such issue will be self-liquidating over the life of the issue and declares its intent to appropriate an amount equal to the highest annual debt service requirements for such issue. The proceeds of such bonds and the investment earnings thereon shall be used to finance transit services or transit projects, including any costs of such projects.

(b) The guaranteed revenue bonds and the interest payable thereon shall be exempt from all taxation within the state imposed by the state

or any county, municipal corporation, or other political subdivision of the state.

History. — Code 1981, § 50-39-33, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930; Ga. L. 2019, p. 1056, § 50/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in the second sentence of subsection (a).

50-39-34. Bonds as securities; investments.

The bonds of the authority are made securities in which all public officials and bodies of the state and all counties and municipalities, all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business, and administrators, guardians, executors, trustees, and other fiduciaries and all other persons whatsoever, who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and may be received by all public officers and bodies of this state and all counties and municipalities for any purposes for which the deposit of bonds or other obligations of this state are now or hereafter may be authorized.

History. — Code 1981, § 50-39-34, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930; Ga. L. 2019, p. 1056, § 50/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation near the end of the first sentence of this Code section.

50-39-35. Protection and assurances to bond owners.

The State of Georgia does pledge to and agree with the owners of any bonds issued by the authority pursuant to this chapter that the state will not alter or limit the rights vested in the authority to fulfill the terms of any agreement made with or for the benefit of the owners of bonds or in any way impair the rights and remedies of bond owners until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such owners, are fully met and discharged or funds for the payment of such are fully provided. The authority is authorized to include this pledge and agreement of the state in any agreement with bond owners.

History. — Code 1981, § 50-39-35, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-36. Exemption from Georgia Uniform Securities Act.

The offer, sale, or issuance of bonds, notes, or other obligations by the authority shall not be subject to regulation under Chapter 5 of Title 10, known as the "Georgia Uniform Securities Act of 2008." No notice, proceeding, or publication except those required in this chapter shall be necessary to the performance of any act authorized in this chapter; nor shall any such act be subject to referendum.

History. — Code 1981, § 50-39-36, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-37. State debt not created; guarantee of payment.

No bonds, notes, or other obligations of and no indebtedness incurred by the authority, other than guaranteed revenue bonds, shall constitute an indebtedness or obligation or a pledge of the faith and credit of the State of Georgia or of its agencies; nor shall any act of the authority in any manner constitute or result in the creation of an indebtedness of the state or its agencies or a cause of action against the state or its agencies; provided, however, the state, to the extent permitted by its Constitution, may guarantee payment of such bonds, notes, or other obligations as guaranteed revenue debt.

History. — Code 1981, § 50-39-37, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-38. Authority is created for benefit of the state's people; tax exemption.

It is found, determined, and declared that the creation of this authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter. For such reasons the state covenants with the owners from time to time of the bonds, notes, and other obligations issued under this chapter that the authority shall not be required to pay any taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others, or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise, and that the bonds, notes, and other obligations of the authority, their transfer, and the

income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this chapter shall include an exemption from sales and use tax on property purchased by the authority or for use by the authority.

History. — Code 1981, § 50-39-38, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-39. Approval by the commission.

The issuance of any bond, revenue bond, note, or other obligation or incurring of debt, public or otherwise, by the authority must be approved by the commission established by Article VII, Section IV, Paragraph VII of the Constitution of the State of Georgia of 1983 or its successor.

History. — Code 1981, § 50-39-39, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-40. Calculating debt limitations.

No bonded indebtedness of any kind shall be incurred by the authority or on behalf of the authority by the Georgia Environmental Finance Authority at any time when the highest aggregate annual debt service requirements of the state for the then current fiscal year or any subsequent fiscal year for outstanding general obligation debt and guaranteed revenue debt, including the proposed debt and treating it as state general obligation debt or guaranteed revenue debt for purposes of calculating debt limitations under this Code section, and the highest aggregate annual payments for the then current fiscal year or any subsequent fiscal year of the state under all contracts then in force to which the provisions of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of 1976 are applicable, exceed 7.5 percent of the total revenue receipts, less refunds of the state treasury in the fiscal year immediately preceding the fiscal year in which any such debt is to be incurred.

History. — Code 1981, § 50-39-40, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

ARTICLE 4

PROJECT PROCEDURES FOR LOCAL GOVERNMENTS

50-39-50. "Lease agreement" defined; operation; execution; provisions.

(a) For the purposes of this Code section, the term "lease agreement" shall mean and include a lease, operating lease rental agreement, usufruct, sale and lease back, or any other lease agreement having a term of not more than 50 years and concerning real, personal, or mixed property, any right, title, or interest therein by and between the state, the authority, a local government, or any combination thereof.

(b) A local government by resolution of its governing body may enter into a lease agreement for the provision of transit services, transit projects, or air quality services utilizing facilities owned by the authority upon such terms and conditions as the authority shall determine to be reasonable including, but not limited to, the reimbursement of all costs of construction and financing and claims arising therefrom.

(c) No lease agreement shall be deemed to be a contract subject to any law requiring that a contract shall be let only after receipt of competitive bids.

(d) Any lease agreement may provide for the construction of such transit project or air quality facility by the local government as agent for the authority. In such event, all contracts for such construction shall be let by such local government in accordance with the provisions of law otherwise applicable to the letting of such contracts by such local government and with the provisions of state law pertaining to prevailing wages, labor standards, and working hours. Any such lease agreement may contain provisions by which such local government shall indemnify the authority against any and all damages resulting from acts or omissions to act on the part of such local government or its officers, agents, or employees in constructing such facility or facilities, in letting any contracts in connection therewith, or in operating and maintaining the same.

(e) Any lease agreement executed by the authority directly with any local government may provide at the termination thereof that title to the transit project or air quality facility project shall vest in the local government or its successor in interest, if any, free and clear of any liens or encumbrances created in connection with any contract or bonds, revenue bonds, notes, or other obligations involving the authority.

(f) Any lease agreement directly between the state or authority and a local government may contain provisions requiring the local government to perform any or all of the following:

(1) In the case of a transit service or transit project, to establish and collect rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) The costs of operation, maintenance, renewal, replacement, and repairs of the transit project of such local government; and

(B) Outstanding bonds, revenue bonds, notes, or other obligations incurred for the purposes of such transit project and to provide for the payment of all amounts as they shall become due and payable under the terms of such lease agreement, including amounts for the creation and maintenance of any required reserves;

(2) In the case of an air quality facility, to establish and collect rents, rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) The costs of operation, maintenance, renewal, and repairs of the air quality facility of such local government; and

(B) Outstanding bonds, revenue bonds, notes, or other obligations incurred for the purposes of such air quality facility and to provide for the payment of all amounts as they shall become due and payable under the terms of such lease agreement, including amounts for the creation and maintenance of any required reserves;

(3) To create and maintain reasonable reserves or other special funds;

(4) To create and maintain a special fund or funds as additional security for the punctual payment of any rentals due under such lease agreement and for the deposit therein of such revenues as shall be sufficient to pay said lease rentals and any other amounts becoming due under such lease agreements as the same shall become due and payable; or

(5) To perform such other acts and take such other action as may be deemed necessary and desirable by the authority to secure the complete and punctual performance by such local government of such lease agreements and to provide for the remedies of the authority in the event of a default by such local government in such payment.

History. — Code 1981, § 50-39-50, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-51. Payment for costs of a project; optional conditions; local government power to contract; fees.

(a) The authority may make grants or loans to a local government to pay all or any part of the cost of a project. In the event the local government agrees to accept such grants or loans, the authority may require the local government to issue bonds or revenue bonds as evidence of such grants or loans. The authority and a local government may enter into such loan commitments and option agreements as may be determined appropriate by the authority.

(b) The authority may require as a condition of any grant or loan to a local government that such local government shall perform any or all of the following:

(1) In the case of grants or loans for transit services or transit projects, establish and collect rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) Costs of operation, maintenance, replacement, renewal, and repairs; and

(B) Outstanding indebtedness incurred for the purposes of such service, project, or facility, including the principal of and interest on the bonds, revenue bonds, notes, or other obligations issued by the local government, as the same shall become due and payable, and to create and maintain any required reserves;

(2) In the case of grants or loans for an air quality facility, establish and collect rents, rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) Costs of operation, maintenance, renewal, replacement, and repairs of the air quality facility of such local government; and

(B) Outstanding indebtedness incurred for the purposes of such air quality facility, including the principal of and interest on the bonds, revenue bonds, notes, or other obligations issued by the local government, as the same shall become due and payable, and to create and maintain any required reserves;

(3) Create and maintain a special fund or funds, as additional security for the payment of the principal of such revenue bonds and the interest thereon and any other amounts becoming due under any agreement, entered into in connection therewith and for the deposit therein of such revenues as shall be sufficient to make such payment as the same shall become due and payable;

(4) Create and maintain such other special funds as may be required by the authority; and

(5) Perform such other acts, including the conveyance of real and personal property together with all right, title, or interest therein to the authority, or take other actions as may be deemed necessary or desirable by the authority to secure the payment of the principal of and interest on such bonds, revenue bonds, notes, or other obligations and to provide for the remedies of the authority in the event of any default by such local government in such payment.

(c) All local governments issuing and selling bonds, revenue bonds, notes, or other obligations to the authority are authorized to perform such acts, take such action, adopt such proceedings, and to make and carry out such contracts with the authority as may be contemplated by this chapter.

(d) In connection with the making of any loan authorized by this chapter, the authority may fix and collect such fees and charges, including, but not limited to, reimbursement of all costs of financing by the authority, as the authority shall determine to be reasonable. Neither the Public Service Commission nor any local government or state agency shall have jurisdiction over the authority's power over the regulation of such fees or charges.

History. — Code 1981, § 50-39-51, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-52. Withholding of funds to local government.

(a) In the event of a failure of any local government to collect and remit in full all amounts due to the authority and all amounts due to others, which involve the credit or guarantee of the authority or of the state, on the date such amounts are due under the terms of any bond, revenue bond, note, or other obligation of the local government, it shall be the duty of the authority to notify the state treasurer who shall withhold all funds of the state and all funds administered by the state, its agencies, boards, and instrumentalities allotted to such local government, excluding funds for education purposes, until such local government has collected and remitted in full all sums due and cured or remedied all defaults on any such bond, revenue bond, note, or other obligation.

(b) Nothing contained in this Code section shall mandate the withholding of funds allocated to a local government which would violate contracts to which the state is a party, the requirements of federal law imposed on the state, or judgments of any court binding the state.

History. — Code 1981, § 50-39-52, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-53. Grant programs; pilot program formation; factors to be considered in selecting pilot projects; procedures; eligible projects.

(a) As used in this Code section, the term:

(1) "Local government authority" and "state" mean the same as under 49 U.S.C. Section 5302.

(2) "Public-private project initiative" means a local or regional streetcar project which is proposed and advanced by a cooperative entity or sponsor that involves a combined public and private sector financing and development structure which includes not for profit entities.

(3) "Streetcar" includes, but is not limited to, a rail transit vehicle, including a modern, antique, or reproduction vehicle, that is designed to fit the scale and traffic patterns of the neighborhoods through which it travels and operates at lower speeds generally in existing rights of way through mixed traffic, with frequent stops.

(b) The authority shall establish and implement a five-year grant program to provide assistance to local governmental authorities as well as a public-private project initiative for the capital, technical, and start-up costs of development and expansion of streetcar transportation and attendant economic and community development opportunities. The five-year grant program shall begin when funding becomes available for such purposes. The five-year grant program may be renewed at the end of each five-year period, consistent with the provisions of this Code section.

(c) The authority will work closely with the formation of a pilot program and will provide a state-level flow through point for any available federal funding or other forms of financial and development sources and assistance for local, regional, and public-private streetcar projects.

(d) The authority shall consider the following factors in its selection of projects that will be implemented by this pilot program:

(1) The project is ripe for development, construction, and operation;

(2) The project application demonstrates strong local and private sector financial participation in the project;

(3) The project will foster redevelopment opportunities adjacent to the streetcar line for which assistance is being sought;

(4) The project includes the financial participation of the private owners of real property abutting the streetcar line, with the exception

of owner occupied residential properties, for some of the capital costs of the project;

(5) The project application demonstrates that development or redevelopment agreements are in place with respect to the project and land planning policies complimentary to the project have been adopted for land in close proximity to the streetcar line, including the availability of property zoned to accommodate mixed use development adjacent to the streetcar line;

(6) The project application demonstrates either how redeveloping or new neighborhoods on vacant or underutilized land will be connected by the project to each other or to major attractors in the central city where the project will be carried out or how circulator or connector lines under the project will connect developed neighborhoods with one another or with the business district in the central city;

(7) The project has demonstrated desirable levels of local financial and linking resources commitment; and

(8) The project may include, and is encouraged to include, a public-private project initiative and organizational structure or sponsor.

(e) The authority will coordinate with all appropriate metropolitan, regional, and municipal planning and development agencies where projects may be pursued and will coordinate with the Atlanta-region Transit Link "ATL" Authority and appropriate local transit agencies in the development, funding, and implementation of various streetcar projects.

(f) In order to receive grant assistance under this Code section, a sponsor of a project must submit to the authority an application that includes a detailed operating plan for the streetcar line for which such assistance is being sought, including the frequency of service, hours of operation, stop locations, and demonstration of the financial capacity of the sponsor to operate the streetcar line.

(g) A project for which grant assistance may be provided under this Code section may include streetscaping, signalization modifications, and other modifications to the road system or other public rights of way on which the project is to be carried out; acquisition of streetcars; and project construction, design, and engineering.

History. — Code 1981, § 32-10-76, enacted by Ga. L. 2006, p. 498, § 2/SB 150; Code 1981, § 50-39-53, as redesignated by Ga. L. 2018, p. 377, § 4-13/HB 930; Ga. L. 2019, p. 1056, § 50/SB 52.

The 2018 amendment, effective July 1, 2021, redesignated former Code Section 32-10-76 as this Code section, and effective May 3, 2018, substituted "Atlanta-region Transit Link 'ATL' Au-

thority" for "Georgia Regional Transportation Authority" in the middle of subsection (e).

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, substituted "Atlanta-region" for "Atlanta region" in subsection (e).

Editor's notes. — Ga. L. 2006, p. 498, § 1/SB 150, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Community Streetcar Development and Revitalization Act.'"

Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

ARTICLE 5

CONSTRUCTION AND APPLICATION

50-39-60. Liberal construction.

This chapter, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes specified in this chapter.

History. — Code 1981, § 50-39-60, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

50-39-61. Application of Chapter 1 of Title 40.

No provision of Chapter 1 of Title 40 shall apply to any bus, other motor vehicle, or rapid rail system of the authority which provides transit services.

History. — Code 1981, § 50-39-61, enacted by Ga. L. 2018, p. 377, § 2-1/HB 930.

CHAPTER 40

PROMOTION AND DEPLOYMENT OF BROADBAND SERVICES

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Cross references. — Promotion of deployment of broadband services by broadband services providers, § 36-70-6.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, the chapter as enacted by Ga. L. 2018, p. 629, § 6-1/SB 402, was redesignated as Chapter 40.

Editor's notes. — Ga. L. 2018, p. 629, § 1/SB 402, not codified by the General

Assembly, provides that: "This Act shall be known and may be cited as the 'Achieving Connectivity Everywhere (ACE) Act.'"

Administrative rules and regulations. — Achieving Connectivity Everywhere ACE, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Affairs, Chapter 110-36.

RESEARCH REFERENCES

Am. Jur. 2d. — 15B Am. Jur. 2d, Computers and the Internet, § 1 et seq.

ARTICLE 1

GENERAL PROVISIONS

50-40-1. Definitions.

As used in this chapter, the term:

(1) "Broadband network project" means any deployment of broadband services.

(2) "Broadband services" means a wired or wireless terrestrial service that consists of the capability to transmit at a rate of not less than 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction to end users and in combination with such service provides:

(A) Access to the internet; or

(B) Computer processing, information storage, or protocol conversion.

(3) "Broadband services provider" means any provider of broadband services or a public utility or any other person or entity that builds or owns a broadband network project.

(4) "Development authority" shall have the same meaning as provided in Code Section 36-62A-20.

(5) "Eligible applicants" means any or all public bodies, designated by the Department of Community Affairs pursuant to paragraph (2) of subsection (b) of Code Section 50-40-81, as political subdivisions qualified to apply for funds under this article.

(6) "Local authority" shall have the same meaning as provided in Code Section 36-82-220.

(7) "Location" means any residence, dwelling, home, business, or building.

(8) "Political subdivision" means a county, municipal corporation, consolidated government, or local authority.

(9) "Qualified broadband provider" means an entity that is authorized to apply for or that obtains a certificate of authority issued pursuant to Code Section 46-5-163 that:

(A)(i) Has, directly or indirectly, been providing broadband services to at least 1,000 locations; and

(ii) Has been conducting business in the state for at least three years with a demonstrated financial, technical, and operational capability to operate a broadband services network; or

(B) Is able to demonstrate financial, technical, and operational capability to operate a broadband services network.

(10) "Served area" means a census block that is not designated by the Department of Community Affairs as an unserved area.

(11) "Unserved area" means a census block in which broadband services are not available to 20 percent or more of the locations as determined by the Department of Community Affairs pursuant to Article 2 of this chapter.

History. — Code 1981, § 50-40-1, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402; Ga. L. 2021, p. 922, § 50/HB 497.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "internet" for "Internet" in subparagraph (2)(A).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-81" was substituted for "Code Section 50-39-81" in paragraph (5).

Law reviews. — For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018).

50-40-2. Coordination of state-wide efforts; development of policies and programs; annual reporting and required information; cooperation between state agencies.

(a) The Georgia Technology Authority is authorized and directed to establish and implement such policies and programs as are necessary to coordinate state-wide efforts to promote and facilitate deployment of broadband services and other emerging communications technologies throughout the state. Such policies and programs may include, but are not limited to, the following:

(1) A written state-wide broadband services deployment plan and the development of recommendations for the promotion and implementation of such a plan;

(2) Technical support and advisory assistance to state agencies, including, but not limited to, the Department of Community Affairs and the OneGeorgia Authority, in developing grant programs, designation programs, and other programs to promote the deployment of broadband services and other emerging communications technologies;

(3) A periodic analysis performed in conjunction with the State Properties Commission of any state assets, including, but not limited to, real property and structures thereon, that may be leased or otherwise utilized for broadband services deployment; and

(4) Coordination between state agencies, local governments, industry representatives, community organizations, and other persons that control access to resources, such as facilities and rights of way, that may be used for the deployment of broadband services and other emerging communications technologies, that apply for or receive federal funds for the deployment of broadband services and other emerging communications technologies, and that promote economic and community development.

(b) The Georgia Technology Authority shall submit copies of an annual report to the Lieutenant Governor, the Speaker of the House of Representatives, and the Governor regarding the policies and programs established by the authority as provided in subsection (a) of this Code section. Such report shall specifically include information as to the status of attainment of state-wide deployment of broadband services and other emerging communications technologies and industry and technology trends in broadband services and other emerging communications technologies. The Georgia Technology Authority shall also provide such report to all members of the General Assembly; provided, however, that the authority shall not be required to distribute copies of the report to the members of the General Assembly but shall notify the members of the availability of such report in the manner which it deems to be most effective and efficient. Furthermore, such report may be a part of or submitted in conjunction with the report required to be submitted by the Department of Community Affairs pursuant to Code Section 50-40-84.

(c) All state agencies shall cooperate with the Georgia Technology Authority and its designated agents by providing requested information to assist in the development and administration of policies and programs and the annual report provided for in this Code section.

(d) The Georgia Technology Authority shall promulgate any policies necessary to effectuate the provisions of this Code section.

History. — Code 1981, § 50-40-2, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-84" was substituted for "Code Section 50-39-84" at the end of subsection (b).

50-40-3. Confidential and proprietary nature of information provided by broadband service providers.

All information provided by a broadband services provider pursuant to this chapter shall be presumed to be confidential, proprietary, a trade secret as such term is defined in Code Section 10-1-761, and subject to exemption from disclosure under state and federal law and shall not be subject to disclosure under Article 4 of Chapter 18 of this title, except in the form of a map where information that could be used to determine provider-specific information about the network of the broadband services provider is not disclosed. Except as otherwise provided in this chapter, such provider-specific information shall not be released to any person other than to the submitting broadband services provider, the Department of Community Affairs or the Georgia Technology Authority, agents designated to assist in developing the map provided for in Article 2 of this chapter, employees of the Department of Community Affairs or the Georgia Technology Authority, and attorneys employed by or under contract with the Department of Community Affairs or the Georgia Technology Authority without express permission of the submitting broadband services provider. Such information shall be used solely for the purposes stated under this chapter.

History. — Code 1981, § 50-40-3, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

ARTICLE 2

AREA IDENTIFICATION

50-40-20. Determination of served and unserved areas.

The Department of Community Affairs shall determine those areas in the state that are served areas and unserved areas and shall publish such findings.

History. — Code 1981, § 50-40-20, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

50-40-21. Development, publication and utilization of map identifying underserved areas.

(a) On or before January 1, 2019, the Department of Community Affairs shall publish on its website a map showing the unserved areas in the state.

(b) The Department of Community Affairs shall consult with the Federal Communications Commission in determining if a map showing the unserved areas, as determined by the Department of Community

Affairs, exists. If on or before July 1, 2018, the Department of Community Affairs determines that such a map does not exist, then such a map shall be created by the Department of Community Affairs or an agent designated by the Department of Community Affairs. Such agent may include the Georgia Technology Authority or other entities and individuals that are determined by the Department of Community Affairs to possess the necessary prerequisites to assist the department in creating such a map. Any such map created by the Department of Community Affairs shall take into consideration any information received pursuant to subsections (c) and (d) of this Code section and Code Section 50-40-22. If the Department of Community Affairs determines that such a map does exist that was not created by the Department of Community Affairs or an agent designated by the Department of Community Affairs, then its website may link to such existing map in lieu of republishing such map.

(c) All local governments shall cooperate with the Department of Community Affairs and any agent designated by the Department of Community Affairs by providing requested information as to addresses and locations of broadband services and other emerging communications technologies within their jurisdictions.

(d) The Department of Community Affairs and any agent designated by the Department of Community Affairs may request information from all broadband services providers in the state in developing a map or making the determination as to the percentage of locations within a census block to which broadband services are not available.

History. — Code 1981, § 50-40-21, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402; Ga. L. 2019, p. 1056, § 50/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in the second sentence of subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-22" was substituted for "Code Section 50-39-22" at the end of the fourth sentence in subsection (b).

50-40-22. Petition contesting maps.

(a) An entity that is authorized to apply for or that obtains a certificate of authority pursuant to Code Section 45-5-163, a broadband services provider, or a political subdivision may file a petition with the Department of Community Affairs along with data specifying locations or census blocks which the petitioner alleges should be designated differently than as shown on the map published on the website of the Department of Community Affairs pursuant to Code Section 50-40-21. Upon receipt of such petition and data, the Department of Community Affairs shall provide notice of the petition on the Department of Community Affairs' website and shall notify all broadband services

providers furnishing broadband services in such census block or any census block in which any such locations are positioned. Such broadband services providers shall have 45 days after the date such notice is sent to furnish information to the Department of Community Affairs showing whether the locations that are the subject of the petition currently have broadband services available. The Department of Community Affairs shall determine whether the designation of such locations or census blocks should be changed and shall issue such determination within 75 days of the date the notice is sent to the broadband services provider.

(b) Any determination made by the Department of Community Affairs pursuant to this Code section shall be final and not subject to review, and any such determination shall not be a contested case under Chapter 13 of Title 50, "Georgia Administrative Procedure Act."

History. — Code 1981, § 50-40-22, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402; Ga. L. 2019, p. 1056, § 50/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-21" was substituted for "Code Section 50-39-21" at the end of the first sentence of subsection (a).

ARTICLE 3

BROADBAND COMMUNITIES

50-40-40. Certification as broadband ready community; requirements for certification.

(a) A political subdivision that has a comprehensive plan that includes the promotion of the deployment of broadband services, as required pursuant to Code Sections 36-70-6 and 50-8-7.1, may apply to the Department of Community Affairs for certification as a broadband ready community. The department shall by rules and regulations prescribe the form and manner for making an application. The department shall prescribe by rules and regulations a process for public notice and comment on an application for a period of at least 30 days after such application is received, except that such process shall not apply to an application by a political subdivision that enacts a model ordinance developed by the department under Code Section 50-40-41.

(b) The department shall approve an application and certify a political subdivision as a broadband ready community if the department determines that such political subdivision has enacted an ordinance that complies with Code Section 50-40-41. If the process for public notice and comment applies to an application, the department

shall, before approving such application, consider any public comments made regarding such application.

History. — Code 1981, § 50-40-40, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-41" was substituted for "Code Section 50-39-41" throughout the Code section.

50-40-41. Requirements for local ordinances for reviewing applications and issuing permits; development of model ordinances; monitoring compliance.

(a) A political subdivision shall not be certified as a broadband ready community unless such political subdivision enacts an ordinance for reviewing applications and issuing permits related to broadband network projects that provides for all of the following:

(1) Appointing a single point of contact for all matters related to a broadband network project;

(2) Requiring such political subdivision to determine whether an application is complete and notifying the applicant about such determination in writing within a certain time period after receiving such application; provided, however, that any delay in the processing of an application that is outside the control of such political subdivision and that is directly caused by or attributable to a natural disaster, a state of emergency, a mandated federal review or approval, the receipt of multiple applications by the same or different applicants within a relatively short period of time, another political subdivision's review or approval, or through fault of the applicant shall not count toward the days allotted within such time period;

(3) If the political subdivision receives an application that is incomplete, requiring the written notification provided for under paragraph (2) of this subsection to specify in detail the required information that is incomplete;

(4) If such political subdivision does not make the written notification required under paragraph (2) of this subsection, requiring such political subdivision to consider an application to be complete;

(5) Within a certain time period after receiving an application that is complete, requiring such political subdivision to approve or deny such application and provide the applicant notification in writing of such approval or denial;

(6) That any fee imposed by such political subdivision to review an application, issue a permit, or perform any other activity related to a broadband network project shall be reasonable, cost based, and nondiscriminatory to all applicants; and

(7) Any other information or specifications as may be required by the department by rules and regulations related to ensuring ready access to the public rights of way and infrastructure.

(b) The department, with input from broadband services providers and local governments, shall develop a model ordinance for the review of applications and the issuance of permits related to broadband network projects that complies with subsection (a) of this Code section that may be enacted by a political subdivision.

(c) If a political subdivision enacts an ordinance that differs from the model ordinance developed by the department, the political subdivision shall, when applying for certification under Code Section 50-40-40, provide the department with a written statement that describes the ordinance enacted by such political subdivision and how such ordinance differs from the model ordinance.

(d) After certification of a political subdivision as a broadband ready community, the department shall continue to monitor such political subdivision's compliance with the broadband ready community eligibility requirements provided in subsection (a) of this Code section to ensure that the ordinance is still in effect and that such political subdivision's actions are in conformance with such ordinance.

History. — Code 1981, § 50-40-41, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-40" was substituted for "Code Section 50-39-40" in the middle of subsection (c).

50-40-42. Decertification by department.

A political subdivision that the department has certified as a broadband ready community under Code Section 50-40-41 may be decertified by the department if it:

(1) Imposes an unreasonable or noncost based fee to review an application or issue a permit for a broadband network project. Any application fee that exceeds $100.00 shall be considered unreasonable unless such political subdivision can provide documentation justifying such fee based on a specific cost;

(2) Imposes a moratorium of any kind on the approval of applications or issuance of permits for broadband network projects or on construction related to broadband network projects;

(3) Discriminates among broadband services providers with respect to any action described in this article or otherwise related to a broadband network project, including granting access to public rights of way, infrastructure and poles, river and bridge crossings, or any other physical assets owned or controlled by such political subdivision; or

(4) As a condition for approving an application or issuing a permit for a broadband network project, requires the applicant to:

(A) Provide any service or make available any part of the broadband network project to such political subdivision; or

(B) Except for reasonable and cost based fees allowed, make any payment to or on behalf of such political subdivision.

History. — Code 1981, § 50-40-42, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-41" was substituted for "Code Section 50-39-41" in the introductory paragraph.

50-40-43. Request for decertification from broadband service provider; determination on reasonableness of fee.

(a) Upon the request of a broadband services provider, the department may decertify a political subdivision as a broadband ready community if such political subdivision fails to act in accordance with the ordinance required for certification under Code Section 50-40-41, modifies such ordinance so that such ordinance no longer complies with subsection (a) of Code Section 50-40-41, or violates any provision of Code Section 50-40-42.

(b) Upon a complaint that an application fee under an ordinance required for certification under Code Section 50-40-41 is unreasonable, the department shall determine whether or not such fee is reasonable. In the proceeding for making such determination, the political subdivision shall have the burden of proving the reasonableness of any action undertaken by such political subdivision as part of the application process and the reasonableness of the costs of such actions.

History. — Code 1981, § 50-40-43, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-41" was substituted for "Code Section 50-39-41" in subsections (a) and (b), and "Code Section 50-40-42" was substituted for "50-39-42" at the end of subsection (a).

50-40-44. Priority of certain projects.

A broadband network project targeting industry development or construction of a new building for which a political subdivision that has been certified as a broadband ready community under Code Section 50-40-40 is seeking financing from the OneGeorgia Authority, as provided for in Chapter 34 of this title, shall be given priority by the OneGeorgia Authority.

History. — Code 1981, § 50-40-44, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code

Section 50-40-40" was substituted for "Code Section 50-39-40" in the middle of this Code section.

50-40-45. Regulatory authority.

The department shall promulgate any reasonable and necessary rules and regulations to effectuate the provisions of this article.

History. — Code 1981, § 50-40-45, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

ARTICLE 4

GEORGIA BROADBAND READY COMMUNITY SITE DESIGNATION PROGRAM

50-40-60. "Broadband services" defined.

As used in this article, the term "broadband services" means the provision of access to the internet or computer processing, information storage, or protocol conversion.

History. — Code 1981, § 50-40-60, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402; Ga. L. 2021, p. 922, § 50/HB 497.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "internet" for "Internet" in this Code section.

50-40-61. Creation of Georgia Broadband Ready Community Site Designation Program.

In order to encourage economic development and attract technology enabled growth in Georgia, the Department of Community Affairs shall, with the assistance of the Department of Economic Development, create and administer the "Georgia Broadband Ready Community Site Designation Program." Such program shall designate facilities and developments that offer broadband services at a rate of not less than 1 gigabit per second in the downstream to end users that can be accessed for business, education, health care, government, and other public purposes as a Georgia Broadband Ready Community Site.

History. — Code 1981, § 50-40-61, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

50-40-62. Evaluation of applicant information; promotion.

(a) The Department of Community Affairs or its designated agents shall evaluate the information submitted by applicants for designation as a Georgia Broadband Ready Community Site to confirm, based on

the best available local, state, and federal broadband information, that at least 1 gigabit of broadband services is available within the facility or development.

(b) The Department of Economic Development shall promote the Georgia Broadband Ready Community Site Designation Program and shall promote the facilities and developments so designated as local community assets. Upon certification of a facility or development as a Georgia Broadband Ready Community Site, the Department of Community Affairs shall notify the Department of Economic Development so that the Department of Economic Development may provide standardized graphics and materials to the owner or owners of such facility or development and the county or municipal corporation in which such facility or development is located in order to promote the status of the site as a Georgia Broadband Ready Community Site.

History. — Code 1981, § 50-40-62, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

50-40-63. Regulatory authority of Department of Community Affairs.

The Department of Community Affairs shall be authorized to adopt and promulgate such rules and regulations as may be reasonable and necessary to carry out the purposes of this article.

History. — Code 1981, § 50-40-63, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

ARTICLE 5

GEORGIA BROADBAND DEPLOYMENT INITIATIVE

50-40-80. Legislative findings.

(a) The General Assembly recognizes that access to broadband services in today's society is essential to everyday life. Access to broadband services is a necessary service as fundamental as electricity, gas, or phone service. There is a growing need for the government of this state to provide the much needed infrastructure to the homes and businesses without access to broadband services due to their location in rural and other unserved areas. Furthermore, the General Assembly finds and declares that ensuring broadband services deployment will have a positive effect on education, health care, public safety, business and industry, government services, and leisure activities throughout the entire state. The General Assembly also finds and declares that guaranteeing an equitable deployment of broadband services throughout the state is a public necessity, one of the basic functions of

government, and a benefit to the entire state. Moreover, the General Assembly finds and declares that it is in the best interest of the state and the persons who live and work in the state to spend state funds through the establishment of a grant program to ensure the creation of a state-wide foundation of broadband services infrastructure in unserved areas of the state.

(b) The General Assembly hereby finds and determines that the economic benefits that will inure to the State of Georgia and designated political subdivisions from the Georgia Broadband Deployment Initiative provided for in this article and from the performance by private sector persons and entities of the obligations that they will incur in connection with such Georgia Broadband Deployment Initiative, will be equal to or greater than the benefits to be derived by such private sector persons and entities in connection therewith, and that, therefore, the Georgia Broadband Deployment Initiative does not violate the prohibition in the Georgia Constitution on the payment by public bodies of gratuities to private sector persons or entities.

History. — Code 1981, § 50-40-80, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

50-40-81. Development of Georgia Broadband Deployment Initiative; funding awards; considerations; priorities; compliance with federal provisions.

(a) On or before July 1, 2019, the Department of Community Affairs shall develop the "Georgia Broadband Deployment Initiative" program to provide funding awards to expand broadband services to unserved areas of the state. The goal of such program shall be to provide broadband services coverage throughout the entire state. The funding awards of the program shall represent the state's investment in the deployment of broadband services to unserved areas and shall be used only for capital expenses and expenses directly related to the purchase or lease of property or communications services or facilities, including, without limitation, backhaul and transport, to facilitate the provision of broadband services.

(b)(1) Funding awards, in the form of grants or loans, shall be competitively awarded to eligible applicants based on criteria consistent with this article and other factors established by the department; provided, however, that the department shall not discriminate between different types of broadband services technology as long as the technology is capable of transmitting data at the rates specified for each unserved area.

(2) The department shall designate political subdivisions as eligible applicants that shall be qualified to apply for funding awards

under this article. All such eligible applicants are hereby granted all powers necessary for any and all purposes of the program, and in the case of any development authority included as an eligible applicant, the exercise of such powers is hereby found and determined to promote the development of trade, commerce, industry, and employment opportunities.

(c) Funding awards shall be based on appropriations of funds or receipt of other funds to support the program.

(d) The department shall consider each of the following in the funding awards process:

(1) The effectiveness of the partnership between an eligible applicant and a qualified broadband services provider;

(2) The benefit to the unserved area in terms of the population served and the capacity and scalability of the technology to be deployed; and

(3) The total project cost and the ability to leverage other available federal, local, and private funds.

(e) In addition to the criteria provided in subsection (d) of this Code section, the department may establish any other criteria for determining any funding awards that are reasonable and necessary to ensure that the funds are utilized to provide broadband services to the unserved areas. Such criteria may include, but shall not be limited to:

(1) Whether the qualified broadband services provider in the partnership is willing to agree to:

(A) Not charge more for broadband services to customers in any unserved area for which a funding award is received than it does for the same or similar broadband services to customers in other areas of the state;

(B) Serve 90 percent of any locations requesting broadband services in any unserved area for which a funding award is received; and

(C) Meet or exceed in any unserved area for which it receives a grant a minimum level of dependable service as established by the department;

(2) The benefit to businesses; industrial parks; education centers; hospitals and other health care facilities, such as telehealth facilities and emergency care facilities; government buildings; public safety departments; or other providers of public services located within the unserved area;

(3) Data cap limits, signal latency, and reliability of the technology to be utilized;

(4) Historic service issues in other areas served by the qualified broadband provider in the partnership; and

(5) The length of time it will take to deploy the broadband services in the unserved area.

(f) The department shall give competitive priority to any unserved area certified as a broadband ready community as provided in Article 3 of this chapter. Partnerships that include qualified broadband providers that cooperate in providing information requested pursuant to subsection (d) of Code Section 50-40-21, as applicable, shall also factor favorably into the competitive funding awards process.

(g) The department shall ensure that the program complies with all applicable federal laws, rules, and regulations.

History. — Code 1981, § 50-40-81, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402; Ga. L. 2019, p. 1056, § 50/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in the last sentence of subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-21" was substituted for "Code Section 50-39-21" in subsection (f).

50-40-82. Oversight and coordination of state efforts for broadband services.

In addition to developing the program provided for in Code Section 50-40-81, the Department of Community Affairs shall provide oversight and coordination of state efforts to apply for, utilize, and implement public and private grants, programs, designations, and other resources for the deployment of broadband services and other emerging communications technologies.

History. — Code 1981, § 50-40-82, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-81" was substituted for "Code Section 50-39-81" in this Code section.

50-40-83. Regulatory authority and administration of program.

The Department of Community Affairs shall promulgate and enforce any reasonable and necessary rules and regulations to effectuate the provisions of this article and administer any of the programs provided for in this article.

History. — Code 1981, § 50-40-83, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

50-40-84. Progress report; publication.

On June 30, 2019, and on each June 30 thereafter, the Department of Community Affairs shall submit a report to the Lieutenant Governor, the Speaker of the House of Representatives, and the Governor on the progress in achieving the purposes of this article, including, at a minimum the status of any funding awards. Such report may be a part of or submitted in conjunction with the report required to be submitted by the Georgia Technology Authority pursuant to Code Section 50-40-2. Such report shall be published on the website of the Department of Community Affairs.

History. — Code 1981, § 50-40-84, enacted by Ga. L. 2018, p. 629, § 6-1/SB 402.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, the subsection (a) designation was deleted.

Pursuant to Code Section 28-9-5, in 2018, "Code Section 50-40-2" was substituted for "Code Section 50-39-2" at the end of the second sentence.

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