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LOCAL GOVERNMENT Bonds: Require the Reporting of Certain Information with Respect to Any Bonds, Notes, or Other Obligations of Any Political Subdivision; Provide for Compilation and Reporting; Provide for Enforcement; Provide for Powers, Duties, and Authority of the Department of Community Affairs with Respect to the Foregoing; Provide for an Effective Date

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LOCAL GOVERNMENT

Bonds: Require the Reporting of Certain Information with Respect to Any Bonds, Notes, or Other Obligations of Any Political Subdivision; Provide for Compilation and Reporting; Provide for Enforcement; Provide for Powers, Duties, and Authority of the Department of Community Affairs with Respect to the Foregoing; Provide for an Effective Date

CODE SECTIONS:	O.C.G.A. §§ 36-82-9 (new), -160 (repealed)
BILL NUMBER:	HB 75
ACT NUMBER:	315
GEORGIA LAWS:	2001 Ga. Laws 1033
SUMMARY:	<p>The Act requires local government units to report information regarding bond issuance costs to the State Department of Community Affairs (DCA) on an annual basis. The information will be compiled and reported by the DCA annually in its existing local government finances and local authority indebtedness reports, and will enable local governments to compare their own bond issuance costs to those of similar bonds issued by other local governments. The Act specifies that existing provisions of Code section 36-81-8 will enforce reporting of the newly required information by making release of state-appropriated funds to the relevant local government units contingent upon receipt of the information by the DCA. The Act further specifies that local government units are not required to report indebtedness under \$1 million in order to prevent creating an overly burdensome administrative requirement. Finally, the Act repeals Code section 36-82-160, comprising Article 7, "Regulation of Bonds and Obligations Issued by Development Authorities," composed of the</p>

reporting requirements made obsolete by the Act.
EFFECTIVE DATE: April 27, 2001¹

History

Prior to the 2000 legislative session, then-State Auditor Claude Vickers made known to Representative Steve Stancil that local government units—primarily county commissions, school boards, and water authorities—faced widely varying bond issuance costs.² For instance, in Representative Stancil's Cobb County district, a \$10 million bond was placed at an interest rate competitive with the interest rate paid by the State on a \$200 million bond.³ However, the actual issuance costs, composed of the underwriting costs and bond counsel fees, were approximately equivalent. Thus, on a dollar-per-dollar basis, Cobb County paid twenty times more to issue its \$10 million bond than the State paid to issue its \$200 million bond.⁴ Representative Stancil determined that a simple way to correct such inequities would be to require all local government units to report their bond issuance costs to the State Department of Community Affairs (DCA) annually, and for the DCA to add that information to its annual statewide reports. Such a requirement would give local governmental units an easy way to compare their bond issuance costs with those of others.⁵ Representative Stancil introduced his bill during the 2000 legislative session and it passed the House with only one vote in opposition.⁶ The Senate, however, never brought HB 75 to the floor for a vote. Privately, Representative Stancil asserted that bond lawyers killed the bill.⁷

1. See 2001 Ga. Laws 1033, §§ 3-4, at 1035. The Act took effect upon approval by the Governor. See *id.*

2. See Telephone Interview with Rep. Steve Stancil, House District No. 16 (Apr. 4, 2001) [hereinafter Stancil Interview].

3. See Telephone Interview with Clint Mueller, Associate Legal Counsel, Georgia Association of County Commissioners, Revenue & Finance Committee (Apr. 5, 2001) [hereinafter Mueller Interview].

4. See *id.*

5. See Stancil Interview, *supra* note 2.

6. See Audio Recording of House Proceedings, Feb. 5, 2001 (remarks by Rep. Steve Stancil), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio].

7. See Stancil Interview, *supra* note 2.

*HB 75**Introduction*

Representative Stancil introduced HB 75 during the 2001 legislative session.⁸ The new bill aimed to accomplish the same goals as the bill defeated a year earlier, but with a reduced scope.⁹ The new bill, while it called for reporting of the names of both underwriter and bond counsel, did not require local governments to report either underwriting costs or bond counsel fees.¹⁰ Representative Stancil decided that just getting a bill passed would be an important first step, and that there would be opportunities to amend the Act in subsequent years.¹¹ Representatives Larry Walker, Thomas Buck, Richard Royal, and Garland Pinholster, of the 141st, 135th, 164th, and 15th Districts, respectively, co-sponsored the bill.¹²

Representative Stancil introduced the bill to the floor of the House on January 10, 2001.¹³ The House assigned the bill to its State Planning and Community Affairs Committee, which favorably reported the bill as adopted by Committee substitute.¹⁴ Representatives Stancil and Royal offered a floor amendment to the Committee substitute that the House adopted without objection.¹⁵ The House unanimously passed the Committee substitute, as amended, on February 5, 2001.¹⁶ On February 7, 2001, the Senate referred HB 75 to its Finance and Public Utilities Committee, which favorably reported the bill unchanged on February 14, 2001.¹⁷ The full Senate passed HB 75 on March 12, 2001, by a vote of 47 to 1, again without change.¹⁸ Governor Roy E. Barnes signed HB 75 into law on April 27, 2001.¹⁹

8. *See id.*; *see also* HB 75, as introduced, 2001 Ga. Gen. Assem.

9. *See* Stancil Interview, *supra* note 2.

10. *See id.*; *see also* HB 75, as introduced, 2001 Ga. Gen. Assem.

11. *See* Stancil Interview, *supra* note 2.

12. *See* HB 75, as introduced, 2001 Ga. Gen. Assem.

13. *See* State of Georgia Final Composite Status Sheet, HB 75, Mar. 21, 2001.

14. *See id.*

15. *See* House Audio, *supra* note 6 (remarks by Reps. Steve Stancil and Richard Royal).

16. *See id.*; Georgia House of Representatives Voting Record, HB 75 (Feb. 5, 2001); State of Georgia Final Composite Status Sheet, HB 75, Mar. 21, 2001.

17. *See* State of Georgia Final Composite Status Sheet, HB 75, Mar. 21, 2001.

18. *See* Georgia Senate Voting Record, HB 75 (Mar. 12, 2001); State of Georgia Final Composite Status Sheet, HB 75, Mar. 21, 2001; *see also* Audio Recording of Senate Proceedings, Mar. 12, 2001, at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter Senate Audio].

19. 2001 Ga. Laws 1033, § 4, at 1035.

Consideration by the House State Planning and Community Affairs Committee

After introduction, the House referred HB 75 to its State Planning and Community Affairs Committee.²⁰ The Committee favorably reported the bill, as substituted, on February 1, 2001.²¹ The House Committee substitute removed language in the preamble to the original bill which asserted that one of the bill's purposes was to amend Article 1 of Chapter 82 of Title 36, relating to general provisions regarding bonds, and also removed the term "public entity."²² However, the Committee substitute added the phrase "to provide for enforcement" to the preamble.²³

Section 1 of the Committee substitute replaced a definition of "public entity" with a definition for "political subdivision," and added a sentence excluding "any state agency or state authority."²⁴ Subsection (b) substituted "political subdivision" for "public entity," and added language that excluded debt instruments of \$1 million or less.²⁵ Subsection (b) also added two line items to the reporting requirement—one that captured whether the issue was new or a "refinancing or refunding," and a second for underwriting costs.²⁶ Within the sentence in subsection (b) following the itemization of information to be reported, the Committee substitute added "subsection (b) of" to a requirement that the information must be reported in accordance with Code section 36-81-8.²⁷ The Committee substitute then deleted the last sentence of the original subsection entirely, which contained generalized reporting requirements already specified in greater detail in Code section 36-81-8.²⁸ The Committee substitute also added Code section 36-82-9(c), which specified that a covered political subdivision that "fails to submit such report[s] to the [DCA] shall be prohibited from entering into any future debt until such reporting requirements are met."²⁹

20. See State of Georgia Final Composite Status Sheet, HB 75, Mar. 21, 2001.

21. See *id.*

22. Compare HB 75, as introduced, 2001 Ga. Gen. Assem., with HB 75 (HCS), 2001 Ga. Gen. Assem.

23. Compare HB 75, as introduced, 2001 Ga. Gen. Assem., with HB 75 (HCS), 2001 Ga. Gen. Assem.

24. Compare HB 75, as introduced, 2001 Ga. Gen. Assem., with HB 75 (HCS), 2001 Ga. Gen. Assem.

25. Compare HB 75, as introduced, 2001 Ga. Gen. Assem., with HB 75 (HCS), 2001 Ga. Gen. Assem.

26. Compare HB 75, as introduced, 2001 Ga. Gen. Assem., with HB 75 (HCS), 2001 Ga. Gen. Assem.

27. Compare HB 75, as introduced, 2001 Ga. Gen. Assem., with HB 75 (HCS), 2001 Ga. Gen. Assem.

28. Compare HB 75, as introduced, 2001 Ga. Gen. Assem., with HB 75 (HCS), 2001 Ga. Gen. Assem. See also 1989 Ga. Laws 908, § 1, at 908 (codified at O.C.G.A. § 36-81-8 (1989)).

29. Compare HB 75, as introduced, 2001 Ga. Gen. Assem., with HB 75 (HCS), 2001 Ga. Gen. Assem.

Finally, the Committee substitute inserted a new Section 2, striking Code section 36-82-160, the preexisting Article 7, regarding “regulation of bonds and obligations issued by development authorities,” and inserted in its place “Reserved.”³⁰

House Passage

After the full House adopted the Committee substitute, Representative Stancil proposed a floor amendment to HB 75, pointing out that the amendment clarified the reporting provisions.³¹ In the final sentence of Code section 36-82-9(b), following the itemization of information to be reported, the floor amendment deleted “subsection (b) of” from the requirement that the information be reported in accordance with Code section 36-81-8.³² Further, the floor amendment deleted proposed Code section 36-81-9(c) entirely, because the sanctions it imposed were simply redundant with the applicable sanctions in Code section 36-81-8.³³ Further, the bill’s supporters worried that the appearance of such punitive language, in addition to being unnecessary, might solidify latent opposition that would not otherwise materialize.³⁴ The full House adopted the floor amendment without objection and passed the bill unanimously.³⁵

Senate Consideration and Passage

The Senate Finance and Public Utilities Committee and the full Senate passed HB 75 without change.³⁶ The Governor signed HB 75 into law on April 27, 2001.³⁷

30. Compare HB 75, as introduced, 2001 Ga. Gen. Assem., with HB 75 (HCS), 2001 Ga. Gen. Assem. See also 1984 Ga. Laws 941, § 1, at 941, (formerly found at O.C.G.A. § 36-82-160 (1999)).

31. Compare HB 75 (HCS), 2001 Ga. Gen. Assem., with HB 75 (HCSFA), 2001 Ga. Gen. Assem. See also House Audio, *supra* note 6 (remarks by Rep. Steve Stancil).

32. Compare HB 75 (HCS), 2001 Ga. Gen. Assem., with HB 75 (HCSFA), 2001 Ga. Gen. Assem.

33. Compare HB 75 (HCS), 2001 Ga. Gen. Assem., with HB 75 (HCSFA), 2001 Ga. Gen. Assem.

34. See Mueller Interview, *supra* note 3.

35. See Georgia House of Representatives Voting Record, HB 75 (Feb. 5, 2001); State of Georgia Final Composite Status Sheet, HB 75, Mar. 21, 2001; House Audio, *supra* note 6 (House vote on HB 75).

36. See Georgia Senate Voting Record, HB 75 (Mar. 12, 2001); State of Georgia Final Composite Status Sheet, HB 75, Mar. 21, 2001; see also Senate Audio, *supra* note 18 (Senate vote). Senate Minority Leader Eric Johnson handled the bill in the Senate and spoke in favor of it on March 12, 2001, calling the bill “another good government measure,” and fielding no questions from either side before the vote for passage. See Senate Audio, *supra* note 18 (remarks by Sen. Eric Johnson).

37. See 2001 Ga. Laws 1033, § 4, at 1035.

The Act

The Act amends Title 36 of the Code by inserting a new Code section 36-82-9 that requires political subdivisions of the state, as defined in the Act, to report ten specific line items to the DCA on an annual basis regarding all revenue bonds and similar debt obligations entered into during the preceding year if in excess of \$1 million.³⁸ The Act also mandates that the required information shall be reported in accordance with the existing reporting requirements in Code section 36-81-8.³⁹

The Act also struck Code section 36-82-160 in its entirety and replaced it with "Reserved."⁴⁰ The minimal reporting requirements of Code section 36-82-160, however, grew markedly when transformed into Code section 36-82-9.⁴¹

Opposition to HB 75

Opposition to HB 75 was minimal, presumably because Representative Stancil did not include a requirement that political subdivisions report to the DCA the bond counsel fees paid on new issues.⁴² As was previously the case, political subdivisions will not easily discover the fees paid to bond counsel by others in the state, even though such information is available through the Open Records Act.⁴³ However, given that the Act requires underwriting costs to be reported, along with the interest rate charged, true interest rate, and other pertinent information about the issuance of new bonds, the legislation arguably represents a step forward in containing bond issuance costs.⁴⁴

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38. See O.C.G.A. § 36-82-9 (Supp. 2001).

39. See *id.*

40. Compare 1984 Ga. Laws 941, § 1, at 941-43, and 1987 Ga. Laws 3, § 36, at 23 (formerly found at O.C.G.A. § 36-82-160 (1999)), with O.C.G.A. § 36-82-9 (Supp. 2001).

41. Compare 1984 Ga. Laws 941, § 1, at 941-43, and 1987 Ga. Laws 3, § 36, at 23 (formerly found at O.C.G.A. § 36-82-160 (1999)), with O.C.G.A. § 36-82-9 (Supp. 2001).

42. Cf. Stancil Interview, *supra* note 2.

43. See *id.*; see also Mueller Interview, *supra* note 3.

44. See Stancil Interview, *supra* note 2; Mueller Interview, *supra* note 3.