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## LOCAL GOVERNMENT Enterprise Zone Employment Act: Provide for Additional Qualifying Businesses and Services; Limit Governmental Authority to Investigate and Inspect Residential Rental Property

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## LOCAL GOVERNMENT

### ***Enterprise Zone Employment Act: Provide for Additional Qualifying Businesses and Services; Limit Governmental Authority to Investigate and Inspect Residential Rental Property***

CODE SECTIONS: O.C.G.A. §§ 36-74-13, 36-88-3  
(amended)

BILL NUMBER: HB 748

ACT NUMBER: 362

GEORGIA LAWS: 2003 Ga. Laws 818

SUMMARY: The Act adds entities engaged in day-care activities to the list of businesses and services eligible for tax exemptions and abatements under the Enterprise Zone Employment Act of 1997. The Act prohibits local governments from investigating or inspecting residential rental property unless they have probable cause to believe that a violation of applicable codes exists or existed. The Act also prohibits local governments from requiring registration of residential rental property.

EFFECTIVE DATE: July 1, 2003

### ***History***

Georgia law provides for the creation of state and local “Enterprise Zones” in areas of the state in need of economic revitalization.<sup>1</sup> Businesses that contribute to economic growth in those areas receive preferential tax treatment and other economic incentives to further stimulate distressed local economies.<sup>2</sup> Prior to the Act, the only

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1. See 1997 Ga. Laws 1481, §§ 1-3 (formerly found at O.C.G.A. §§ 36-88-1 to -10 (2000)). For a complete legislative history of the original Enterprise Zone Employment Act, see James F. Merna, *Review of Selected 1997 Georgia Legislation*, 14 GA. ST. U. L. REV. 191 (1997).

2. See 1997 Ga. Laws 1481, § 1, at 1483 (formerly found at O.C.G.A. § 36-88-4 (2000)).

businesses specifically named as “[s]ervice enterprise[s]” entitled to Enterprise Zone treatment were those entities “engaged primarily in finance, insurance, and real estate activit[ies].”<sup>3</sup> As amended by the Act, the Code now entitles child day-care businesses in Enterprise Zones to tax exemptions and other financial incentives for doing business in the Zones.<sup>4</sup>

The Act’s more controversial portion was not part of the original bill, but the Georgia General Assembly added it in the legislative session’s final minutes by a floor amendment.<sup>5</sup> The controversial section is unrelated to Enterprise Zones and prohibits local governments from (1) inspecting residential rental properties without probable cause to believe that a code violation has occurred and (2) requiring residential rental properties to register.<sup>6</sup> Senator Steve Thompson of the 33rd district proposed the amendment in response to realtor and apartment associations’ lobbying efforts regarding concern about local government practices that ostensibly run counter to the privacy rights of renters.<sup>7</sup> For example, on April 21, 2003, the “Roswell City Council adopted an ordinance . . . requir[ing] registration, inspection[], and the payment of [a] \$25 [fee] per unit for a certificate of compliance for all rental multifamily housing in the [c]ity.”<sup>8</sup> The City of East Point also recently amended its inspection ordinance to include a fee schedule under which apartment complex owners would be liable for thousands of dollars in

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3. 1997 Ga. Laws 1481, § 1, at 1483 (formerly found at O.C.G.A. § 36-88-3(9) (2000)). While any business can qualify for Enterprise Zone treatment by meeting the requisites of the Enterprise Zone Employment Act (for example, by creating new jobs in an Enterprise Zone), prior to the Act the only business services *specifically enumerated* as being entitled to Enterprise Zone treatment were those listed above. See 1997 Ga. Laws 1481, § 1, at 1482-83 (formerly found at O.C.G.A. §§ 36-88-3 to -4 (2000)).

4. Compare 1997 Ga. Laws 1481, § 1 (formerly found at O.C.G.A. § 36-88-3(9) (2000)), with O.C.G.A. § 36-88-3(9) (Supp. 2003).

5. See Audio Recording of Senate Proceedings, Apr. 25, 2003 (remarks by Sen. Steve Thompson), at <http://www.state.ga.us/services/leg/audio/2003archive> [hereinafter Senate Audio]; see also Phillip Glitman, *Bill Draws Criticism: Amendment Restricts Home Inspections*, MARIETTA DAILY J., May 7, 2003, at A1.

6. See O.C.G.A. § 36-74-13(b) (Supp. 2003). In this context, “registered” means requiring that the names of all tenants in a residential rental property be listed with the applicable local government agency. Press Release, Gov. Sonny Perdue, Governor Perdue Signs House Bill 748 (June 4, 2003), at <http://www.gov.state.ga.us/document.asp?doc=press/press136> [hereinafter Press Release].

7. See Haydon Stanley, *The Truth About HB 748* (June 26, 2003) (on file with the Georgia State University Law Review); Glitman, *supra* note 5.

8. See Stanley, *supra* note 7. According to the City of Roswell, the ordinance is necessary to prevent its already aged apartments from deteriorating further. See Paul Kaplan, *Roswell Ordinance Skirts Stumlord Bill*, ATLANTA J. CONST., June 3, 2003, at B1, available at 2003 WL 56078789.

inspection fees.<sup>9</sup> A City of Athens ordinance prohibited more than two unrelated tenants from sharing residential rental property, and the City enacted another ordinance requiring the registration of all tenants living in these properties.<sup>10</sup>

With an eye towards combating these ordinances, the Atlanta Apartment Association and the Georgia Association of Realtors approached Senators during the final week of the legislative session.<sup>11</sup> This discussion resulted in HB 748, as amended.

### *HB 748*

HB 748, as introduced by Representative Tom Buck of the 112th district, provided for the inclusion of day-care centers on to the short list of businesses automatically entitled to preferential tax treatment when located in an Enterprise Zone.<sup>12</sup> The bill that passed was not so simple.<sup>13</sup>

In response to the lobbying efforts of several apartment associations and realtors, Senator Thompson, in the waning hours of the 2003 legislative session, proposed a floor amendment to HB 748 that (1) prohibited local governments from performing inspections of rental property without probable cause for believing “there is or has been” a code violation, (2) prohibited local governments from requiring the registration of rental property, and (3) prohibited local governments from requiring the collection of fees for property inspection.<sup>14</sup> The amendment passed the Senate overwhelmingly.<sup>15</sup>

When the amended bill reached the House, “representatives of the Georgia Municipal Association [(“GMA”)] and the Association of County Commissioners [(“ACCG”)] initially expressed concerns over the amendment and urged members of the House to reject it.”<sup>16</sup>

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9. See Stanley, *supra* note 7. Under the East Point ordinance, as recently amended, the owners of multi-family residential rental property must pay a \$150 inspection fee for the first unit and \$25 for each additional unit. An owner of a 200-unit apartment complex would therefore pay \$5125 in fees. *Id.*

10. See Telephone Interview with Bill Dunaway, Mayor, City of Marietta (June 26, 2003) [hereinafter Dunaway Interview].

11. See Stanley, *supra* note 7.

12. See HB 748, as introduced, 2003 Ga. Gen. Assem.

13. See Stanley, *supra* note 7. Compare HB 748, as introduced, 2003 Ga. Gen. Assem., with O.C.G.A. §§ 36-74-13, 36-88-3 (Supp. 2003).

14. See HB 748 (SFA), 2003 Ga. Gen. Assem.

15. See Georgia Senate Voting Record, HB 748 (Apr. 25, 2003).

16. See Stanley, *supra* note 7.

The original sponsor of HB 748, Representative Buck, asked the amendment's proponents to meet with the GMA and the ACCG to work out a compromise.<sup>17</sup> Following approximately one hour of discussion, the interested groups notified Representative Buck that they had reached a compromise.<sup>18</sup> When Representative Buck asked if he was authorized to tell the House that all interested parties agreed to the amendment, they told him "yes."<sup>19</sup> With Representative Buck's assurances that the new language satisfied all parties, the amendment passed the House unanimously.<sup>20</sup>

After the amended bill passed both chambers, the GMA and the ACCG withdrew their support of the legislation and urged Governor Perdue to veto HB 748, calling the bill the "slumlord" law.<sup>21</sup> Additionally, the Metropolitan Atlanta Mayors Association ("MAMA") drafted a formal resolution urging the veto of HB 748, to which they attached a letter with the signatures of 19 area mayors, urging the same.<sup>22</sup> Even though the GMA and the ACCG assisted in revising the controversial amendment before it passed the House, MAMA claimed in its letter to the Governor that the cities "had no opportunity to review or comment on this [b]ill."<sup>23</sup> The GMA and the ACCG, representing Georgia's cities and counties, admit "they signed off on the final [version] of the amendment," and provided substantial input, but they claim that "they did so with a gun to their heads or, perhaps more accurately, a ticking clock."<sup>24</sup>

On June 4, 2003, Governor Perdue signed HB 748 into law.<sup>25</sup> In signing the bill, Governor Perdue stated:

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17. See *id.*; Telephone Interview with Rep. Tom Buck, House District No. 112 (June 26, 2003) [hereinafter Buck Interview].

18. See Buck Interview, *supra* note 17. The group made minimal changes that included: (1) limiting the amendment to apply only to *residential* rental property, (2) redacting the provision prohibiting collection of fees for inspections, and (3) adding a provision stating that "[c]onditions which appear to be code violations which are in plain view may form the basis for probable cause." Compare HB 748 (SFA), 2003 Ga. Gen. Assem., with HB 748 (HFA), 2003 Ga. Gen. Assem.

19. See Buck Interview, *supra* note 17.

20. *Id.*; Georgia House of Representatives Voting Record, HB 748 (Apr. 25, 2003).

21. See Buck Interview, *supra* note 17; Paul Kaplan, *Officials Cry Foul Over 'Slumlord' Bill: Mayors, Legislators Press Perdue for Veto*, ATLANTA J. CONST., May 10, 2003, at A1, available at 2003 WL 19318633.

22. See Letter from Jere Wood, Chairman, Metropolitan Atlanta Mayors Association, to Gov. Sonny Perdue (May 6, 2003) (on file with the Georgia State University Law Review).

23. *Id.*

24. See Kaplan, *supra* note 21.

25. 2003 Ga. Laws 818.

I was forced to weigh this bill's effect of usurping an area of local governmental action with citizens' privacy rights . . . .

The ordinances in Athens and Roswell . . . severely infringe upon tenants' privacy rights. . . .

. . . .

At least one locality requires the registration of residential rental property and mandates making names and addresses of tenants available to city officials. Another jurisdiction requires city employees to inspect residential rental properties without regard to whether probable cause of a code violation exists to justify these searches and inspections. . . .

HB 748, as amended, presents a palatable solution.<sup>26</sup>

Governor Perdue valued individual privacy rights over the governmental need to police the condition of residential property.<sup>27</sup> However, the evident hostility local governments aimed at the legislation signals that the controversy is far from over. In fact, in the wake of the bill's passage on April 25, 2003, the City of Roswell, whose original inspection ordinance was an impetus for the 11th hour amendment to HB 748, enacted a new inspection ordinance in the hope of skirting the edges of the new state law.<sup>28</sup> The new ordinance circumvents the language in HB 748 by requiring "owners to inspect their own rental units," instead of requiring city employees to do so, and "to have a qualified building inspector certify" code compliance.<sup>29</sup> If courts uphold such an ordinance as not violating the new Act, other local governments may follow suit to avoid the new law.

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26. See Press Release, *supra* note 6.

27. See *id.*

28. See Kaplan, *supra* note 8.

29. *Id.* The new Roswell ordinance requires that the above-mentioned self-inspections occur every year—twice as often as the city's former ordinance required. *Id.*

*The Act*

Under the Act, the Code now entitles child day-care businesses in Enterprise Zones to tax exemptions and other financial incentives for doing business in the Zones.<sup>30</sup> The Act prohibits local governments from requiring registration of rental properties because publicizing the names of rental residents arguably violates those residents' individual privacy rights.<sup>31</sup> Further, the Act prohibits local governments from inspecting residential rental property without probable cause to believe that a code violation has occurred or is occurring.<sup>32</sup> As Governor Perdue noted, the legislation "does nothing to affect the already established power of municipalities to conduct general health and safety inspections pursuant to existing codes. It simply codifies the probable cause standard originally set forth by the U.S. Supreme Court in *Camara v. Municipal Court*."<sup>33</sup>

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30. See O.C.G.A. § 36-88-3(9) (Supp. 2003).

31. See O.C.G.A. § 36-74-13(b) (Supp. 2003); Senate Audio, *supra* note 5 (remarks by Sen. Steve Thompson).

32. See O.C.G.A. § 36-74-13(b) (Supp. 2003).

33. 387 U.S. 523 (1967); Press Release, *supra* note 6.