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Plamen Russev

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STATE GOVERNMENT

Allow State Government to Administer Federal Social-Service Funds to Faith-Based Organizations.

CODE SECTIONS:	O.C.G.A. § 50-1-7 (new)
BILL NUMBER:	HB 1407
ACT NUMBER:	926
GEORGIA LAWS:	2002 Ga. Laws 1147
SUMMARY:	The Act provides a mechanism under which faith-based organizations in Georgia can use designated federal funds.
EFFECTIVE DATE:	July 1, 2002

History

The Welfare Reform Act of 1996 included a provision that recognized the role that religious organizations have played throughout the history of the United States in administering aid to those in need.¹ The provision, known as “charitable choice,” allowed religious organizations to deliver social services that the government traditionally handled, such as welfare-to-work and drug addiction programs.² The charitable choice provision applied to a small number of federal programs until President George W. Bush launched his campaign in January 2001 seeking to expand the pool of eligible programs through faith-based federal funds administration for social services.³

A White House report used to support the President’s initiative found that few federal programs actively complied with the charitable choice provision.⁴ The report pointed out that while more than half of the federal government’s social services expenditures, which amounted to several hundred billion dollars annually, was allocated to contracts with nonprofit organizations, little has gone to faith-

1. 42 U.S.C. § 604 (1996).
 2. *Id.*
 3. Rebecca Carr, *Bush Details Faith-Based Plan for Social Services*, ATLANTA J. CONST., Jan. 31, 2001, at A3.
 4. Thomas Oliver, Editorial, *Uphill Battle: Political Salvos Can Obscure Faith-Based Initiatives’ Benefits*, ATLANTA J. CONST., Sept. 4, 2001, at A10.

based groups.⁵ In addition, according to a nationwide survey, thirty-eight states, including Georgia, violate federal law in dispensing federal funds through social services contracts that sidestep or ignore the charitable choice provision.⁶

However, the Georgia Constitution makes compliance with this provision difficult by explicitly prohibiting the direct or indirect expenditure of tax money on or to any religious groups.⁷ The prohibition is so unambiguous that the Georgia Legislature has put forth House Resolution 131 seeking to amend the Georgia Constitution to allow full compliance with the 1996 Welfare Reform Act.⁸

HB 1407 is part of the national debate and effort to facilitate the administration of federal social service funds to faith-based organizations.⁹ Included in the Governor's package, HB 1407 is a bipartisan proposal seeking to provide a mechanism under which faith-based organizations in Georgia can use designated federal funds.¹⁰ Supporters assert that allowing faith-based organizations to compete for federal money on an equal footing with other nonprofit organizations will improve social programs and services "by utilizing the experience and altruistic drive possessed by these bodies."¹¹ On the other hand, critics emphasize the importance of a constitutionally and socially acceptable separation between church and state.¹² HB 1407 seeks to ensure this separation through (1) limiting the use of federal funds for administrative purposes only; (2) requiring the provision of alternative service providers when individual recipients object to the religious character of the organization; (3) prohibiting discrimination by the recipient organizations against individuals on the basis of religion or religious beliefs; (4) prohibiting the use of federal funds for any form of sectarian worship, instruction, proselytization, or promotion of any particular system of faith or worship; and (5) requiring that recipient institutions be either

5. *Id.*

6. *Id.*

7. GA. CONST. art. I, § 2, ¶ 7.

8. HR 131, as introduced, 2002 Ga. Gen. Assem.

9. Audio Recording of House Proceedings, Mar. 8, 2002 (remarks by Rep. Clint Smith), at <http://www.state.ga.us/services/leg/audio/2002archive> [hereinafter House Audio]

10. *Id.*

11. H.R. No. 29, 1st Sess., (Ga. 2002).

12. *Id.*

501(c)(3) organizations [as defined by the United States Internal Revenue code], or agree to audits of their use of state and local funds.¹³

HB 1407

Introduction

Representatives Charlie Smith, Jr., Clint Smith, Henrietta Turnquest, and Winfred Dukes of the 175th, 19th, 73rd, and 161st Districts, respectively, sponsored HB 1407.¹⁴ Upon the introduction of HB 1407 on February 14, 2002, the House assigned the bill to its State Planning and Community Affairs Committee, which reported the bill favorably by substitute on February 26, 2002.¹⁵ The Committee substitute added a subsection requiring that fund recipients be either institutions organized under Section 501(c)(3) of the United States Internal Revenue Code, or that they agree to audits of the use of state and local funds administered under new Code section 50-1-7.¹⁵ The House adopted and passed HB 1407 by a vote of 152 to 4 on March 8, 2002.¹⁶

Consideration by the Senate

On March 18, 2002, the bill was read in the Senate and referred it to the Senate Interstate Cooperation Committee which favorably reported the bill on April 1, 2002.¹⁷ Senators Thomas Price, Connie Stokes, Donzella James, and René Kemp of the 56th, 43rd, 35th, and 3rd Districts, respectively, offered an amendment on the Senate floor that replaced the general reference to religious organizations with a specific list of institutions that fall under the rules of new Code section 50-1-7.¹⁸ The Senate passed and adopted HB 1407 with the

13. House Audio, *supra* note 9 (remarks by House Rep. Charlie Smith).

14. HB 1407, as introduced, 2002 Ga. Gen. Assem.

15. State of Georgia Final Composite Status Sheet, HB 1407, Apr. 12, 2002. *Compare* HB 1407, as introduced, 2002 Ga. Gen. Assem., *with* HB 1407 (HCS), 2002 Ga. Gen. Assem.

15. *Id.*

16. Georgia House of Representatives Voting Record, HB 1407 (Mar. 8, 2002); State of Georgia Final Composite Status Sheet, HB 1407, Apr. 12, 2002.

17. State of Georgia Final Composite Status Sheet, HB 1407, Apr. 12, 2002.

18. *Compare* HB 1407 (HCS) 2002 Ga. Gen. Assem., *with* HB 1407 (SFA), 2002 Ga. Gen. Assem.

proposed amendment by a vote of 47 to 0 on April 3, 2002.¹⁹ On April 9, 2002, the House agreed to the Senate amendment by a vote of 138 to 3.²⁰ Governor Roy Barnes signed the bill into law on May 15, 2002.²¹

The Act

The Act creates new Code section 50-1-7 which seeks to allow state government, while participating in federal programs, to administer programs and provide services through contracting with charitable, private, and religious organizations.²² The new Code section, however, limits the use of state and local government funds to administrative purposes only.²³ The Act requires that an alternative, acceptable provider be available to any person who objects to the religious character of an organization from which that person receives, or would receive, services.²⁴ Simultaneously, the Act forbids any religious organization that provides program assistance or services from refusing services to any individual on the basis of religion, religious beliefs, or participation in or refusal to participate in a religious practice or rite.²⁵ New Code section 50-1-7 also stipulates that no funds provided to a religious organization for program assistance or services be used for sectarian worship, instruction, proselytization, or promotion of any particular system of faith or worship.²⁶ Finally, the Act requires that all entities not registered under Section 501(c)(3) of the United States Internal Revenue Code agree to submit to financial audits ensuring their compliance with the limitations set forth in new Code section 50-1-7.²⁷

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19. Georgia Senate Voting Record, HB 1407 (Apr. 3, 2002); State of Georgia Final Composite Status Sheet, HB 1407, Apr. 12, 2002.

20. Georgia House Voting Record, HB 1407 (Apr. 9, 2002); State of Georgia Final Composite Status Sheet, HB 1407, Apr. 12, 2002.

21. See 2002 Ga. Laws 1147, § 2, at 1148.

22. O.C.G.A. § 50-1-7 (Supp. 2002).

23. O.C.G.A. § 50-1-7(b)(1) (Supp. 2002).

24. O.C.G.A. § 50-1-7(b)(2) (Supp. 2002).

25. O.C.G.A. § 50-1-7(b)(3) (Supp. 2002).

26. O.C.G.A. § 50-1-7(b)(4) (Supp. 2002).

27. O.C.G.A. § 50-1-7(b)(5) (Supp. 2002).