



# Legislative Update

Volume # 3, Issue 13– April 29, 2012

## 2012 Session of the General Assembly Ends

Georgia lawmakers adjourned the 2012 legislative session at midnight on Thursday, March 29<sup>th</sup>. Over the past three months, legislators have addressed major issues ranging from open meetings and open records to criminal justice reform to tax reform. Many of these issues will have a direct impact on county operations.

Please review the summary of legislation below for more information on the 2012 General Assembly Session. ACCG will distribute a final report once the 40 days (May 8<sup>th</sup>) that the Governor has to sign or veto the bills has expired.

ACCG thanks all the commissioners and county staff that supported our legislative agenda this year by meeting with legislators and making personal contact through phone calls and e-mails. County officials serve as the critical component of the ACCG legislative network. Your involvement was instrumental in helping ACCG staff stop or modify several bills that would have been detrimental to Georgia's local governments.

## Bills Passed

### **ECONOMIC DEVELOPMENT & TRANSPORTATION**

**[Staff: Clint Mueller - Economic Development/Todd Edwards - Transportation]**

#### **HB 817 DOT Annual Clean Up Bill**

(Rep. Chad Nimmer, 178<sup>th</sup>)

*Effective July 1, 2012* - This is DOT's annual cleanup bill. Among other provisions it increases, from \$100,000 to \$250,000, the amount that DOT is allowed to contract for without having to go out to bid; allows posting a bid on their website to satisfy the public bid requirement and suffice for having read the bid; and sets out conditions on when, and under what conditions, DOT can close or limit access to state highways. Additionally, counties will no longer be required to get the DOT Commissioner's permission to designate local truck routes so long as they notify DOT of said designation within 90 days of doing so.

#### **HB 835 Increase Weight Limits for Tow Trucks**

(Rep. Jay Roberts, 154<sup>th</sup>)

*Effective July 1, 2012* - This bill allows for a 5-percent weight variance for tow trucks carrying disabled, damaged or wrecked commercial vehicles within 100 miles of the initial emergency tow pick up location. Said variance requires the purchase of a \$500 annual permit from the DOT. Tow trucks could not exceed a single axle

weight of 21,000 pounds, a load on any tandem axle exceeding 40,000 pounds, or a total load length exceeding 125 feet.

#### **HB 868 Job Tax Credits Designated by Tiers**

(Rep. Doug Collins, 27<sup>th</sup>)

*Effective January 1, 2012* - This legislation is part of the Governor's Competitive Initiative to make Georgia's tax incentives for new job creation more competitive with other states. The bill expands eligibility and increases benefits for job creation.

#### **HB 897 Georgia Workforce Investment Board**

(Rep. Michael Harden, 28<sup>th</sup>)

*Effective July 1, 2012* - This bill repeals the Georgia Work Ready Program and greatly revises the rule-making authority and overview of the Georgia Workforce Investment Board.

**SB 371 Authorize Counties to Improve Airports with CID Funds**

(Sen. Lindsey Tippins., 37<sup>th</sup>)

*Effective July 1, 2012* - This bill authorizes cities and counties to enter into cooperative agreements with Community Improvements Districts (CIDs) for the

improvement of airports and landing fields within the CID.

**GENERAL COUNTY GOVERNMENT**  
**[Staff: Todd Edwards and Jim Grubiak]**

**HB 110 Local Government Foreclosed and Vacant Property Registry**

(Rep. Mike Jacobs, 80<sup>th</sup>)

*Effective July 1, 2012* - HB 110 sets forth procedures to which a county or city must adhere in developing registries for foreclosed and vacant real property. The intent of these registries is to identify responsible parties that can be held accountable for properly maintaining the properties so that surrounding neighborhoods are not adversely affected. The bill defines foreclosed and vacant properties and imposes a cap on registration fees at \$100 per registration and fines for noncompliance at no more than \$1000. The bill also expressly allows local governments to require owners of the registered properties to update contact information for properties in the registry. While ACCG opposed earlier versions of the bill which were designed to make registries infeasible, HB 110 in its current form, is acceptable.

an employee. This bill was introduced in response to a recent court decision that said that using non-lawyers to file an answer constitutes the illegal practice of law. The bill would also allow the designated person to pay into the court the funds required by the garnishment.

**HB 685 Responsible Dog Ownership Law**

(Rep. Gene Maddox, 172<sup>nd</sup>)

*Effective July 1, 2012* - HB 685 extensively revises provisions relating to dangerous and vicious dogs, defining both, and providing for liability to owners for injuries and damage (to persons or property) caused by these dogs.

All counties and cities will have to designate an individual as a "dog control officer" to aid in the administration and enforcement of the act, with cities and counties being able to partner and provide one officer over multiple jurisdictions. The dog control officer will receive complaints, make a determination whether a dog is dangerous or vicious, notify owners of said determination and will participate in a hearing process if it occurs. They will also set out standards by which such dogs can be impounded or euthanized, maintain a registry of such dogs, and ensure the enforcement of other aspects of the law such as having these dogs micro chipped and that vicious dogs carry liability insurance of no less than \$50,000.

**HB 397 Open Meetings/Open Records Comprehensive Rewrite**

(Rep. Jay Powell, 171<sup>st</sup>)

*Effective April 17, 2012*- HB 397 updates and re-organizes the open meetings and open records laws. While there are some significant substantive changes proposed in the bill, many of the amendments clarify the requirements of existing law. The bill defines a meeting as the "gathering" of a quorum of a board of commissioners or a committee created by the board. E-mail messages between commissioners will not be considered a meeting. The bill also enhances the attorney-client privilege relative to the open records act and revised the cost recovery provisions of the law by reducing the per copy fee for standard-sized paper from \$.25/page to \$.10/page. However, counties can recover the actual cost of producing non-standard sized documents. **To read more see Appendix A.**

The bill expressly allows local governments to charge any and all reasonable fees for administering the law; to be more restrictive in their regulations on dangerous and vicious dogs than prescribed by these minimum standards; and stipulates that local governments cannot be held liable for their failure to enforce any of these provisions that result in a person suffering an injury by a dangerous or vicious dog.

**HB 683 Authorize Non-Attorneys to Answer Garnishment Procedures**

(Rep. Wendell Willard, 49<sup>th</sup>)

*Effective February 7, 2012* - HB 683 allows the county and other employers to designate someone other than an attorney to file an answer to a garnishment filed against

**HB 728 Clarifies Covenants Effect Created Prior to the Adoption of Zoning Laws**

(Rep. Rick Jasperse, 12<sup>th</sup>)

*Effective July 1, 2012* - HB 728 specifies that covenants that restrict property to certain uses that were created before zoning laws were adopted in a county or city will

continue to be effective until the covenant expires according to its terms notwithstanding contrary provisions of the zoning ordinance. However, this limitation applies only to those covenants where the zoning ordinance, upon its initial enactment, expressly acknowledged the continuing application of the covenant's restrictions on uses of the lands subject to the covenant.

#### **HB 766 Authorize Counties to Display Foundation of American Law**

(Rep. Tommy Benton, 31<sup>st</sup>)

*Effective July 1, 2012* - Current state statute authorizes counties to display the Foundations of American Law and Government in judicial buildings. HB 766 expands this statute to authorize said display in any public building. Examples of the Foundations of American Law include the Ten Commandments, Mayflower Compact, Declaration of Independence, Magna Carta and Bill of Rights.

#### **HB 822 Georgia Taxpayer Protection False Claims Act**

(Rep. Edward Lindsey, 54<sup>th</sup>)

*Effective July 1, 2012* - HB 822 establishes a procedure in equity that could be used whenever someone makes a false or fraudulent claim for payment from the state or a county or fails to deliver all or any property owed to the state or a county to the state or county. It allows the Attorney General to initiate an investigation or to delegate the investigation to the district attorney "or other appropriate official of a local government." If the Attorney General finds that a violation occurred, he may either initiate a civil action or give the local government the authority to initiate a civil action. Private citizens may also initiate a proceeding on the county's behalf. A private person winning such a case may be awarded between 25% and 35% of the proceeds of the action. The civil penalty is between \$5,000 and \$11,000 plus three times the amount of damages that the county sustains because of the fraud. This bill is similar to existing state Medicaid fraud law and brings the state law into compliance with federal Medicaid fraud law.

#### **SB 92 Comprehensive Update of State Elections Law**

(Sen. Joshua McKoon, 29<sup>th</sup>)

*Effective upon signature of the Governor* - SB 92 is the Secretary of State's comprehensive elections bill much of which was developed in cooperation with local elections officials. The bill make numerous changes throughout the election code including changes to: nonpartisan elections; minimum number of members to county election or registration boards; pauper petitions; write-in candidates; candidates selecting their political affiliation; registrar and deputy registrar qualifications; absentee ballot counting; special election voter registration; registration lists and deceased electors; election records

storage; electronic device usage in a polling place; ballots; issuance of the call for elections held in conjunction with presidential preference primary; General Assembly vacancies; provisional and challenged ballots; reopening of qualifying periods; and timing of nonpartisan consolidated government elections. SB 92 was a vehicle for several election bills including HB 725, HB 776 and HB 899. The bill has multiple effective dates. **To read more see Appendix B.**

#### **SB 101 Create Student Teen Election Participant Program**

(Sen. Jesse Stone, 23<sup>rd</sup>)

*Effective upon signature of the Governor* - This bill creates a program whereby full-time public, private, and home-schooled high school students may volunteer to work as poll officers. The volunteer work shall not count as an absence from school.

#### **SB 113 Procurement - Clarifying Performance Contracting Process**

(Sen. Buddy Earl Carter, 1<sup>st</sup>)

*Effective upon signature of the Governor* - This bill exempts energy savings performance contracts from the requirements of the local government public works construction law. Counties will still be required to follow the procedures established in the energy savings performance contract statute, but certain provisions that were not intended to apply to county government have been removed (i.e., requiring the use of the State's prequalified list of providers). Counties will be required to issue a request for proposals to at least two qualified energy service providers, as well as advertise the contract opportunity by posting it at the board of commissioners' office and on the county's website, if one exists.

#### **SB 286 Tax Commissioners and Staff: Participation in State Retirement System if County Agrees**

(Sen. Bill Heath, 31<sup>st</sup>)

*Effective July 1, 2012* - Under current law, tax commissioners and their employees are members of the state retirement system. SB 286 would allow all tax commissioners presently in office and any current employees of a tax commissioner to remain in the state system but tax commissioners first taking office after July 1, 2012 and any employees of a tax commissioner first hired after that date will not automatically be participants in the state retirement system. The county board of commissioners may, however, agree to include them in the state system so long as the county pays to the state the employer's contribution for each such tax commissioner and employee. The county must also agree to collect any employee contributions from the employee and forward same to the state retirement system.

**SB 402 Authorizes Alternative Investment Options for Public Retirement Systems**

(Sen. Tim Golden, 8<sup>th</sup>)

*Effective July 1, 2012* - This bill authorizes, but does not require, the state retirement system and other large retirement systems to invest trust assets in specified alternative investments subject to certain conditions and

limitations. Examples of alternative investments include leveraged buyout funds, mezzanine funds, debt funds and venture capital funds. Alternative investments cannot in the aggregate exceed 5 percent of a retirement system's assets at any time.

**HEALTH & HUMAN SERVICES**

[Staff: Debra Nesbit]

**SB 370 Chase's Law - Prohibition of Synthetic Marijuana**

(Sen. Buddy Earl Carter, 1<sup>st</sup>)

*Effective July 1, 2012* - This legislation updates the statutory drug formulations so as to outlaw the components of synthetic marijuana, bath salts, etc.

**NATURAL RESOURCES & ENVIRONMENT**

[Staff: Todd Edwards]

**HB 684 Locals to Have Notice of State Park Closings**

(Rep. Debbie Buckner, 130<sup>th</sup>)

*Effective upon signature of the Governor* - Under this bill, whenever the Department of Natural Resources is considering closing or reducing (by 50 percent or more) the hours of operation of a state park or recreational area, they are required to provide at least 90 days notice to the city or county in which the park or recreational area is located. The idea being that, with due notice, the local government would have ample time to decide whether it wanted to take over the control, operation and/or management responsibilities.

septage disposal rules (compromise language ACCG agreed to).

Calculating and Paying Sewer Bills -requiring any privately-owned public water supplier who is not providing sewer service to a location, but the sewer service is provided by a local government, to inform the public sewer provider of the water used by each customer (to help calculate appropriate sewer bills). Furthermore, if the customer is not paying his or her public sewer bill, the private water provider must discontinue water service within 5 days of being informed by sewer provider of non-service (to help enforce sewer bill payment).

**HB 1102 Hazardous Sites, Septage Land Disposal Permitting and Sewer Bill Collection**

(Rep. Lynn Smith, 70<sup>th</sup>)

*Effective upon signature of the Governor*-A multi-faceted bill, HB 1102 originally established a 30-day grace period for liability limitation for a purchaser of a hazardous site. It was amended late in the session to also address:

Septage Land Disposal Permitting Delay - providing a two-year extension for septage land disposal sites to have to obtain EPD permitting under the standing DNR

**SB 427 EPD Permits - Paying More to Expedite**

(Sen. Ross Tolleson, 20<sup>th</sup>)

*Effective July 1, 2013* -SB 427 calls for the Director of the state Environmental Protection Division (EPD) to establish procedures whereby EPD will expedite permits or variances if the applicant pays an additional fee. The EPD Director must also establish a process whereby all permit/variance applicants may track the status of their application via a secure connection to the EPD's website.

**PUBLIC SAFETY & the COURTS**  
[Staff: Debra Nesbit]

**HB 198 Eliminates Sunset for Superior Court Clerks Real Estate Filing Fees**

(Rep. Tom Rice, 51<sup>st</sup>)

*Effective July 1, 2012*—Under current law, certain fees are collected by the superior court clerks in conjunction with recording certain property records that are given to the Georgia Superior Court Clerks' Cooperative Authority to help fund a state-wide uniform automated information system. This funding mechanism is scheduled to terminate on July 1, 2014. HB 198 eliminates this sunset.

**HB 247 Department of Community Health Requirement to Fingerprint and Investigate EMS Personnel**

(Rep. Jay Neal, 1<sup>st</sup>)

*Effective July 1, 2012* - HB 247 requires anyone licensed as an emergency medical service provider to be fingerprinted based on a criminal history check from the Georgia Criminal Information Center and the Federal Bureau of Investigation when they are being licensed or having their licenses renewed. Emergency medical services employees who are currently licensed will only be required to pay a fee for the criminal history background check to renew their licenses. This bill was amended to allow employers to submit an affidavit stating a criminal background check was completed on employees. This bill was further amended to provide authority to the Firefighters Standards and Training Council to refuse to grant a certificate or to discipline a certified firefighter upon the determination that the applicant or firefighter has been convicted of a felony offense.

**HB 351 Increase in Probate Court Judges Retirement Surcharge - Include State Court**

(Rep. Howard Maxwell, 17<sup>th</sup>)

*Effective July 1, 2012* - This bill eliminates the tiered surcharge on traffic fines to fund probate judges retirement. There will now be a \$3.00 surcharge on every traffic case.

**HB 534 Change in Population of Counties where Probate Judge Must be Attorney**

(Rep. Carol Fullerton, 151<sup>st</sup>)

*Effective July 1, 2012*—HB 534 lowers the population threshold before which a probate judge must be an attorney from 96,000 to 90,000.

**HB 541 Obstruction of Public Administration**

(Rep. James Epps, 140<sup>th</sup>)

*Effective July 1, 2012*—This bill makes it a crime to threaten or intimidate a public official for actions taken in his or her official capacity. Violation is a felony and punished by a fine between \$5,000 and \$20,000 and/or ten years imprisonment.

**HB 665 Office of Clerk of Superior Court - Comprehensive Administrative Changes**

(Rep. Billy Maddox, 127<sup>th</sup>)

*Effective July 1, 2012* - This is a comprehensive bill that is meant to "modernize" the code sections dealing with the clerk of superior court duties. Among the provisions of the bill are requirements to increase the bond executed by the clerk from \$25,000 to \$150,000, the cost of the bond is paid by the governing authority; all publications required by the clerk's office relative to federal, state and local law and digest shall be paid from law library fund; the clerk's office may close for up to eight hours every six months for training with 10 days public notice and approval of the chief superior court judge; no clerk may agree to acquire services, supplies, or equipment that requires expenditure of county funds unless the funds to be obligated are included in the budget of the county for the operation of the clerk's office; when a case is transferred from magistrate court to state or superior court, the filing fee shall also be transferred and the balance of the filing fee in state or superior court is due to the county within 30 days of the transfer; Part III of the bill is HB 763 which prohibits convicted felons from serving as a juror unless his or her civil rights have been restored.

**HB 827 Fleeing or Attempting to Elude a Police Vehicle or Impersonating and Police Officer A Felony Offense**

(Rep. Bill Hembree, 67<sup>th</sup>)

*Effective July 1, 2012* - This bill would make it a felony for a driver to fail to stop when given a visual or audible signal from a law enforcement officer.

**HB 872 Comprehensive Revision of Secondary Metal Theft Recyclers and Metal Theft Requirements**

(Rep. Jason Shaw, 176<sup>th</sup>)

*Section 1 Effective January 1, 2013; All other Provisions effective July 1, 2012* - HB 872 is a compromise bill which includes provisions from the Senate version SB 321. This legislation requires secondary metal recyclers to obtain a permit from the sheriff every year. The sheriff is required to keep a record of all permits, the date of

issuance, as well as the name and address of the permit holder. All of the information must be entered into a statewide electronic database created by the GBI. The sheriff may impose a reasonable permit fee. **To read more see Appendix C.**

#### **HB 900 Cancellation of Certificate of Title for Scrap Metal from Dismantled or Demolished Trailers**

(Rep. Tom Rice, 51<sup>st</sup>)

*Effective July 1, 2012-* HB 900 provides for cancellation of trailer titles when the trailer is scrapped, dismantled, or demolished. The bill seeks to prevent trailer theft for scrap metal purposes.

#### **HB 991 Sheriffs Vacancy - Procedures for Filling**

(Rep. Billy Maddox, 127<sup>th</sup>)

*Effective July 1, 2012-* HB 991 revises the procedure for filling vacancies in the Sheriff's office. The revised procedure is clearly outlined in statute and allows for the chief deputy to fill the vacancy until the next election is held. If there is no chief deputy the probate judge must appoint someone within three days.

#### **HB 997 Makes Filing a False Lien Statement Against Public Officers a Crime**

(Rep. B.J.Park, 102<sup>nd</sup>)

*Effective July 1, 2012 -* HB 997 creates the new felony crime of filing a false lien or encumbrance against a public officer or public employee. The maximum fine is \$10,000.

#### **HB 1048 Statewide Process Server Certification - Removal of Sheriff's Approval**

(Rep. Wendell Willard, 49<sup>th</sup>)

*Effective July 1, 2012 -* This bill amends who may serve process so that a person, 18 or over, who is not a party and has been appointed as a permanent process server by that court can no longer serve. It further removes the requirement that the sheriff must approve certified process servers for their county. This bill also sets a filing fee of \$58 for an application to be appointed as a certified process server.

#### **HB 1049 Clarification of Definition Prepaid Cellular Service for Purpose of 911 Fees**

(Rep. Wendell Willard, 49<sup>th</sup>)

*Effective July 1, 2012 -* This legislation requires that all Voice Over Internet Protocol (VOIP) service suppliers register as a provider with GEMA for purposes of paying required 9-1-1 fees. The bill provides a definition of prepaid cellular service to all forms of prepaid service, and clarifies that prepaid cellular service providers are not eligible to bill local government for cost recovery.

#### **HB 1176 Criminal Justice Reform**

(Rep. Rich Golick, 34<sup>th</sup>)

*Effective dates range from July 1, 2012 to July 1, 2014 for various sections -* This legislation is an attempt to reduce the prison population by implementing sweeping changes to Georgia's criminal justice system. The proposed changes will result in more cases handled at the local level and will impact local jails.

The bill amends the drug court and mental health court statute to facilitate the creation a statewide system of accountability courts for drug offenders and offenders with mental health issues. Funding was added to the FY 2012 budget to assist local governments in the implementation of new accountability courts and for existing programs.

The bill reduces prison terms for nonviolent offenses, and raises the threshold on a number of felony offenses, which will result in an increase in the county courts caseloads. There is also a revision of the punishment guidelines for a number of crimes, including burglary, shoplifting, forgery and the sale or use of marijuana. Fine amounts were increased to generate additional support for these caseloads at the local level.

Expands the number of offenses to which the Drug Abuse, Treatment and Education (DATE) Fund surcharge attach. The surcharge will now be on an expanded list of felony drug offenses, misdemeanor offenses including DUI and underage alcohol possession. This surcharge will attach to cases at all levels of court, including municipal courts, and must be remitted to county governing authority for the DATE fund, these revenues can be used to operate DUI and Drug courts.

Maximum fees for pretrial diversion programs have been increased as well as fine amounts for various misdemeanor offenses. **To read more see Appendix D.**

#### **HR 1731 House Motor Vehicle and Traffic Reform Study Committee**

(Rep. Tom Rice, 51<sup>st</sup>)

*Effective on July 1, 2012 -* The study committee consists of seven members to be appointed by the Speaker of the House. The speaker shall designate a member of the committee as the chair. The committee will study the conditions, needs, issues and problems related to the traffic laws of the state and recommend action or legislation deemed necessary.

**SB 50 Change in Priority Order for Partial Payments of Fines and Surcharges**(Sen. Bill Hamrick, 30<sup>th</sup>)

*Effective on July 1, 2012* - Often times, criminal defendants do not pay all of their criminal fines, surcharges and other fees all at one time. When only a partial payment is made, Georgia law establishes priorities for how the funds are distributed to the various funds and agencies to which they are owed. SB 50 reorders the fees and adds funding of local victim assistance programs to the priority list. The list was reordered to place all fees that are kept locally or benefit local government ahead of all fees that are remitted to the state. The local governing authority has moved up to number 9 on this list from 14 in the last version of the bill.

**SB 350 Forfeiture of Firearms Used in Commission of a Crime**(Sen. Don Balfour, 9<sup>th</sup>)

*Effective July 1, 2012* - SB 350 specifies that guns forfeited because of their use in the commission of a crime must be disposed of to the highest bidder once they are no longer of use to the law enforcement agency. Before disposing of the gun, law enforcement must try to find the rightful owner, if it is suspected that the gun may have been stolen. Guns that belong to innocent owners must be returned to those owners.

**SB 351 Requires Recorder's Court Judges to Complete Municipal Judge Training Program**(Sen. John Crosby, 13<sup>th</sup>)

*Effective July 1, 2012* - This bill requires a judge "exercising municipal court jurisdiction" such as Recorder's Court to complete the same training as a municipal court judge at the expense of the governing authority where the judge presides. Probate, Magistrate, State and Superior Court Judges are exempt from this requirement.

**SB 352 Appointment of Prosecutors In Lower Courts**(Sen. John Crosby, 13<sup>th</sup>)

*Effective July 1, 2012* - This bill allows the probate court to hire a full time or part time prosecuting attorney (i.e., solicitor) to represent the county in prosecutions in the probate court. The board of commissioners must initially approve the decision to hire a solicitor. The cost of creating an office and personnel needs of the solicitor would be an expense of the county.

**SB 431 Prohibition on Internet Cafes**(Sen. Judson Hill, 32<sup>nd</sup>)

*Effective July 1, 2012* - SB 431 provides any promotion involving an element of chance which involves the playing of a game on a computer, mechanical device or electronic device at a place of business in this state shall be considered an unlawful lottery. Any prizes awarded from games shall be non-cash prizes and shall not be redeemable for cash.

**SB 432 Counties Cannot Enact Any Ordinance More Restrictive Than General Law on Knife Sales**(Sen. Bill Heath, 31<sup>st</sup>)

*Effective July 1, 2012* - This bill defines a "knife" as any cutting instrument with a blade. It further limits counties and cities from adopting ordinances or resolutions on knife sales and possession that are more restrictive than state law.

**SB 441 Establishment of an Offense of Unlawful Pointing of a Laser Device at a Law Enforcement Officer**(Sen. John Crosby, 13<sup>th</sup>)

*Effective July 1, 2012* - SB 441 creates the new crime of pointing a laser device at a peace officer. This offense is a high and aggravated misdemeanor.

**REVENUE & FINANCE****[Staff: Clint Mueller]****HB 48 Expanded Options for the Freeport Exemption**(Rep. Jay Powell, 171<sup>st</sup>)

*Effective July 1, 2011* - HB 48 designates the current freeport law as Level 1 Freeport. It provides for a new level of freeport which is designated as Level 2 Freeport. This new level of freeport applies to business inventory that does not otherwise qualify for a Level 1 Freeport. Other than this, Level 2 Freeport is imposed and operates in the same manner as Level 1 Freeport. It first requires approval by the governing authority. It can be set at 20, 40, 60, 80, or 100% of the value of the property. Finally, it requires voter approval in a local referendum.

Level 2 Freeport is completely separate and distinct from Level 1 Freeport. A local jurisdiction has complete flexibility to choose the type of Freeport(s) it desires as well as the percentage value of each of the exemptions. A county could have a Level 1 only, a Level 2 only, or it could have both. It has the flexibility to have the same or to have different percentages of exemption percentage for the exemptions. For example, it could have Level 1 at 100% and Level 2 at 40%.

### **HB 386 Tax Reform**

(Rep. Mickey Channell, 116<sup>th</sup>)

*Effective January 1, 2013 Energy Excise Tax; Effective March 1, 2013 Vehicle Title Tax* - HB 386 makes several changes to tax laws that will impact county governments. Part 1 replaces property tax and sales tax on vehicles with a new title tax (See Appendix E for details). Part 3 prohibits local governments from holding a conservation easement unless the encumbered real property is located at least partly within the boundary of the holding local government. Part 4 repeals the state and local sales tax exemption on film equipment and production. Part 5 phases out the state and local sales tax on energy used in manufacturing and authorizes local governments to replace their lost revenue with a local excise tax on energy used in manufacturing (See Appendix F for more details). Part 6 creates an affiliate nexus for companies that are not currently collecting state and local sales tax on remote sales to Georgia residents. This nexus will require these companies to begin collecting the sales tax. This part also renews the Back-to-School Sales Tax Holiday and the energy efficient sales tax holiday. **To read more see Appendix E and F.**

### **HB 743 Motor Fuel Tax Exemption for Public Transit and Public Campus Systems**

(Rep. Tom Rice, 151<sup>st</sup>)

*Effective July 1, 2012* - This bill extends the exemptions from the first and second motor fuel taxes for certain public mass transit vehicles owned by public transportation systems and for vehicles operated by public campus transportation systems until June 30, 2015. The current exemptions are scheduled to sunset on June 30, 2012.

### **HB 916 Amendments to Conservation Use Special Assessments**

(Rep. David Knight, 126<sup>th</sup>)

*Effective upon signature of the Governor* - HB 916 removes the land up to two acres around a residential home from future CUVA covenants. The bill also prohibits counties

from setting minimum acreage requirements and allows for newly acquired property less than 50 acres to be added to an existing covenant.

### **SB 284 Georgia Land Bank Act**

(Sen. Tim Golden, 8<sup>th</sup>)

*Effective July 1, 2012* - This legislation authorizes local governments to jointly participate in a land bank authority through intergovernmental agreement. It provides a self-financing mechanism for the land bank, at the option of the local governing authority. It expands the number of board members on the land bank authority to ensure an odd number of board members. **To read more see Appendix G.**

### **SB 293 Replaces County Name Decal with "In God We Trust" on License Plates**

(Sen. Bill Heath, 31<sup>st</sup>)

*Effective July 1, 2012* - This bill requires tag offices to offer vehicle owners a free decal with the county name or a decal with "In God We Trust" for their license plates.

### **SB 332 Changes in Contents of SPLOST Published Annual Report**

(Sen. William Ligon Jr., 3<sup>rd</sup>)

*Effective January 1, 2012 SPLOST Report; Effective January 1, 2013 Amendments to Energy Excise Tax* - SB 332 changes the SPLOST annual published reporting requirements to include unexpended surplus funds for project/purposes, their estimated completion date, and actual cost upon completion. The bill also requires the report to be posted on the local government website if one is available. Further, the bill adds a new provision allowing for any person or entity to enforce compliance for any provision in the SPLOST statute as well as allowing the Attorney General to seek civil or criminal enforcement. After the Tax Reform Bill was passed, an amendment was added to this bill clarifying the process for counties and cities to share the optional excise tax on energy used in manufacturing.

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## **Bills that Failed to Pass in 2012 Session**

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### **ECONOMIC DEVELOPMENT & TRANSPORTATION**

- **HB 1050** Tourism Development Act
- **HR 1378** Dedicated Fund for Maintaining Public-Use Airports
- **SB 146** Increase Truck Weight Limits
- **SB 257** Development Authorities

## **GENERAL COUNTY GOVERNMENT**

- **HB 707** Provide Valid Student Identification Card with Photograph to Vote in Elections
- **HB 730** Cannot Require nor Prohibit Bidders to/from Unions and Collective Bargaining
- **HB 802** Allow for the Subdivision of Historic Property
- **HB 811** Prevent the Redirection of Dedicated Fees
- **HB 844** Amends Revenue Bond Validation Hearing Requirements
- **HB 1065** Alcohol - Changes in Local Tax Collection Date
- **SB 98** Firearms - Allowed in County Government Buildings
- **SB 301** Hunters Authorized to Use Silencers
- **SB 458** Illegal Immigration Reform Revisions - Secure and Verifiable Documents by Mail
- **SB 493** Gun Carry Permits - Authorize Those 18 and Over to Carry After Training

## **HEALTH & HUMAN SERVICES**

- **SB 238** Requires Handicapped Persons in Motorized Wheelchairs/Scooters Use Reflectors After Dark
- **SB 341** Clarification of Definition of "Designated Felony" and Increase Detention in Juvenile Cases

## **NATURAL RESOURCES & ENVIRONMENT**

- **SB 269** Compliance with Water Pollution Rules
- **SB 374** Exempt Tennessee River Withdrawals from IBT Restrictions
- **SB 384** Prohibit Yard Trimmings Near Storm Drains
- **SB 415** EPD Wastewater Permits: Only Need Before Operating Plant
- **SB 467** Septage Land Application - Ease Regulations
- **SB 499** Require Violators to Pay for the Costs of Third-Party Monitoring

## **PUBLIC SAFETY & THE COURTS**

- **HB 372** Release of Unclaimed Bail Bonds in One Year to County General Fund
- **HB 641/SB 127** Juvenile Code Rewrite
- **HB 648/HR 977** Dedication of Indigent Defense Fees
- **HB 940** Modifies Payment Requirements for Indigent Defense Conflict Cases
- **HB 1080** Eliminate Advisory Committee for Georgia Emergency Telephone Number 9-1-1 Service Act of 1977
- **HB 1141/SB 411** Creation of the Georgia Sheriffs' Cooperative Authority
- **SB 225** Create a New Offense of Transmitting a False Report
- **SB 379** Pawn Transaction Fees--Prohibit Counties from Collecting
- **SR 801** Opposes Utilization of Inmates to Staff County and City Fire Stations
- **SR 845** Dedication of Revenues Collection from Sale of Fireworks to Trauma Care and Firefighter Services

## **REVENUE & FINANCE**

- **HB 291** Removal of Authority to Collect Fees on Property Tax Bills
- **HB 564** Solar Energy Use Allowed Under CUVA
- **HB 660** Eliminates Certain CUVA Breaches
- **HB 715** Contracting for Municipal Tax Collection
- **HB 893** Eliminate Local Governments Ability to Provide a Lien Against Solid Waste Fees
- **SB 234** Property Tax Administration Reform

- **SB 313** Competition between Public and Private Communication Service Providers
- **SB 395** Authorization to Impose a SPLOST at a Fraction of One Percent

## Appropriations

### **HB 741 FY2012 Amended Budget**

(Rep. David Ralston, 7<sup>th</sup>)

*Effective date March 15, 2012* - The supplemental appropriations bill provides for the midyear adjustment to the FY2011 budget. To view a summary of the appropriations that impact counties see listing below.

### **HB 742 FY2013 Budget**

(Rep. David Ralston, 7<sup>th</sup>)

*Effective date July 1, 2012* - This bill is the general appropriations for FY2013. To view a summary of the appropriations that impact counties see listing below.

#### **Agriculture, Department of**

- Transfers \$3.5 million in funds and 63 positions from the Department of Labor to the Department of Agriculture for the Safety Inspections program

#### **Behavioral Health and Developmental Disabilities, Department of**

- Increases state funding for community services - \$44.5 million

#### **Community Affairs, Department of**

FY 2012

- Reduce funds to Regional Commissions for Coordinated Planning - (\$51,000)
- Provides funds for Express operation in the Transit implementation program due to loss of federal and local funds - \$5.6 million
- Provided payments to OneGeorgia Authority to provide for rural economic development - \$10 million

FY 2013

- Reduce funds to Regional Commissions for Coordinated Planning (\$77,500)
- Provide payments to OneGeorgia Authority to provide for rural economic development - \$10.6 million

- Includes \$22.3 million in bonds recommended for GEFA to re-capitalize the Georgia fund
- Includes recommendation for \$20.8 million in bonds for GEFA to continue funding the Georgia Water Supply Program

#### **Corrections, Department of** FY 2012

- Increases funding for the county jail subsidy program - \$5.5 million
- Provide funding for Bostick facility (located in Baldwin County) renovation to provide 150 beds for medically fragile offenders - \$6 million
- (Health) - Convert 3 Pre-Release Centers (PRC's) to Residential Substance Abuse Treatment Centers (RSATs) to provide 600 additional treatment beds for incarcerated offenders - \$334,000
- (State Prisons) - Convert 3 Pre-Release Centers (PRC's) to Residential Substance Abuse Treatment Centers (RSATs) to provide 600 additional treatment beds for incarcerated offenders - \$4.2 million

FY 2013

- Maintains \$9.6 million for the county jail subsidy program
- Annualizes the conversion 3 Pre-Release Centers (PRC's) to Residential Substance Abuse Treatment Centers (RSATs) to provide 600 additional treatment beds for incarcerated offenders - \$5.2 million
- Annualizes the cost of 2650 beds in private prison expansion - \$35.2 million

**Economic Development, Department of**

FY 2013

- Consolidate the International Relations and Trade program into the Global commerce program - \$2.1 million
- Consolidate the Business Recruitment and Expansion into the Global Commerce program - \$7.6 million
- Reduce funding for the Plains and Sylvania Visitor Information Centers and eliminate state funding (\$4,833)
- Reduce state funding for the Bainbridge Welcome Center (\$80,000)
- Reduce state funding for the Georgia Historical Society and the Georgia Humanities Council (\$22,000)

**Georgia Bureau of Investigation**

FY 2013

- Provides new funding and transfer funding for new and existing Accountability Courts to be administered through the Criminal Justice Coordinating Council - \$11.6 million
- Provides \$1.2 million for additional scientists and equipment for drug testing requirements of Criminal Justice Reform.

**Governor's Office**

FY2012

- Transfer \$68.1 million grant funds from the Department of Labor to the Governor's Office of Workforce Development

FY 2013

- Transfers \$68.1 million grant funds from the Department of Labor to the Governor's Office of Workforce Development

**Human Services, Department of**

- Reduce Family Connection county collaborative contracts (\$140,000)

**Department of Juvenile Justice**

FY 2012

- Provide funding for 60 new Evening Reporting Centers - \$288,000
- Provide funding for 50 non-secure residential beds - \$1.9 million

- Provide funding for operating expenses of the Atlanta YDC - \$3.3 million

FY 2013

- Provides funding for 60 new Evening Reporting Centers - \$576,000
- Provides funding for 50 non-secure residential beds - \$2.7 million
- Provides funding for operating expenses of the Atlanta YDC - \$7.8 million

**Natural Resources, Department of**

FY 2013

- Provides funding from the Hazardous Waste Trust Fund to pay local government reimbursements - \$3 million
- Provides funding from the Solid Waste Trust Fund for solid waste management - \$881,000

**Prosecuting Attorney's Council**

- Provides two Assistant District Attorneys in Piedmont and Bell-Forsyth Judicial Circuits effective 1/1/13 - \$104,522

**Public Defender Standards Council (GPDSC)**

FY 2012

- Provides additional funds for conflict cases - \$339,000

FY 2013

- Provides additional funds for conflict cases - \$565,000

**Public Health, Department of**

FY 2012

- Reduce funds by for the Georgia Trauma Care Network Commission to reflect revised revenue projection for super speeder and license reinstatement fees - (\$1.7 million)

FY 2013

- Reduce funds for the Georgia Trauma Care Network Commission to reflect revised revenue projection for super speeder and license reinstatement fees - (\$1.7 million)
- Provides \$350,000 for assessment of traumatic brain injury
- Increases funds for tuberculosis detection, prevention and treatment - \$350,000

- Provides \$2.5 million to fund first year phase in for new grants to counties formula to hold harmless all counties

**Department of Public Safety**

FY 2013

- Public Safety Training Center - reduce contract with North Central Cobb Police Academy (\$44,757)
- Police Officer Standards and Training Council - provide mandatory training for newly elected sheriffs \$401,905

**Regents, Board of**

FY 2012

- Cooperative Extension Service reduction in personal services - (\$362,000)
- Public Libraries reduction in personal services and operating expenses - (\$645,000)

FY 2013

- Public Libraries reduction in personal services and operating expenses - (\$645,000)
- Adds \$394,218 in funds to New Directions formula based on increase in state population

**Revenue, Department of**

FY 2013

- Forestland Protection Grants FY12 funding level of \$14.5 million reduced by (\$400,000) for FY 13 based on expenditures
- Provides \$700,000 for initial step of a three replacement schedule for county GRATIS printers for implementation of tax reform

**Superior Courts**

- Provides funding for new judgeships in the Piedmont and Bell-Forsyth circuits effective 1/1/13 - \$350,207

**Transportation, Department of**

FY 2013

- Increase in Local Maintenance and Improvement Grants (LMIG) - \$10 million
- Transfers surplus funds from Payments to State Road and Tollway Authority program to the Capital Construction Projects program for capital outlay projects - \$13 million
- Provides contract funds for capital maintenance projects - \$34.4 million
- Provides \$500,000 for grant funds for airport project including Blairsville, Hampton, North Georgia Regional Airports, Americus, Bainbridge, Griffin, Rome and Valdosta

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**SUMMARY**  
**OPEN MEETINGS/OPEN RECORDS**  
**HOUSE BILL 397**

Effective Date: April 17, 2012

***Key Changes to Georgia's Open Meeting and Open Records Laws***

In addition to numerous substantive changes, HB 397 significantly reorganizes current law, eliminates some inconsistencies, incorporates settled case law, and in some cases, reverses case law. This summary focuses on the substantive changes of interest to counties. Note that the terms “county” or “counties” are used throughout the summary for convenience, but the changes in the bill generally affect all agencies that are subject to the open meetings and open records acts.

**SECTION I. OPEN MEETINGS**

**Agency Definition.** The current definition is expanded such that in addition to every department, agency, board, bureau, commission, authority or similar body being a covered agency, an “office” of the county or city is an agency subject to the open meetings act [§ 50-14-1 (a)(1)(C)].

**Meeting Definition.** A meeting subject to the open meetings law is defined as a gathering of a quorum where official business, policy, or a public matter of the county is presented, discussed or voted upon [§ 50-14-1 (a)(3)(A)(i)]. *Note that the proviso in current law--"at a designated time and place"--is deleted.*

**Committees.** Committees created by the county are subject to the open meetings law. If a quorum of a committee gathers for official business, that constitutes a meeting subject to the open meetings law [§ 50-14-1 (a)(3)(A)(ii)].

**Not a Meeting:**

- Inspecting facilities or property where no other official action is discussed or taken [§ 50-14-1 (a)(3)(B)(i)].
- Attending statewide or regional meetings or training where no official action taken [§ 50-14-1 (a)(3)(B)(ii)].
- Meetings with state or federal legislative or executive officials where no official action taken [§ 50-14-1 (a)(3)(B)(iii)].
- Traveling together where no official business, policy, or public matter is formulated, presented, discussed or voted on [§ 50-14-1 (a)(3)(B)(iv)].
- Attending social, civic, ceremonial or religious events where no official business, policy, or public matter is formulated, presented, discussed or voted on [§ 50-14-1 (a)(3)(B)(v)].

However, regarding exceptions (i) through (v) above, if it can be shown that the primary purpose of the gathering is to avoid the requirements of the open meetings law, then the gathering would be deemed a meeting where all notice, access, agenda, summary and minutes requirements must be met [§ 50-14-1 (a)(3)(B)].

**Voting.** With a couple of exceptions, explained elsewhere, all votes must be taken in public after due notice to the public [§ 50-14-1 (b)(1)].

**Decisions Not Binding.** Decisions that are made outside a meeting that meets the requirements of the act are not binding. Any challenge must be brought within 90 days of the action occurring or being discovered, but in no case more than six months after the date of the contested meeting [§ 50-14-1 (b)(2)].

**Notice:**

- Regular meetings, including those of the commissioners or any committee appointed, must be posted at least one week in advance and must be posted on county website if the county has one [§ 50-14-1 (d)(1)].
- Specially called meetings and emergency meetings with less than 24 hours notice are authorized [§ 50-14-1 (d)(2) and(3)].

**Minutes-Summaries-Agendas:**

- Meeting agendas, summaries of meetings and minutes must be prepared for the board of commissioners as well as for committee meetings [§ 50-14-1 (e)(2)(B)].
- Minutes must identify the persons making and seconding all votes and the name of each person voting for or against each proposal [§ 50-14-1 (e)(1) and (2)].
- Executive session minutes must be kept, but are confidential unless reviewed by a court in chambers. The executive session minutes will have to specify each issue discussed in executive session. If matters are discussed subject to the attorney-client privilege, the fact that an attorney-client discussion occurred and the subject shall be identified, but the substance of the discussion need not be recorded or identified in the minutes [§ 50-14-1 (e)(2)(C)].

**Meetings via Teleconference.** Currently allowed only for agencies with statewide jurisdiction, they will now be allowed for counties and other agencies under limited circumstances, including for emergency or health reasons:

- Under emergency conditions involving public safety or the preservation of property or public services, a county may conduct meetings by teleconference so long as all notice requirements are met and the public has simultaneous access to the teleconference meeting.
- For any other county meeting, so long as a quorum is present in person, a member may participate by teleconference due to health reasons or absence from the jurisdiction. Except in an emergency or with a doctor's note, no commissioner may meet via teleconference more than twice in one calendar year. [§ 50-14-1 (g)].

**Mediation.** Mediation proceedings are exempt from the open meetings act. Decisions, however, must be voted on in public and records related to the mediation are subject to disclosure [§ 50-14-3 (a)(5)]. Arbitration not exempted.

**Incidental Conversation.** Conversations unrelated to the business of the county will not trigger an open meeting [§ 50-14-3 (a)(7)].

**Email Communications.** Emails among commissioners do not violate the act. However, the emails will be considered documents subject to disclosure under the open records act [§ 50-14-3 (a)(8)]. Note that telephone communications are not addressed.

**Executive Sessions:**

- Executive session is defined as a meeting lawfully closed [§ 50-14-1 (a)(2)].
- Acquisition, disposal or lease of property may be discussed in executive session [§ 50-14-3 (b)(1)].
- In contrast to the general rule, votes may be taken in executive session regarding the following [§ 50-14-3 (b)(1)]:
  - to authorize settlement of any matter relative to the attorney-client privilege per OCGA § 50-14-2 (1).
  - to authorize negotiations to acquire, dispose or lease property.
  - to authorize an appraisal relative to the acquisition or disposal of real estate.
  - to contract to purchase, dispose or lease property.
  - to enter into an option to purchase, dispose or lease real estate.

However, no vote to acquire, dispose or lease real estate or to settle a claim is binding until subsequently voted on in open meeting.

- Applicants for the position of executive head of an agency, presumably to include county managers and department heads, may be interviewed in executive session [§ 50-14-3 (b)(2)].
- Discussion in executive session of records that are otherwise protected from disclosure under the open records act is authorized [§ 50-14-3 (b)(4)].
- If a non-exempt topic is brought up in executive session, the chairman must immediately rule the discussion out of order. If the non-exempt discussion continues, the chairman must adjourn the meeting. The commissioners may adopt a policy that all commissioners must sign the affidavit under oath swearing that only exempt topics were discussed in the executive session rather than just the chairman [§ 50-14-4 (b)].

**Penalties/Enforcement/Defense.** Criminal penalties for violation of the open meetings act increase from \$500 to \$1000. However, the bill also authorizes a court, as an alternative, to impose civil penalties of up to \$1000 against any person violating the open meetings act. The penalties will increase to \$2500 for subsequent violations in the same calendar year. A criminal violation of the act requires the person to have knowingly and willfully violated the law. There is a good faith defense to such charges. On the other hand, civil penalties can be sought if someone negligently violates the requirements of the act. There is no good faith defense if civil penalties are sought [§ 50-14-6].

## SECTION II. OPEN RECORDS

**Records Defined.** Expands the definition of public record to include "data" and "data fields" [§ 50-18-70 (b)(2)].

**Who Is Entitled to Access?** Expands right to access to public records to individuals outside the Georgia. Language in current law providing that public records shall be open for inspection "*by any citizen of this state*" is deleted on line 384 [§ 50-18-70 (b)(2)].

**Records Retention.** Records by local governments must be maintained in accordance with the state records retention act found at § 50-18-90 *et seq.* [§ 50-18-71 (a)].

**Timeline.** No change. Records still must be produced within 3 business days if possible. If not, the response must be made within 3 business days as to when the records will be produced [§ 50-18-71 (b)(1)(A)].

**Records Not in Existence at the Time of the Request.** Counties will not be required to produce documents not in existence at the time of the request, i.e., a requestor is not entitled to make standing requests for the production of documents in the future if and when they are produced [§ 50-18-71 (b)(1)(A)].

**Requests Orally or in Writing/Enforcement.** Requests can be made orally or in writing. [§ 50-18-71 (b)(1)(B)]. However, only requests made in writing are subject to the criminal and civil enforcement proceedings and penalties in the law [§ 50-18-71 (b)(3)].

### **Records Custodian or Officer:**

- County can specify that all written requests go to a records custodian [§ 50-18-71 (b)(1)(B)].
- The custodian can be the chairman, chief executive, agency head, a clerk, or other person [§ 50-18-71 (b)(1)(B)].
- The records custodian must be designated in writing by the county, the legal organ must be notified, and the custodian must be posted on the county's website if it has one [§ 50-18-71 (b)(2)].
- Written requests may be made by mail, fax or email [§ 50-18-71 (b)(2)].
- Three-day response period starts when the custodian gets the request—not when it arrives at the courthouse mailroom or when some county employee or official gets it that is not actual keeper of the records. [§ 50-18-71 (b)(2)].

**Access to Records/Copies of Records.** Generally, requestors may inspect records. At the time of inspection, the requestor may make photographic copies or other electronic copies using portable devices brought in to the place of inspection. However, the county in its discretion may provide copies in lieu of access if the records contain personal information subject to redaction [§ 50-18-71 (b)(1)(B)].

### **Fees for Responding to Records Requests/Redaction:**

- Charges for search, retrieval and production of copies continues to be allowed at the

rate of the lowest paid full time employee able to respond [§ 50-18-71 (c)(1)].

- In addition, HB 397 would, for the first time, expressly authorize counties to charge for the cost of redacting records by a full time employee [§ 50-18-71 (c)(1)].
- Fees for copying records is reduced from \$.25/page to \$.10/page for letter or legal size documents. For odd-size printed documents, the actual cost of producing the documents can be charged. For electronic records, a county can charge the actual cost of the media on which the records or data are produced. [§ 50-18-71 (c)(2)].
- County can charge for records--even if not picked up [§ 50-18-71 (c)(3)].
- If estimated cost of producing records is over \$25.00, the county must notify the requestor within three business days of the request as to the estimated amount. The county can defer search and retrieval until the requestor agrees to pay the estimated amount [§ 50-18-71 (d)].
- If estimated cost of producing records is over \$500, the county may require prepayment before the search, retrieval, review or production of records [§ 50-18-71 (d)].
- If costs not paid to the county for prior requests, the county may require prepayment for all new requests, regardless of amount, until the previous charges are paid [§ 50-18-71 (d)].

**Discovery.** If records are sought as part of ongoing litigation, the request must be in writing and copied to the county attorney simultaneously. The county would have to prepare a duplicate set of the requested documents produced that must be provided to the county attorney unless the county attorney elects not to receive them [§ 50-18-71 (e)].

**Requests for Emails or other Electronic Messages.** Requests for emails should contain information about the requested messages that is reasonably calculated to allow the records custodian to locate the requested messages such as name, title, office or specific data base to be searched to assist the custodian in finding the emails [§ 50-18-71 (g)].

#### **Electronic Records/County Website:**

- Counties must produce electronic copies, or if the requestor prefers, printouts of electronic records or data from database fields used by the county [§ 50-18-71 (f)].
- Counties cannot refuse to produce electronic records, data or data fields on the grounds that exporting data or redaction of exempted data will require inputting range, search, filter, report parameters, or similar commands or instructions into the agency's computer system [§ 50-18-71 (f)].
- A requestor may request that electronic records, data and data fields be produced in the format in which such data or records are kept by the county, or in a standard export format in which case the data or records are to be downloaded in such format onto suitable electronic media by the county [§ 50-18-71 (f)].
- No county can be required to prepare new reports, summaries, or compilations not

in existence at the time of the request [§ 50-18-71 (j)].

- In lieu of providing printouts, a county may provide access to records through a website accessible by the public. However, if the request is for data fields, the county cannot refuse to comply on the grounds that the data is available on the website [§ 50-18-71 (h)].
- A county cannot use private vendors to limit access data maintained by the vendor for the county and must ensure that the vendor does not impede access to public records [§ 50-18-71 (h)].

**Exemptions from Disclosure.** Other than those noted below, generally the exemption provisions in § 50-18-72 are rewritten for clarity and consistency with no intent to broaden and limit their application:

- Pending, rejected or deferred sealed bids or proposals and related detailed cost estimates are exempt from disclosure, but must be released after the final award of the contract is made, the project is terminated or abandoned, or the county takes a public vote on the bids or proposals, whichever occurs first [§ 50-18-72 (a)(10)].
- Personal emails addresses, unlisted phone numbers, cell phone numbers found in public records are exempted and must be redacted before the underlying document is released [§ 50-18-72 (a)(20)(A)].
- The exemption for personal information regarding public employees, such as home address, home telephone numbers, social security numbers, birthdates, credit card information, bank account information, and similar personal data is extended to former employees as well as current employees [§ 50-18-72 (a)(21)].
- The burden for determining whether or not records may include information that would reveal trade secrets is substantially shifted from the public agency to the private entity claiming the exemption [§ 50-18-72 (a)(34)].
- Records pertaining to rating plans, underwriting rules and similar proprietary information used to administer self-insurance to a county are exempt [§ 50-18-72 (a)(45)].
- Records of the Department of Economic Development pertaining to an economic development project until the project is secured by a binding commitment or has been terminated; and records related to state training programs for economic development projects [§ 50-18-72 (a)(46) and (47)].
- Exhibits tendered to a court in a civil or criminal trial are not open to disclosure without the approval of the court. Where disclosure is allowed, it is done under circumstances provided for in the law. Where the exhibits relate to criminal charges relating to sexual exploitation of children, violation of this confidentiality provision is punishable by up to 20 years in jail, a fine of up to \$100,000, or both [§ 50-18-72 (c) and (d)].

**Attorney-Client Privilege.** The attorney-client privilege is broadened to include all records containing communications subject to the attorney-client privilege recognized

by state law, with one exception. The privilege does not extend to factual findings related to an investigation conducted by an attorney on behalf of the county, so long as such investigation does not pertain to pending or potential litigation, settlement, claims or other judicial actions. Where records are withheld under this provision, the requestor make seek an *in camera* review of the records to determine whether or not the records were properly withheld [§ 50-18-72 (a)(41)].

**Confidential Attorney Work Product.** Attorney work product continues to be generally protected. However, the protection does not extend to factual findings related to the investigation conducted by an attorney on behalf of the county, so long as such investigation does not pertain to pending or potential litigation, settlement, claims or other judicial actions. Where records are withheld under this provision, the requestor make seek an *in camera* review of the records to determine whether or not the records were properly withheld

**Enforcement/Penalties/Defense.** Criminal penalties for an open records violation increase from \$500 to \$1000. However, the bill also authorizes a court, as an alternative, to impose civil penalties of up to \$1000 against any person violating the open records act. The penalties will increase to \$2500 for subsequent violations in the same calendar year. A criminal violation of the act requires the person to have knowingly and willfully violated the law. There is a good faith defense to such charges. On the other hand, civil penalties can be sought if someone negligently violates the requirements of the act. There is no good faith defense if civil penalties are sought [§ 50-18-73 and § 50-18-74].

**Enforcement/Arrest Warrants.** Any prosecution to enforce the open records act can be commenced only by issuance of a citation served on the accused public official or employee. The defendant cannot be arrested prior to the time of trial, unless the defendant fails to appear for arraignment or trial

**Effective.** April 17, 2012; except for a new exemption of certain state records related to economic development prospects which effects already submitted records requests.



**SB 92 COMPREHENSIVE ELECTIONS UPDATE**

SB 92 is the Secretary of State's annual elections legislation. It incorporates several elections bills into SB 92 including HB 725, HB 776 and HB 899 much of which was developed in cooperation with local election officials.

Some of the highlights of the bill:

- Allows the Secretary of State to develop a secure method to register to vote online.
- Gives independent candidates the option to qualify during partisan qualifying.
- Incumbents running as an independent to succeed his or herself are no longer required to collect petition signatures.
- Moves up the date the Secretary of State and superintendents publish the list of qualified write-in candidates so it is available before absentee voting begins.
- Requires that the Secretary of State determine the look and manner of the qualifying petition form.
- Allows an absentee ballot request to also be used by the elector to notify elections office of a name change.
- Provides for the county registrar to utilize other methods to identify if a voter has recently died (obituaries, verifiable knowledge, letter by a family member, etc) allowing for more accurate voter rolls.
- Improves the National Change of Address registration updating process.
- Clarifies the statute governing the use of cameras and recording devices in the polling place.
- Gives the Governor more flexibility in calling for special elections for legislative seats by removing the 30-60 day requirement when the general assembly is not in session.
- Allows that if an incumbent were to qualify for reelection then withdraw before the end of qualifying, then qualifying would be extended for an additional two days. Also allows the political parties the opportunity to reopen qualifying if an incumbent were to withdraw after qualifying ended.
- Declares that consolidated governments that elect their officials in a nonpartisan election shall hold their elections on the nonpartisan general election date (July Primary).
- Includes language to allow a refund of qualifying fees if it was the result of an error by the elections superintendent.



**HB 872 – Summary**

**Secondary Metal Recyclers; comprehensive revision of provisions**

- Provides that secondary metals recycler must register with the local sheriff and provide data on all sales to a statewide database.
- Removes cash payment option – Must be check, electronic transfer or voucher for cash that cannot be redeemed until three days after the sale.
- Check or electronic funds transfer to be made to name in presented ID or to a validated business that seller represents.

Creates Permits and Databases:

- Each secondary metals recycler shall obtain permit from sheriff of each county they have a fixed site
  - Permit information will be entered into statewide accessible electronic database
  - Sheriff is authorized to assess reasonable permit fee no greater than \$200.00
  - Permit good for 12 months
  - **Unlawful to sell regulated metal property to recycler without a valid permit**
- Secondary recycler records will now also include:
  - Clear, undistorted photograph or video images of property
  - Electronically stored thumbprint of person delivering the property
  - Scanned or photocopied seller permit if business agent is signing for corporation (automobiles)
  - A Signed statement from the seller

Other Items

- Law enforcement may now inspect all regulated metal property in possession of recycler, not just that deemed purchased
- Removes business to business exception
- Recycler not allowed to operate between 5:00 P.M. and 8:00 A.M. (Was 9:00 P.M. – 6:00 A.M.)
- State law shall not supersede or preempt local regulation
- Definition of regulated metal property updated to include ferrous metals, nonferrous metals, aluminum property, or catalytic converter
- Penalties
  - First offense – Misdemeanor
  - Second offense – Misdemeanor of a high and aggravated nature
  - Third offence and each sub - Felony
- Penalty for violation applies to anyone buying or selling
- Anyone who buys or sells in violation shall be liable for full value of metal property, any repair and related expenses, plus court cost and attorney fees
- Effective date July 1, 2012.



## HB 1176

### Criminal Justice Reform Bill Overview (LC 29 5281S)

#### Section 1-1

##### Part I- Exemptions for Certificates of Immediate Review

Adds “order, decision or judgment setting aside or dismissing any indictment, accusation, or petition alleging that a child has committed a delinquent act or any count thereof” to the list of orders/decisions/judgments that exempt certificates of immediate review.

##### Part II- Drug Court Requirements

- Requires that a work plan include a risk and needs assessment. This assessment is based on an actuarial tool to be approved by the Judicial Council (JC) and should be used to identify the likelihood of recidivism and to identify criminal risk factors for future crimes. The plan should ensure that drug court should be focused on medium and high risk offenders
- Requires the JC to use guidelines from the National Drug Court Institute and from the Substance Abuse and Mental Health Services Administration in developing drug court standards
- Each drug court must adopt practices and policies consistent with the JC guidelines
- On and after January 1, 2013, the JC is required to provide technical assistance to drug courts to help implement policies and procedures
- On and after July 1, 2013, the JC is required to create and manage a certification and review process to ensure the program meets JC standards. Waivers are permitted. JC is tasked with creating the waiver process
- Any drug court **created** on or after July 1, 2013, must be certified, or must have been provided with a waiver, to receive state appropriated funding.
- On and after July 1, 2013, state funds for a drug court shall be conditioned upon that court attaining certification or a waiver The JC will publish a list of certified drug courts by September 1<sup>st</sup> annually
- AOC is required to manage and develop an electronic information system for performance measurement in a consistent format from all drug courts. The JC develops the performance measure elements.
- Starting on July 1, 2015 and every three years thereafter, the JC will conduct performance peer reviews on drug courts

##### Section 2-2- Mental Health Courts

- Requires that a work plan include a risk and needs assessment. This assessment is based on an actuarial tool to be approved by the Judicial Council (JC) and should be used to identify the likelihood of recidivism and to identify criminal risk factors for future crimes. The plan should ensure that mental health court should be focused on medium and high risk offenders
- Requires the JC to use guidelines and practices from but not limited to US Abuse and Mental Health Services Administration, Council of State Governments Consensus Projects and the

## Appendix D – Association County Commissioners of Georgia

National GAINS Center to reduce recidivism of offenders with mental illness or developmental disabilities

- Each court must adopt practices and policies consistent with the JC guidelines
- On and after January 1, 2013, the JC is required to provide technical assistance to mental health courts to help implement policies and procedures
- On and after July 1, 2013, the JC is required to create and manage a certification and review process to ensure the program meets JC standards. Waivers are permitted. JC is tasked with creating the waiver process
- Any mental health court **created** on or after July 1, 2013, must be certified, or must have been provided with a waiver, to receive state appropriated funding.
- On and after July 1, 2013, state funds for a mental health court shall be conditioned upon that court attaining certification or a waiver. The JC will publish a list of certified mental health courts by September 1<sup>st</sup> annually
- AOC is required to manage and develop an electronic information system for performance measurement in a consistent format from all mental health courts. The JC develops the performance measure elements.
- Starting on July 1, 2015 and every three years thereafter, the JC will conduct performance peer reviews on mental health courts.

### Section 2-3- Pretrial Intervention and Diversion Program

- Increases the fee for pretrial intervention and diversion programs from \$300 to a maximum of \$1000.
- Allows for waiver of part of all of the fee and allows payment by monthly installments upon a showing of good cause.
- Any fee collected goes to the general fund of the governing authority.

### Section 2-4 County DATE Fund

#### 15-12-100

Adds fine money from the following crimes to this section: unlawful manufacture, distribution or possession with intent to distribute of imitation controlled substances; possession of substances containing ephedrine, pseudoephedrine, and phenylpropanamine; possession of substances with intent to use or convey such substances for the manufacture of Schedule I or Schedule II controlled substances; trafficking ecstasy; transactions in and possession of drug related objects; use of communication facility in committing or facilitating the commission of a felony; manufacturing, distributing, dispensing, or possessing controlled substance in or around K-12 schools, housing projects, parks or drug free commercial zone.

An additional 50% penalty is also imposed **in every case** in which a fine is imposed for the following violations: furnishing alcohol to a minor or the attempt to purchase and possess alcohol by a minor; DUI; homicide or serious injury by vehicle if a DUI was involved. If no fine is provided and the person is placed on probation, then the probation fine is applicable.

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### **15-12-101**

Allows DATE funds to be used for DUI and drug courts.

### **Part III Crimes and Offenses**

#### **Section 3-1 Burglary**

- Provides for 3 classes of Burglary, all are felonies
- First Degree Burglary: Enters and remains in a dwelling in possession of weapons/explosives, causes harm, or has 2 burglary priors, any degree. Increases penalty from 1 to 5 year minimum and from 20 to 30 year maximum.
- Second Degree Burglary: Enters and remains in a dwelling with intent to commit crime, but does not have weapons, causes harm, or has prior convictions. Provides penalty of 1 year minimum and 20 year maximum sentence.
- Third Degree Burglary: Enters and remains in an occupied/unoccupied/vacant building with intent to commit crime but does not have weapons, causes harm, or prior convictions. Provides penalty of 1 year minimum and 5 year maximum.

#### **Section 3-2 Theft**

- Creates three levels of theft felonies
- Increases the original amount of theft to commit a felony from \$500 to \$24,999.99 and increase minimum sentence from 1 year to 2 years and increase maximum from 10 to 20 years
- Provides for an intermediate felony theft for property valued at least \$5000, but less than \$25,000. Sentence is provided for 1-10 years per judge's discretion
- Provide for a lower level felony theft for property valued at least \$1500 but less than \$5000. Sentence is provided for 1-5 years, per judge's discretion
- Anyone with 2 misdemeanor theft priors that commits a third, will be guilty of a felony and sentenced to 1-5 years, per the judge's discretion
- Strikes motor vehicles or motor vehicle parts of \$100 in value from section
- Increases the value for grave marker, monument, or memorial theft from \$300 to \$1000
- Increases the fine for theft of agricultural products from \$500 to \$1000

#### **Section 3-3- Theft by Shoplifting**

- Increases the misdemeanor limit from \$300 to \$500
- Increase the minimum fine limit from \$250 to \$500 (misdemeanor or felony)
- Felony starts at \$500.01 and is based on the aggregate value taken within a 180 day period and carries a 1-10 year sentence.

#### **Section 3-4-Counterfeit Universal Product Codes**

- Increases the value from \$300 to \$500 to commit a felony. It is based on the aggregate value.

## **Appendix D – Association County Commissioners of Georgia**

### **Section 3-5-Forgery**

- Provides for 4 degrees of forgery
- First degree forgery is the intent to defraud by knowingly making, altering, or possessing any writing, other than a check, in a fictitious name, or as altered purports to have been made by another person at another time or without permission and delivers this writing. This is a felony offense punishable by 1-15 years.
- Second degree forgery is the intent to defraud by knowingly making, altering, or possessing any writing or as altered purports to have been made by another person at another time or without permission. This is a felony offense punishable by 1-5 years.
- Third degree forgery is the intent to defraud by knowingly making, altering, or possessing a check written in the amount of \$1000 or more in a fictitious name, or as altered purports to have been made by another person at another time or without permission. This is a felony offense punishable by 1-5 years.
- Fourth degree forgery is the intent to defraud by knowingly making, altering, or possessing a check written in the amount of less than \$1000 in a fictitious name, or as altered purports to have been made by another person at another time or without permission. This is a misdemeanor offense punishable by 1-5 years.

### **Section 3-6- Deposit Account Fraud**

- Increases the minimum threshold from \$100 to \$500 and increases the maximum fine from \$500 to \$1000. The maximum fine and jail time (up to 12 months) can be applied to a single instrument (less than \$500) or to multiple instruments drawn within a 90 day period that equal \$500 or more.
- Increases the minimum and maximum limits for high and aggravated misdemeanor for deposit account fraud from \$300-\$499 to \$500-\$999.99. Same applies for multiple instruments.
- Increase the minimum value for felony deposit account fraud for a single instrument from \$500 to \$1,000 and increases the maximum fine from \$5000 to \$10,000.

### **Section 3-7A through Section 3-7C-Purchase, manufacture, distribution, possession of drugs**

These sections phase in the new drug requirements over a course of 3 years from 2012-2014. It's the same code section listed 3 times with different requirements by the year of the phase in. Note that the first year does not include the weight requirement. The weight requirements are the aggregate weight and not the individual weight.

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### 2012

- Changes the minimum sentence for an initial Schedule I (controlled substance) or Schedule II (narcotics) from two years to one year. Strikes language that requires a 5-30 year sentence for a subsequent conviction.
- Changes the minimum sentence for an initial Schedule II (controlled substance other than narcotics) violation from two years to one year. Strikes language that requires a 5-30 year sentence for a subsequent conviction.
- Creates a third conviction violation for controlled substance in Schedule I or II or for a counterfeit substance. The sentence is a term not to exceed twice the length of the sentence applicable to the particular crime.
- The maximum sentence for violators of Schedule III, IV, or V controlled substance crimes has been reduced from 5 years to 3 years.
- The maximum sentence for the possession of counterfeit substances has been reduced from 10 to 2 years. Current law included possession with manufacturing and distributing crimes.
- Breaks out manufacturing and distributing counterfeit substances from possession and keeps the current sentencing guidelines of 1-10 years for manufacturing and distribution.
- Reduces minimum sentence for flunitrazepam (Schedule IV controlled substance) from 2 to 1 year and removes specified subsequent conviction requirement.

### 2013

- For Schedule I (controlled substance) and Schedule II (narcotics) violations are as follows:
  - Less than 1 gram results in a sentence of 1-3 years
  - More than 1 gram but less than 4 grams results in a sentence of 1-8 years
  - More than 4 grams but less than 28 grams results in a sentence of 1-15 years
  - Violations involving morphine, heroin, or opium, or any salt, isomer or combination thereof is punishable by the minimum punishment through 30 years and by a fine not to exceed \$1 million
- For Schedule II controlled substance other than narcotics violations are as follows:
  - Less than 1 gram results in a sentence of 1-3 years
  - More than 1 gram but less than 4 grams results in a sentence of 1-8 years
  - More than 4 grams but less than 28 grams results in a sentence of 1-15 years
- A third violation for Schedule I or II results in imprisonment not to exceed twice the length of the sentence applicable to the particular crime.
- Changes maximum violations of Schedule III, IV, or V drugs from 5 to 3 years for a first or second conviction and from 10 to 5 years for third or subsequent conviction. [Current law provided a 10 year sentence of the second conviction]

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- The maximum sentence for the possession of counterfeit substances has been reduced from 10 to 2 years. Current law included possession with manufacturing and distributing crimes.
- Breaks out manufacturing and distributing counterfeit substances from possession and keeps the current sentencing guidelines of 1-10 years for manufacturing and distribution.
- Reduces minimum sentence for flunitrazepam (Schedule IV controlled substance) from 2 to 1 year and removes specified subsequent conviction requirement.

### 2014

- For Schedule I (controlled substance) and Schedule II (narcotics) violations are as follows:
  - Less than 1 gram results in a sentence of 1-3 years
  - More than 1 gram but less than 4 grams results in a sentence of 1-8 years
  - More than 4 grams but less than 28 grams results in a sentence of 1-15 years
  - Violations involving morphine, heroin, or opium, or any salt, isomer or combination thereof is punishable by the minimum punishment through 30 years and by a fine not to exceed \$1 million
- For Schedule II controlled substance other than narcotics violations are as follows:
  - Less than 1 gram results in a sentence of 1-3 years
  - More than 1 gram but less than 4 grams results in a sentence of 1-8 years
  - More than 4 grams but less than 28 grams results in a sentence of 1-15 years
- A third violation for Schedule I or II results in imprisonment not to exceed twice the length of the sentence applicable to the particular crime.
- Changes maximum violations of Schedule III, IV, or V drugs from 5 to 3 years for a first or second conviction and from 10 to 5 years for third or subsequent conviction. [Current law provided a 10 year sentence of the second conviction]
- The maximum sentence for the possession of counterfeit substances has been reduced from 10 to 2 years. Current law included possession with manufacturing and distributing crimes.
- Breaks out manufacturing and distributing counterfeit substances from possession and keeps the current sentencing guidelines of 1-10 years for manufacturing and distribution.
- For flunitrazepam (Schedule IV controlled substance) violations are as follows:
  - Less than 2 grams results in a sentence of 1-3 years
  - At least 2 grams but less than 4 grams results in a sentence of 1-8 years
  - At least 4 grams results in a sentence of 1-15 years

### Section 3-8 Trafficking in Cocaine, illegal drugs, marijuana, meth, etc.

Violations in trafficking of these drugs result in a mandatory minimum punishment and not more than 30 years of imprisonment and a fine not to exceed \$1 million. [Fine is current law]

## Part IV Criminal Procedure

### Section 4-1 Limitations on Prosecution

Specifically exempts certain offenses for victims under 16 from the statute of limitations for prosecution.

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### **Section 4-2 Offenses for Victims Under 16**

Provides that certain crimes against children can be prosecuted at any time including cruelty to children in the first degree, rape, aggravated sodomy, child molestation, enticing a child for indecent purposes, and incest.

### **Section 4-3 Fixing Sentences/Probation**

- Changes all probation supervision requirements to “active probation supervision” which means the period of a probated sentence in which a probationer actively reports to his or her probation supervisor or is otherwise under the direct supervision of a probation supervisor
- Provides that active probation supervision terminates in all cases no later than 2 years from the commencement of active probation supervision, except in those cases that involve the collection of fines and restitution in which case the “active” probation supervision remains in effect until obligation is paid or sentence is terminated. Current law does not make reference to “active” probation.
- For GA Street Gang Terrorism and Prevention Act, the active probation stays into effect until sentence is terminated but not more than 5 years.
- No active probation for defendants sentenced to probation while defendant is in DOC custody.
- Court can shorten active probation supervision or administrative probation supervision on defendant’s motion or upon probation supervisor request

### **Repeals Section 4-4 Punishment of Repeat Offenders**

#### **Part V- Mandatory Reporting of Child Abuse**

##### **Section 5-1**

- Provides for definitions of abortion, child service organization personnel, clergy, reproductive health care facility, and school
- Adds ‘nurse’s aides’ and ‘reproductive health care facility personnel and volunteers’ to the list of who upon relief belief that a child has been abused in required to report the abuse.
- Specifies that clergy aren’t required to report child abuse received solely from confession or similar communication from the perpetrator but are required if received from any other sources.

#### **Part VI-Creating Job Opportunities**

##### **Section 6-1**

- Specifies that the Georgia Crime Information Center cannot provide records of arrests, charges, or dispositions when access has been restricted under OCGA § 35-3-37

##### **Section 6-2**

This section creates a new section on modification, inspection, purging, and supplementing criminal records. A person’s criminal history record can be made available to that individual or designee by written application through the Georgia Crime Information Center

- Forms and procedures for record access may be created by the Center

## Appendix D – Association County Commissioners of Georgia

- If records are thought to be inaccurate, incomplete or misleading by the individual a time can be set for review and verification of those records at the Center
- Fee may not exceed \$15 to inspect records, which shall not include the cost of fingerprinting
- If the criminal history record information is believed to be inaccurate, incomplete or misleading the individual may request that **the entity having custody, or control of that information** change or amend the information and notify the Center of these changes within 60 days of the request, except that notice to the Center is not required for county jails and detention centers.
- If the individual is not happy with the change or if the entity did not act within 90 days of the request, the individual has the right to appeal to the court with original jurisdiction of the criminal charges in the county where the entity is located.
- The purpose of appealing is to require the entity holding the records to make the changes by court order.
- If the court finds by a preponderance of the evidence that the criminal history is inaccurate, incomplete or misleading, an order will be issued to require the entity holding the records to correct each and every copy in its possession of the history within 60 days of the order.
- The entity is further required to disseminate the revised version of the criminal history to any individual, agency, Center, or company for which the incorrect information has been previously communicated within 60 days of the request.
- Access to an individual's criminal history information shall be restricted by the Center for the following types of dispositions:
  - Prior to indictment, accusation or other charging instrument
    - The case was never referred to for further prosecution to the proper prosecuting attorney by the investigating law enforcement agency
    - The case was referred to the prosecuting attorney but was later dismissed
    - The grand jury returned tow no bills
  - After indictment or accusation:
    - All charges dismissed or nolle prossed
    - Individual found guilty of drug charges but successfully completed terms and conditions of his probation
    - Individual successfully completed a drug court or mental health court program
    - Individual acquitted of all charges by a judge or jury unless DA provides proof that restricting the history is counter to public interest
  - After the filing of indictment or accusation cannot restrict access unless:
    - Charges were nolle prossed
    - Charges were tried and some but not resulted in an acquittal
    - Individual acquitted but later found only due to jury tampering or judicial misconduct
    - Youthful offender (lots of conditions go with this)
- The Center is required to notify the arresting law enforcement agency if records have been restricted

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- An individual who has had their history restricted may issue a written request to a county jail or detention center to have all the records retained by that entity restricted. This should be done within 30 days of the request.
- Restricted information shall only be made available to law enforcement agencies or for criminal investigative purposes
- If the records are restricted and the entity declines to restrict access the individual may file a civil action in superior court. The standard that must be met by the entity for providing access is clear and convincing evidence.
- If the record is with the court, the individual can petition the clerk to have the record sealed and the clerk must restrict any record relating to the order to be restricted within 60 days.
- The clerk of court is required to create a separate and distinct index or docket that is sealed, locked or otherwise unavailable to the public.
- An individual can request the arresting agency in writing to restrict arrest records occurring prior to July 1, 2013. Reasonable fees can be charged by the arresting agency and center for the actual cost of restricting the records but shall not exceed \$50. That entity must provide a copy of the request to the DA within 30 days and he in turn can review to determine it meets the restriction requirements and shall notify the arresting agency within 90 days
- To restrict Center records, the individual must submit an expungement request to the Center that in turn must restrict access within 30 days of the request
- It is the duty of the entity to take reasonable action to prevent disclosure of information that would identify the individual whose records are being restricted
- The Center upon notifying a firearm dealer that an individual cannot purchase a firearm due to involuntary hospitalization within the past 5 years must provide the individual with the record of the involuntary hospitalization and must inform that person of their right to hearing before the probate judge.

### **Part VII: Penal Institutions**

#### **Section 7-1**

Provides definitions.

#### **Section 7-2**

Transfers the requirement that penal institution employees cannot provide attorney information to inmates or receive fees for attorneys from the previous code section.

#### **Section 7-3**

Amends DOC definition

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### **Section 7-4**

- Defines “Evidence Based Practices” as supervision policies, programs and procedures that demonstrate reduction in recidivism through scientific research.
- Defines “Recidivism as returning to prison or jail within 3 years of being on probation or discharged from a department or jail facility.

### **Section 7-5**

- Requires the clerks of court to submit sentencing packages to DOC electronically.

### **Repeals Section 7-6**

### **Section 7-7**

- Defines chief probation officer as highest ranking field probation officer in each judicial circuit who doesn’t have direct supervision of the probationer who is the subject of the hearing
- If graduated sanctions are a condition of probation, and probationer violates these conditions, unless it’s for a new offense, the DOC may impose graduated sanctions as an alternative to judicial modifications or parole revocations if approved by the chief probation officer
- Failure to comply with graduated sanctions constitutes a violation of probation
- Voluntary acceptance of graduated sanctions by the probationer can be provided at any time
- DOC’s decision is final unless probationer files an appeal in the sentencing court within 30 days
- Appeal shall first be reviewed by judge of record and a dev novo hearing may be held. Filing of appeal does not stay the decision.
- DOC’s decision affirmed by operation of law if sentencing judge doesn’t act within 30 days

### **Section 7-8**

- The court may provide that the probationer wear a tracking device. DOC is authorized to assess and collect fees from the probationer for this purpose [Current law, moved up a couple of paragraphs in bill]
- The court may provide that a probationer complete a residential or nonresidential substance abuse program or mental health treatment
- The court may provide that a probationer agree to the imposition of graduated sanctions if probation supervisor thinks it is appropriate.

### **Section 7-9**

- Provides that a court ordered program of confinement cannot exceed 180 days in a probation detention center

### **Section 7-10**

- Amends existing law on the termination of probation so that the probation supervisor and not the chief judge reviews the case after 2 years on probation.

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### **Section 7-11**

If a probationer has violated their probation, it allows the probation supervisor to impose graduated sanctions to address the specific problems leading up to the violation if such sanctions were a condition of the probation by the court.

### **Part VIII: Cross References**

#### **Section 8-1**

Allows for judgments and orders to be deemed directly appealable related to error.

#### **Section 8-2**

Specifies “misdemeanor” shoplifting and strikes \$300 reference.

#### **Section 8-3**

Specifies that any degree burglary satisfies the requirements of this code section.

#### **Section 8-4**

Requires the GBI to treat confidentiality of destroyed records the same as restricted records.

#### **Sections 8-5 through 8-8, 8-10 through 8-11, 8-15**

Specifies that burglary references apply to any degree of burglary.

#### **Section 8-9**

Deletes 16-9-2 from the list of felony violations

#### **Section 8-12 & 8-13**

Strikes reference to varying degrees of forgery.

#### **Section 8-14**

Grants municipal court jurisdiction for misdemeanor shoplifting. [Current law tied it to degree of offense and dollar value of \$300 or less]

### **Part IX: Effective Dates**

- Most of the Act is effective on July 1, 2012
- Sections 3-7A,B,& C is phased in from July 2012-July 2014
- Part VI and Sections 8-1 & 8-4 effective on July 1, 2013.



**Motor Vehicle Tax Reform (HB 386)**

Beginning March 1, 2013, the taxation of motor vehicles in Georgia will undergo substantial reform. After this date, state and local sales tax will no longer be charged on the purchase of a vehicle. Annual ad valorem tax will also be eliminated on vehicles that have transferred ownership, except in the case of a transfer to an immediate family member where a title tax is not paid. The sales tax and annual ad valorem tax will be replaced with a one-time state and local title ad valorem tax paid every time the ownership of a vehicle is transferred, except in the case of a transfer to an immediate family member. The new title tax will be collected by county tax commissioners and dispersed to the state, counties, school districts and cities based upon the formulas prescribed by law. The following questions and answers should help provide an overview of the changes to come regarding HB 386.

**1. How are vehicles valued for title tax purposes?**

The average of the retail and wholesale value listed in the current motor vehicle ad valorem assessment manual utilized by the Department of Revenue minus the value of any vehicle traded-in to a dealer.

**2. Can the vehicle value be appealed?**

Yes, the value can be appealed in the same manner as values for ad valorem tax purposes are appealed.

**3. What is the tax rate?**

The tax rate is 6.5% in FY 2013, 6.75% in FY 2014 and 7% in all future years unless the state revenue target is not met. If the state revenue target is not met then the tax rate could be adjusted up to 9%.

**4. What is the local share of the title tax?**

Local governments will receive 43% of the revenue in 2013, 45% in 2014, 45% in 2015, 46.5% in 2016, 56% in 2017, 60% in 2018, 64% in 2019, 66% in 2020, 70% in 2021 and 72% in 2022 and all subsequent years. Beginning in 2016 the local share is subject to modification based upon total local vehicle revenues collected relative to the local revenue target amount. The Department of Revenue is responsible for calculating any required adjustments to the local share of the title tax and notifying the tax commissioners of the change.

**5. How is the local target amount determined to ensure local governments collectively receive an amount of revenue greater than what they currently are receiving from sales tax and ad valorem tax on vehicles?**

The local target amount is a \$1 billion base amount ( This amount exceeds the amount of total local sales taxes and ad valorem taxes on vehicles generated statewide in 2011) added

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to the product of 2% of the base amount multiplied by the number of years since 2012 with a maximum amount of \$1.2 billion. A comparison of the target amount to actual revenues collected begins in 2016 and is calculated annually through 2022.

### **6. Where is the tax paid?**

The title tax must be paid to the tax commissioner in the county where the vehicle is registered. Vehicle dealers may collect the tax from the purchaser and submit the tax along with the title application to the tax commissioner of the county where the vehicle is to be registered. Dealers will no longer be able to process titles in the county where the dealership resides if the purchaser is registering the vehicle in another county.

### **7. How are the revenues dispersed by the tax commissioner to the state and local governments?**

Within 30 days following the end of each calendar month, the tax commissioner will send the Department of Revenue the state's portion of the tax minus a 1% administrative fee deducted from the state's share of the revenue. The remaining local revenues, after deducting the normal commission for collecting ad valorem taxes, will be distributed first to the county, school district and each city in an amount equal to the difference between the vehicle ad valorem taxes each entity received for that month in 2012 minus the vehicle ad valorem taxes each entity received for the current year. After the difference in ad valorem tax revenues has been dispersed, the remaining local revenues will be divided between the local governments based upon their proportionate share of local sales tax. The school district will receive 1/3 of the remaining proceeds unless they have an ELOST in which case they will receive 2/3 of the remaining revenue. In counties without an ELOST, 2/3 of the remaining revenue will be divided between the county and its cities based upon the proportionate share of shared county and city local sales taxes. If the county has less than a 2% local sales tax, then 1/3 if the local sales tax rate is 1% or 2/3 if the local sales tax rate is 0% shall be divided between the county and its cities based upon resident population.

### **8. Are the local title tax revenues required to be used for the legally mandated purposes of the local sales tax it replaces?**

No, these revenues are deposited in the local governments general fund and do not have to be used for the purposes of the local sales taxes (e.g. capital project and tax relief). In effect, this change allows the local governments to convert a portion of their local sales tax revenues to a unrestricted general operating revenue.

### **9. Can the owner of a vehicle purchased prior to March 1, 2013 avoid payment of future ad valorem taxes on their vehicle?**

If the vehicle was purchased between January 1, 2012 and March 1 2013, the owner can choose to pay the difference if the title tax owed is greater than the amount of state and local sales tax and ad valorem tax previously paid between January 1, 2012 and March 1, 2013. This option must be exercised before January 1, 2014.

**10. Will the vehicle title tax impact TSPLOST revenues?**

No. TSPLOST is not subject to the sales tax exemption and it will be collected in addition to the title tax.

**11. Can a vehicle be transferred to an immediate family member without having to pay the title tax?**

Yes, a vehicle can be transferred to a spouse, parent, child, sibling, grandparent or grandchild without triggering the title tax. However, if the title tax is not paid, the annual ad valorem tax will continue to apply to the vehicle.

**12. How will the tax commissioner determine if the person receiving transfer is an immediate family member?**

The transferor and transferee will have to complete an affidavit affirming that they are immediate family members. Anyone who falsely attests shall be subject to a state penalty up to \$2,500 and a local penalty up to \$2,500

**13. If a person receives a vehicle from an immediate family member through an inheritance are they subject to paying the vehicle title tax?**

If the title tax has not previously been paid then they can opt to continue to pay the annual ad valorem tax or pay the title tax and avoid future ad valorem taxes. If the title tax has been previously paid then they will be required to pay a state title tax in an amount equal to one-quarter of 1% of the vehicles fair market value and a local title tax in an amount equal to one-quarter of 1% of the vehicles fair market value.

**14. Is someone moving into the state required to pay a title tax on their vehicle(s)?**

Yes, 50 % of the title tax must be paid within 30 days of moving to the state and the remaining 50 % must be paid within the next 12 months.

**15. What happens to someone that fails to register their vehicle and pay the title tax?**

They will be required to pay a penalty of 10% of the amount of the title tax owed plus an additional 1% per month for every month late.

**16. Are vehicles purchased in another state by a Georgia resident subject to the vehicle title tax?**

Yes

**17. Are vehicles on a multi-year lease subject to the title tax?**

Yes, the company leasing the vehicle will have to pay the title tax.

**18. Are companies that rent or lease vehicles for short durations (less than 31 days) subject to the title tax?**

Yes, however, if the sales taxes paid on the vehicle in the immediate preceding calendar year is \$400 or greater, then the rate of the local title tax is .75% of the fair market value and the state title tax is .75% of the fair market value

**19. Are trailers subject to the title tax?**

The law is not clear. We are waiting on guidance from the Department of Revenue.

**20. Are salvage vehicles subject to the title tax?**

No, salvage vehicles are only required to pay a state title tax equal to 1% of the fair market value of the motor vehicle.

**21. Are donated vehicles subject to the title tax?**

If a vehicle is donated to a 501 (c)(3) charity for the purpose of being transferred to another person, then that charity shall only pay a state title tax equal to 1% of the fair market value of the motor vehicle.

**22. Does the title tax apply when a title is corrected, replaced or reissued to the same owner?**

No

**23. Will a person that has eliminated the annual vehicle ad valorem tax by paying the title tax be subject to the title processing fee and annual registration fees?**

Yes

**24. Are vehicles owned by veterans exempt from the title tax?**

Yes, vehicles owned by veterans that were previously exempt from ad valorem tax are also exempt from the title tax.

**25. Since the title tax is a one-time ad valorem tax, will it be an allowable itemized deduction on your income tax?**

No, to be deductible as a 'personal property tax', one of the conditions is that the tax is charged on a yearly basis. The new title tax is a one-time tax that does not meet this test. Please consult IRS Publication 17 or a tax adviser.



## **Local Excise Tax on Energy Used in Manufacturing**

The local excise tax on energy used in manufacturing is an optional local tax designed to replace the local sales tax revenues lost to the new statewide sales tax exemption on energy used in manufacturing beginning January 1, 2013. It should not be considered a new tax but a method of replacing local sales tax revenues. The new sales tax exemption and the imposition of the new excise tax are proportionately phased in over a four year period. Counties should decide before January 1, 2013 if they will impose the new excise tax and if their cities will participate.

### **What is the tax rate?**

The local excise tax is levied at the same rate as the local county/city sales taxes. Future increases or decreases to the local sales tax rate will trigger an automatic rate adjustment to the excise tax.

### **How are tax revenues distributed between the county and its cities?**

They are shared between the county and the cities based upon the same proportional share each receives from local sales taxes.

### **How is energy used in manufacturing defined?**

Any natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing or any other use in any phase of the manufacture of tangible personal property. It does not include energy purchased by a manufacturer that is primarily engaged in producing electricity for resale, such as energy manufactured for resale by Georgia Power or an EMC.

### **How is the tax enacted?**

The tax is enacted through the adoption of an ordinance by the board of commissioners; no referendum is required. If one or more cities want to be included they must sign an intergovernmental agreement with the county. If the county fails to adopt the ordinance before the end of 2013, any city can adopt their own ordinance and collect the tax within their jurisdiction.

### **How is the tax collected?**

The tax is collected by the county from companies that sell energy (e.g., electricity, gas, oil, or other types of fuel) to manufactures within the county. The county retains a one percent administrative fee for collecting the tax and distributes to the participating cities their share of the revenue. The county is also given the authority to conduct audits.

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### **What if the county refuses to enact the tax but a city wants to impose the tax?**

After January 1, 2013, if a county has failed to impose the tax, then any city can impose the tax at the same rate but only on energy sold to manufactures within their

### **If the county does not impose the tax beginning January 1, 2013, can it impose the tax at a later date?**

Yes, the tax can be imposed at anytime. If the county imposes the tax after a city has imposed the tax the tax will revert back to the countywide collection and distribution formula.

### **How can this tax be used?**

Unlike the restricted sales tax revenues that this tax is intended to replace, these revenues are unrestricted and can be used in the general fund for any purpose. A county may choose to use a portion of these revenues in their SPLOST account, but is not required to do so.

### **How is the tax terminated?**

The tax can be terminated at any time by ordinance of the county governing authority.



**Georgia Land Bank Act: SB 284**  
**(SB 284/As Passed by General Assembly)**  
**Section-by-Section Summary**  
**Draft Date: April 10, 2012**

<b>Georgia Land Bank Act Section by Section Summary</b>	
<b>Section 1</b>	Amendment to Current Georgia Land Bank Statute (O.C.G.A. § 48-4-60 <i>et seq.</i> )
<b>§ 48-4-61</b>	This section provides that no land banks created after the effective date of the Georgia Land Bank Act shall be created under the current Georgia land bank statute. Land banks created prior to the passage of Georgia Land Bank Act shall continue in operation unaffected unless the land bank board votes to adopt powers contained in the Georgia Land Bank Act.
<b>Section 2</b>	Creation of New Article in Georgia Code Updating Current Land Bank Statute.
<b>§ 48-4-100</b>	This section provides that the short title of the legislation is the "Georgia Land Bank Act."
<b>§ 48-4-101</b>	This section provides legislative purpose and intent language. Dilapidated, abandoned and tax delinquent properties impose significant costs on Georgia's communities by lowering property values, increasing fire and police protection costs, decreasing tax revenues, and undermining community cohesion. Land banks are one of the tools communities can use to return these properties to productive use.
<b>§ 48-4-102</b>	This section contains various definitions of terms used throughout the Georgia Land Bank Act. For example, "intergovernmental contract" refers to the agreements between local governments that create land banks. "Land bank member" refers to the local governments ( <i>e.g.</i> , county, city or consolidated government) that join a land bank.
<b>§ 48-4-103</b>	This section governs which local governments are allowed to create a land bank including any group of local governments or a single consolidated government. Counties may not create a land bank without at least one participating city within the geographical boundaries of the county, and cities may not create a land bank without the county in which the city is located. Additional local governments may join an existing land bank. The local law, ordinance or resolution that creates a land bank must specify various items including the initial land bank board members. Land banks may not own property inside cities within the land bank's geographical boundaries that are not land bank members unless such city consents.
<b>§ 48-4-104</b>	This section outlines the appointment of the land bank's board of directors, their qualifications, and their duties. The initial board size must be an odd number between 5 and 11. Board members may not receive compensation for their board service. A majority of the board must be present at a meeting for the board to take action, and then a majority of those present and voting is required for approval of board action. Super-majority approval is required for certain board action such as the adoption of bylaws, the incurring of debt and the disposition of property with a value of more than \$50k.
<b>§ 48-4-105</b>	This section provides that a land bank may employ its own staff and determine the qualifications and fix the compensation of those persons. A land bank may contract with local governments for staffing services.
<b>§ 48-4-106</b>	This section enumerates land bank powers including, for example, the power to sue and be sued, contract, borrow money for the work of the land bank, and also to acquire, develop, demolish, rehabilitate, lease, sell or otherwise dispose of real property.
<b>§ 48-4-107</b>	This section expressly provides that land banks do not have the power of eminent domain.
<b>§ 48-4-108</b>	This section details the ability of a land bank to acquire property and provides that land bank income and property is tax exempt. Land banks may acquire property by gift, devise, transfer, foreclosure, or purchase from private parties, non-profit entities or local governments, as long as the property is in the geographical boundaries of the land bank. Land banks must maintain all land bank property in accordance with the laws of jurisdiction where the property is located, including all housing and building codes.
<b>§ 48-4-109</b>	This section details the ability of a land bank to dispose of property. Land banks must maintain a public inventory of all real property held by the land bank. Land banks may determine the consideration required for conveyance of land bank property, including non-monetary consideration such as a promise to use property for certain public purpose. Land banks may establish hierarchical rankings for the disposition of

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	land bank property for uses such as public space, affordable housing, retail or commercial activities, conservation areas or land trusts.
<b>§ 48-4-110</b>	This section covers the financing mechanisms for land bank operations. Land banks may be funded through grants or loans from governments or private sources, and from rent, sale or insurance coverage of land bank property. Subsection (c) provides that at local option up to 75% of the taxes collected on property conveyed out of the land bank shall be remitted to the land bank to fund operations for five years after conveyance. Proceeds of the sale of land bank property go to fund land bank operations and recover land bank expenses, and may also be remitted to the tax commissioner.
<b>§ 48-4-111</b>	This section provides that land banks are governed by Georgia open meetings and open records laws. Land bank board members and employees may not have any interests in land bank property or in contracts for materials or services provided or used by the land bank. Land banks may be dissolved by resolution approved by 2/3 of the board members upon 60-calendar days notice to the governing authorities of the land bank members.
<b>§ 48-4-112</b>	This section details the ties between land banks and the tax foreclosure system. Land banks may extinguish tax liens and claims on property that is encumbered by such liens when the land bank acquires the property. School taxes may be waived if the land bank notifies the school district of its intent to extinguish and the school district fails to object to the extinguishment in writing. Land banks may acquire tax executions from the tax commissioner for any consideration agreed to by the land bank and the tax commissioner. Land banks may acquire property at both non-judicial and judicial tax sales.
<b>Section 3</b>	This section provides for an effective date of July 1, 2012.
<b>Section 4</b>	This section contains standard language such than any laws in conflict with the Georgia Land Bank Act are repealed upon its passage.