

MBAG

Legislative Update 4/15/11

Day 40 of the Legislative Session is known as “Sine Die,” a Latin term meaning “without assigning a day for further meeting.” It’s the last day a bill can be voted on for this Legislative Session. Because there will be a Special Session this summer for Redistricting, there is a chance Governor Deal could instruct the Legislature to take up some other bills during Special Session. That does not often happen, but it could this year. HB388, a tax reform proposal that would have lowered the state income tax rate, increased the state sales tax on some services, and exempted the state sales tax on other services, failed in the last week of the session as Speaker Ralston announced he didn’t trust the underlying data and thus could not know for certain what impact the proposal would have on the average taxpayer. The proposal will be studied over the summer and could be taken up again in a Special Session. All legislation that did not pass during the 2011 Legislative Session is available for consideration during the 2012 Legislative Session, since the 2012 Legislative Session is the second and final year of the Biennial process for the Georgia General Assembly.

Perhaps the biggest news of the week was the passage of HB87, the “Illegal Immigration Reform and Enforcement Act” of 2011. Specifically, HB 87 will require employers with 10 or more employees to ensure that their new hires are eligible to work in the United States. The bill also requires secure and verifiable identification for official purposes and helps local law enforcement agencies handle issues associated with illegal immigration. This legislation does not affect existing programs that provide legal avenues for foreign workers to lawfully come to Georgia and work in our state.

Another hotly debated bill was SB10. After years of discussion, this legislation allows local communities to decide whether they want to allow Sunday sales of alcohol. SB 10 would do this by allowing city councils and county commissions to call for referendums on whether Sunday alcohol sales should be allowed at stores in their cities and counties. The state already permits the purchase of alcohol at bars, restaurants, and special events on Sunday, but does not allow for the purchase of alcohol at retail stores. SB 10 simply gives local jurisdictions the opportunity to directly decide Sunday alcohol sales in their areas.

The FY 2012 state budget (HB78) directs state spending from July 1, 2011 through June 30, 2012 and totals \$18.3 billion in state funds. A few years ago, the state budget totaled \$21 billion. While state funds have experienced a net increase of 2 percent as a result of improving economic conditions, total spending for FY 2012 has decreased by over 14 percent due to expiring federal stimulus funds and other factors.

Listed below is the legislation that directly relates to your industry. Please do not hesitate to [contact us](#) if you have any questions/concerns.

HR 2: Eminent domain; taking private property; prohibit
Sponsored by Rep. Bobby Franklin

This bill proposes an amendment to the Constitution of the State of Georgia so as to prohibit the taking of private property through eminent domain. Also provide for submission of this amendment for ratification or rejection. This resolution is in the Judiciary Committee and was read for the second time before the House on 1/24/11.

HR 3: Property; zoning laws; prohibit
Sponsored by Rep. Bobby Franklin

This bill proposes an amendment to the Constitution so as to provide that no restrictions shall be placed by any government or governmental entity on the use of property within this state. Also provides that land use and zoning laws, ordinances, and resolutions shall be prohibited. This resolution was read for the second time before the House on 1/24/11.

HB 30: Contracts; Illegal or void; Repeal certain code sections
Sponsored by Rep. Wendell Willard

In its current form, this bill will, among other things, repeal Code Section 13-8-2.1, relating to contracts in partial restraint of trade, change provisions relating to contracts contravening public policy, repeal Article 4 of Chapter 8 of Title 13, relating to restrictive covenants in contracts, and to provide for the enforcement of contracts that restrict or prohibit competition in certain commercial agreements. **This bill was passed by the House on 2/22/11 and passed the Senate on 4/12/11 and now awaits the Governor's signature / veto.**

HB 66: Insurance; certificate of insurance forms approved by commissioner
Sponsored by Rep. Howard Maxwell

This bill relates generally to insurance, so as to provide for certificate of insurance forms to be approved by the commissioner. **This bill passed the House on 3/2/11 and passed the Senate on 3/30/11 and now waits on the governor.**

HB 93: Code enforcement boards; code enforcement officers; change definition
Sponsored by Rep. Tom Taylor

A bill relating to local government code enforcement boards created on or after January 1, 2003, so as to change a definition for purposes of said article; to change certain references to "code inspectors" to "code enforcement officers" in said article. **The bill passed the House on 2/28/11 but did not pass the Senate.**

HB 102: Civil actions; conservation easement property; provide limitation
Sponsored by Rep. Doug McKillip

A BILL to be entitled an Act to amend Article 2 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to specific periods of limitations of actions, so as to provide a limitation period with respect to actions for title by prescription or private way by prescription to real property that is subject to a recorded conservation easement. The bill is currently in the House Rules Committee.

HB 110: Mortgages and liens; vacant property registry; provisions
Sponsored by Rep. Mike Jacobs

HB 110's language was added to HB 129 on Day 40. HB 129 passed the House but did not make it out of the Senate at the last minute on Day 40.

This bill relates generally to mortgages, conveyances to secure debt, and liens, so as to provide for a vacant property registry. **The bill has passed the House but did not pass the Senate.**

HB 117: Withholding tax; person listed on closing statement subject to requirements
Sponsored by Rep. Rick Crawford

This bill relates to withholding tax on sale or transfer of real property and associated tangible personal property by nonresidents, so as to provide that the person listed on the closing statement as the seller shall be treated as the seller and shall be subject to the withholding and documentation requirements. **The bill passed the House on 3/14/11 and the Senate on 4/12/11. On 4/14/11 both chambers adopted the conference committee's report and the bill now heads to the governor's desk.**

HB 129: Conveyances; future conveyance of real property; prohibit fee
Sponsored by Rep. Doug McKillip

This bill relates generally to mortgages, conveyances to secure debt, and liens, so as to prohibit a fee for a future conveyance of real property except under limited circumstances. **HB 110's language was added to HB 129 on Day 40. HB 129 passed the House but did not make it out of the Senate due to a filibuster at the last minute on Day 40.**

HB 170: Tax executions; issuance; change certain provisions
Sponsored by Rep. David Knight

This bill relates to tax executions, so as to change certain provisions regarding issuance of tax executions. It has been referred to the House Ways & Means Committee.

HB 198: Superior court clerks; real estate or personal property filing fees; extend sunset dates
Sponsored by Rep. Tom Rice

This bill relates to clerks of superior courts, so as to extend sunset dates for real estate or personal property filing fees, the state-wide uniform automated information system, and the collection and remittance of real estate or personal property filing. **It passed the House but did not pass the Senate.**

HB 204: Protecting Georgia Homeowners Act of 2011
Sponsored by Rep. Billy Mitchell

This bill's intention is to provide for homeowner relief from unfair practices related to foreclosure and foreclosure rescue schemes. It has been placed in the House Judiciary Committee.

HB 209: Foreclosure sales; county list properties advertised in alphabetical or numerical order
Sponsored by Rep. Terry Johnson

This bill relates to sales made on foreclosure under power of sale, manner of advertisement, and conduct necessary for validity, so as to provide that the official organ of each county shall list the addresses of property advertised for non-judicial foreclosure each week in alphabetical or numerical order. The bill is currently in the House Judiciary Committee.

HB 210: Taxation of intangibles; real estate transfer tax; change certain provisions
Sponsored by Rep. David Knight

This bill relates to taxation of intangibles, so as to change certain provisions regarding the real estate transfer tax. The bill is currently in the House Ways & Means Committee.

HB 237: Residential mortgage fraud; mortgage lending process
Sponsored by Rep. Rich Golick

This bill relates to residential mortgage fraud, so as revise the definition of "mortgage lending process"; to provide for investigative and subpoena powers of district attorneys and the Attorney General relative to residential mortgage fraud. **HB 110's language was added to HB 129 on Day 40. HB 129 passed the House but did not make it out of the Senate at the last minute on Day 40.**

HB 239: Financial institutions; provide for definitions
Sponsored by Rep. Greg Morris

This bill relates to financial institutions, so as to provide for definitions; to provide the Department of Banking and Finance the power to require dissolution of a financial institution; to provide for the effect of failure to maintain five members on a board of directors; to provide for service on a credit committee by a director of a credit union in certain cases; to provide for the payment of a P.O.D. account to an incorporated entity; to provide for penalties for making false statements; to provide that certain attorneys must be licensed to practice law in Georgia; to provide for related matters; to repeal conflicting laws. **The bill was passed by the House on 3/7/11 and the Senate on 4/11/11 and now heads to the governor's desk to get signed or vetoed.**

HB 281: Interest and usury; legal and maximum rates of interest
Sponsored by Rep. Ben Harbin

This bill relates to general provisions regarding interest and usury, so as to change certain provisions relating to the legal rate of interest and the maximum rate of interest generally; to change certain provisions relating to criminal penalties for excessive interest; to repeal conflicting laws; and for other purposes. This bill is currently in the House Banks & Banking Committee.

SB 123: Georgia Residential Mortgage Fraud and Foreclosure Fraud Act
Sponsored by Sen. Lester Jackson

This bill relates to property, so as to revise provisions relating to foreclosure of security deeds; to change provisions relating to the transfer of security deeds; to require recording prior to foreclosure; to provide for owners' rights to obtain payoff balances from creditors; to change provisions relating to the timing, contents, and manner of delivery of foreclosure notices; to amend Title 16 of the Official Code of Georgia Annotated, relating to crimes, so as to change provisions relating to the crime of residential

mortgage fraud; to provide for the crime of residential foreclosure fraud and prescribe elements of the crime and penalties; to provide for other matters related to the foregoing; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes. This bill is currently in the Senate Banking and Financial Institutions Committee.

SB 136: Property; provide for transfer of control of a condominium association in certain circumstances

Sponsored by Sen. Bill Hamrick

This bill relates to specialized land transactions, so as to provide for transfer of control of a condominium association in certain circumstances; to set out public policy concerning the standing of condominium associations to file suit; to provide for priority of certain liens against condominium property and against property subject to a property owners' association; to provide for related matters; to repeal conflicting laws; and for other purposes. This bill is currently in the Senate Judiciary Committee.

HB 338: Neighborhood Stabilization Act; or NEST Act; enact

Sponsored by Rep. Bob Bryant

This bill relates to property, so as to extensively revise and enact provisions relating to the creation, transfer, modification, and foreclosure of mortgages and deeds to secure debt as well as other documents creating security interests. This bill is currently in the House Banks & Banking Committee.

HB 445: Property; foreclosure; provide definitions; change multiple provisions

Sponsored by Rep. Andrew Welch

This bill relates to property, so as to provide for security deposits when residential rental property has been foreclosed upon. The bill is currently in the House Judiciary Committee.

HB 447: Foreclosure Rescue Fraud Prevention Act

Sponsored by Rep. Billy Mitchell

This bill provides for foreclosure rescue consultants and firms to be bonded, provides for the application of certain state consumer protection laws to foreclosure rescue transactions and provides that unfair foreclosure rescue transactions are unlawful and void. The bill is currently in the House Judiciary Committee.

HB 455: Unfair trade practices; prohibition against licensees; change provisions

Sponsored by Rep. Alan Powell

This bill relates to violations by licensed community association managers, salespersons, associate brokers, brokers, schools, and instructors and sanctions and unfair trade practices, so as to change provisions relating to the prohibition against licensees engaging in unfair trade practices. The bill is currently in the House Rules Committee.

HB 465: Instruments conveying interest; transfers of security instruments; include

Sponsored by Rep. Tom Weldon

HB 465's language is now on SB 64. SB 64 passed the House and Senate and now awaits the Governor's signature / veto.

This bill relates to execution of instruments conveying interest in real property or releasing security agreements, so as to include transfers of security instruments within the ambit of the Code section.

SB 262: Counties/Municipal Corporations; owner of property against which a notice of code of violation has been sent

Sponsored by Sen. Ronald Ramsey

This bill relates to general provisions relative to counties and municipal corporations, so as to provide that the owner of real property against which a notice of code violation has been sent who fails to correct such violation within 48 days shall be subject a daily fine. This bill is currently in the Senate Judiciary Committee.

HB 527: Foreclosure; violate federal Servicemembers Civil Relief Act; provide penalties

Sponsored by Rep. Terry Johnson

This bill relates to general provisions relative to foreclosure, so as to provide penalties for foreclosures in violation of the federal Servicemembers Civil Relief Act. The bill is currently in the House Judiciary Committee.

SB 64: Corporations; change the amount of fees/penalties for application for reinstatement for corporations, nonprofit corporations

Sponsored by Sen. Joshua McKoon

HB 465s language is included on SB 64.

This bill relates to corporations, partnerships, and associations, so as to change the amount of fees and penalties for application for reinstatement for corporations, nonprofit corporations, and limited liability companies. **SB 64 passed the House and Senate and awaits the Governor's signature / veto.**

Please do not hesitate to [contact us](#) if you have any questions/concerns.

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