

9-1-2005

LABOR AND INDUSTRIAL RELATIONS Prohibitions on Local Government Wage and Employment Benefit Mandates: Change Provisions Relating to the Prohibition of Local Government Wage and Employment Benefit Mandates; Provide That No Local Government Entity May Through Its Purchasing or Contracting Procedures Seek to Control or Affect the Wages or Employment Benefits Provided by its Vendors, Contractors, Service Providers, or Other Parties Doing Business with the Local Government Entity; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

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Recommended Citation

Keith Muse, *LABOR AND INDUSTRIAL RELATIONS Prohibitions on Local Government Wage and Employment Benefit Mandates: Change Provisions Relating to the Prohibition of Local Government Wage and Employment Benefit Mandates; Provide That No Local Government Entity May Through Its Purchasing or Contracting Procedures Seek to Control or Affect the Wages or Employment Benefits Provided by its Vendors, Contractors, Service Providers, or Other Parties Doing Business with the Local Government Entity; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes*, 22 GA. ST. U. L. REV. (2005).
Available at: <https://readingroom.law.gsu.edu/gsulr/vol22/iss1/9>

LABOR AND INDUSTRIAL RELATIONS

Prohibitions on Local Government Wage and Employment Benefit Mandates: Change Provisions Relating to the Prohibition of Local Government Wage and Employment Benefit Mandates; Provide That No Local Government Entity May Through Its Purchasing or Contracting Procedures Seek to Control or Affect the Wages or Employment Benefits Provided by its Vendors, Contractors, Service Providers, or Other Parties Doing Business with the Local Government Entity; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTION:	O.C.G.A. § 34-4-3.1 (amended)
BILL NUMBER:	HB 59
ACT NUMBER:	69
GEORGIA LAWS:	2005 Ga. Laws 450
SUMMARY:	This Act prevents Georgia municipalities from enforcing or passing ordinances that give preferences to contractors, bidders, and others who voluntarily pay their employees certain wages and benefits and seek business with the municipality.
EFFECTIVE DATE:	July 1, 2005

History

Representative Earl Ehrhart of the 36th district introduced HB 59 because he wanted to clarify the language in Code section 34-4-3.1, which was enacted in 2004.¹ The language provided that a municipality could not require contractors and others to pay higher wages and partner benefits to their employees in order to do business

1. See Audio Recording of House Proceedings, Feb. 22, 2005 (remarks by Rep. Earl Ehrhart), http://www.georgia.gov/00/article/0,2086,4802_6107103_33078458,00.html [hereinafter House Audio]; 2004 Ga. Laws 377, § 2, at 378 (formerly found at O.C.G.A. § 34-4-3.1 (2004)).

with that municipality.² Representative Ehrhart specifically addressed the City of Atlanta's passage of a local ordinance that made higher wage payments and partner benefits voluntary.³ Representative Ehrhart introduced HB 59 to prevent Atlanta and other municipalities from imposing requirements that were voluntary in name only.⁴ In late 2004, the City of Atlanta enacted a living wage ordinance that gave preference to bidders on city contracts if they paid their employees \$10.50 per hour with insurance or \$12 per hour without insurance.⁵ In response to Representative Ehrhart's introduction of the bill, which would prevent municipalities from giving preferences to bidders for paying the living wage, the Atlanta City Council passed a resolution saying the bill was "inconsistent with principles of local control and home rule."⁶

Representative Ehrhart stated that with the passage of the bill, Georgians "can compete on an equal playing field for doing work with government agencies in their area."⁷ Drafters designed the bill to keep jobs in Atlanta even if the wage rates are not as high as opponents would prefer.⁸ In 2004, Representative Ehrhart stated that AirTran Airlines had chosen to open their new satellite reservations office in Carrollton, Georgia instead of Atlanta due to the living wage ordinance.⁹ According to Representative Ehrhart, this is just one example of Atlanta's loss of as many as 100 jobs due to the living wage ordinance.¹⁰

The City of Atlanta lobbied against the passage of the bill for two reasons.¹¹ First, the City said the bill would jeopardize public safety due to the lower wages that contractors could pay security personnel

2. See House Audio, *supra* note 1 (remarks by Rep. Earl Ehrhart); 2004 Ga. Laws 377, § 2, at 378 (formerly found at O.C.G.A. § 34-4-3.1 (2004)).

3. See House Audio, *supra* note 1 (remarks by Rep. Earl Ehrhart).

4. *Id.*

5. Ty Tagami, *LEGISLATURE 2005: GOP, City Leaders Spar Over 'Living Wage,' Rights*, ATLANTA J. CONST., Jan. 20, 2005, at C6, available at 2005 WLNR 786628.

6. *Id.*

7. Sonji Jacobs, *LEGISLATURE 2005: Senate Votes to Kill Atlanta's Living-Wage Law*, ATLANTA J. CONST., Mar. 30, 2005, at B4, available at 2005 WLNR 5041921.

8. *Id.*

9. Ernie Suggs, *LEGISLATURE 2004: 'Living Wage' Ban Passes in House*, ATLANTA J. CONST., Mar. 19, 2004, at D5, available at 2004 WL 6313789.

10. *Id.*

11. Memorandum from the City of Atlanta Legislative Team to the Georgia Senate (Mar. 29, 2005) (on file with the Georgia State University Law Review).

who worked directly with the City.¹² Lobbyists for the City of Atlanta said that if the bill passed, Atlanta would either have to accept a lower level of professionalism among their security staff or use uniformed officers for security purposes.¹³

In addition, City lobbyists pointed out that federal law requires contractors working on federally funded projects to pay “prevailing wages” to their workers.¹⁴ The City of Atlanta legislative team stated that as a result, any local entity receiving federal funds would violate either state or federal law.¹⁵

Bill Tracking of HB 59

Consideration by the House

House Representative Earl Ehrhart of the 36th district introduced HB 59.¹⁶ The House first read the bill on January 12, 2005, and read it a second time on January 24, 2005.¹⁷ The House Committee on Intragovernmental Coordination favorably reported on the bill February 14, 2005.¹⁸

The Bill, As Introduced

The purpose of the bill was to amend Code section 34-4-3.1 to include the following language:

No local government entity may through its purchasing or contracting procedures seek to control or affect the wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the local government entity. A local government entity shall not through the use of evaluation factors, qualification of bidders, or otherwise award preferences on the basis of wages or

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. See HB 59, as introduced, 2005 Ga. Gen. Assem.

17. See State of Georgia Final Composite Status Sheet, HB 59, Jan. 12, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, HB 59, Jan. 24, 2005 (May 11, 2005).

18. See State of Georgia Final Composite Status Sheet, HB 59, Feb. 14, 2005 (May 11, 2005).

employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the local government entity.¹⁹

Floor Debate and Proposed Amendments

During the floor debate, Representative Ehrhart pointed out that this bill would close a loophole that the City of Atlanta had recently used to pass an ordinance that gave preferences to bidders that paid their employees the living wage rate.²⁰

Representative Bob Holmes of the 61st district spoke against the bill during the floor debate.²¹ Representative Holmes stated that there are at least 37 cities and many airports throughout the country that have living wage requirements, and he questioned how these laws could remain in effect if, as Representative Ehrhart asserted, such laws are unconstitutional.²² Representative Holmes also expressed concern that Representative Ehrhart only proposes bills to preempt local laws when they relate to the City of Atlanta.²³ Representative Roger Bruce of the 64th district also expressed his opposition to the bill and his concerns that Representative Ehrhart was targeting the City of Atlanta.²⁴ Representative Ehrhart responded by pointing out that the bill would affect all municipalities throughout Georgia and not just the City of Atlanta.²⁵

Representative Douglas C. Dean of the 59th district also spoke against the bill.²⁶ Representative Dean expressed concern that this bill would send the wrong message because it is too pro-business.²⁷ Representative Dean also stated that he believes Atlanta should be able to obtain living wages for its residents just as it did when it required contractors bidding for the 1996 Olympics to pay a certain wage.²⁸ Representative Sharon Beasley-Teague of the 65th district

19. See HB 59, as introduced, 2005 Ga. Gen. Assem.

20. See House Audio, *supra* note 1 (remarks by Rep. Earl Ehrhart).

21. See *id.* (remarks by Rep. Bob Holmes).

22. See *id.*

23. See *id.*

24. See *id.* (remarks by Rep. Roger B. Bruce).

25. See *id.* (remarks by Rep. Earl Ehrhart).

26. See House Audio, *supra* note 1 (remarks by Rep. Douglas C. Dean).

27. See *id.*

28. See *id.*

also pointed out that other cities throughout the country that serve as the economic engines of their state operate without the obstacles this bill would present.²⁹

House Representative Calvin Smyre of the 132nd district introduced three amendments to HB 59.³⁰ The first amendment, which eventually failed, would have added the words “except as provided by federal law, rule, or regulation” to the bill.³¹ Representative Ehrhart spoke in opposition to this amendment because he believed it would raise issues concerning the Davis-Bacon Act.³²

Representative Smyre also introduced an amendment that would exclude application of the bill to contracts dealing with security services.³³ This amendment also failed, and Representative Ehrhart objected to it because he said treating one business differently from another falls under the long-since discredited separate but equal doctrine.³⁴ The last failed amendment that Representative Smyre introduced would have added an exception regarding state contracts.³⁵ The House adopted HB 59 without amendment by a vote of 105 to 57.³⁶

Consideration by the Senate

The Senate first read HB 59 on February 23, 2005, and the Senate Insurance and Labor Committee favorably reported the bill on March 15, 2005.³⁷

29. *See id.* (remarks by Rep. Sharon Beasley-Teague).

30. *See* Failed House Floor Amendments to HB 59, introduced by Rep. Calvin Smyre, Feb. 22, 2005.

31. *See* Failed House Floor Amendment 1 to HB 59, introduced by Rep. Calvin Smyre, Feb. 22, 2005.

32. *See* House Audio, *supra* note 1 (remarks by Rep. Earl Ehrhart). The Davis-Bacon Act was “enacted to protect employees of government contractors from substandard earnings and to preserve local wage standards.” 64 AM. JUR. 2D *Public Works and Contracts* § 222 (2004).

33. *See* Failed House Floor Amendment 2 to HB 59, introduced by Rep. Calvin Smyre, Feb. 22, 2005.

34. *See* House Audio, *supra* note 1 (remarks by Rep. Earl Ehrhart).

35. *See* Failed House Floor Amendment 3 to HB 59, introduced by Rep. Calvin Smyre, Feb. 22, 2005.

36. Georgia House of Representatives Voting Record, HB 59 (Feb. 22, 2005).

37. *See* State of Georgia Final Composite Status Sheet, HB 59, Feb. 23, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, HB 59, Mar. 15, 2005 (May 11, 2005).

Floor Debate and Amendments

During the floor debate, Senator Chip Rogers of the 21st District spoke in support of the bill.³⁸ Senator Rogers said the bill would prevent municipalities from setting up a “scoring system that would effectively put into place a living wage.”³⁹ Senator Rogers supported the bill because he believes living wages would hurt rather than help Georgia citizens.⁴⁰ Senator Rogers pointed to a study prepared by professors at the University of Chicago and Northwestern University to support his view that living wages force companies to cut jobs and possibly enter into bankruptcy.⁴¹

Opponents feared passage of the bill would create a conflict between Georgia law and the Davis-Bacon Act.⁴² In addition, they argued there are dozens of studies that show living wages work.⁴³ Lastly, the bill’s opponents questioned Senator Rogers’s motive in carrying the bill in the Senate and also his knowledge of the details surrounding the City of Atlanta ordinance concerning living wages.⁴⁴

The two main opponents of the bill also introduced amendments.⁴⁵ Senator Kasim Reed of the 35th district introduced two amendments that would have provided exceptions for security services and for situations where there were conflicts with federal laws, rules, or regulations.⁴⁶ Senator Vincent Fort of the 39th district introduced an amendment that would have made the minimum wage in Georgia \$6.15 an hour.⁴⁷ The amendments failed and the bill passed, as introduced, by a vote of 33 to 17.⁴⁸ The Governor signed the bill into law on May 2, 2005.⁴⁹

38. See Audio Recording of Senate Proceedings, Mar. 29, 2005 (remarks by Sen. Chip Rogers), http://www.georgia.gov/00/article/0,2086,4802_6107103_33091490,00.html [hereinafter Senate Audio].

39. *Id.*

40. *Id.*

41. *Id.*

42. See *id.* (remarks by Sen. Kasim Reed).

43. See *id.* (remarks by Sen. Vincent Fort).

44. See Senate Audio, *supra* note 38. (remarks by Sens. Kasim Reed and Vincent Fort).

45. See Failed Senate Floor Amendments to HB 59, introduced by Sen. Kasim Reed and Sen. Vincent Fort, Mar. 29, 2005.

46. See Failed Senate Floor Amendments 1 and 2 to HB 59, introduced by Sen. Kasim Reed, Mar. 29, 2005.

47. See Failed Senate Floor Amendment 3 to HB 59, introduced by Sen. Vincent Fort, Mar. 29, 2005.

48. Georgia Senate Voting Record, HB 59 (Mar. 29, 2005).

49. See State of Georgia Final Composite Status Sheet, HB 59, May 2, 2005 (May 11, 2005).

Analysis

As noted above, the City of Atlanta passed an ordinance in 2003 that required contractors working with the City to pay their workers a living wage.⁵⁰ But in 2004, the Georgia General Assembly passed a law that prevented local governments from passing such ordinances.⁵¹ The City of Atlanta then passed an ordinance that gave preferences to contractors that paid their workers living wages.⁵² Representative Earl Ehrhart introduced the bill to close the door on this loophole.⁵³

Supporters of the bill argued that living wage ordinances do not work.⁵⁴ They argued that the costs to companies eventually outweigh the minimal benefits that workers might receive.⁵⁵ Supporters argued that when companies face the prospect of having to pay employees higher wages, they either choose to locate outside of the municipality, or they resort to bankruptcy.⁵⁶

Many local governments have enacted various forms of living wage ordinances over the last ten years.⁵⁷ According to the Living Wage Resource Center, over 100 cities and counties have adopted ordinances that require bidders who want to work for the municipality in certain capacities to pay a living wage.⁵⁸ For example, New York City passed a living wage ordinance in November of 2002 that applies to service contractors in areas such as day care and food service.⁵⁹

Other cities have gone even further and enacted wage increases for workers beyond those who work directly or indirectly for the city.⁶⁰

50. See Ernie Suggs, *Atlanta Oks Ordinance That Requires Living Wage*, ATLANTA J. CONST., Mar. 27, 2003, North Fulton, at 4, available at 2003 WLNR 6240024.

51. 2004 Ga. Laws 377, § 2, at 378 (formerly found at O.C.G.A. § 34-4-3.1 (2004)); See Editorial, *OUR OPINIONS: Keep Living Wage Alive: Atlanta's Attempt to Lift Workers Out of Poverty Would Have More Benefits Than Drawbacks*, ATLANTA J. CONST., June 9, 2005, at A18, available at 2005 WLNR 9123805.

52. See Editorial, *supra* note 51.

53. *Id.*

54. See Senate Audio, *supra* note 38 (remarks by Sen. Chip Rogers).

55. *Id.*

56. *Id.*

57. See Mary Beth Lipp, Note, *Legislator's Obligation to Support a Living Wage: A Comparative Constitutional Vision of Justice*, 75 S. CAL. L. REV. 475, 476, 487-88 (2002).

58. See The Living Wage Resource Center, *Living Wage Wins*, <http://www.livingwagecampaign.org/index.php?id=1958> (last visited Oct. 2, 2005).

59. See *id.*

60. *Id.*

For example, San Francisco voters passed a law that set the minimum wage at \$8.50 for all workers who are employed by companies having at least 10 employees.⁶¹

Proponents of living wage ordinances have faced both political and legal obstacles.⁶² In 2004, the Ninth Circuit Court of Appeals dealt with the issue of whether Berkeley, California's living wage law was unconstitutional.⁶³ The court upheld the City's ordinance that required employers to pay a certain minimum wage if they received financial benefits from the city.⁶⁴ The court addressed RUI One Corporation's contract clause and due process clause challenges and said the plaintiff had failed to meet its burden of showing substantial impairment of the contractual relationship or the improper delegation of legislative power.⁶⁵

Although there was a fundamental disagreement between the two camps over whether living wages work, at least one opponent of the bill contended that Senator Ehrhart's motives in introducing the bill were more than just a conservative economic philosophy.⁶⁶ Representative Bob Holmes claimed that HB 59 specifically targeted the City of Atlanta.⁶⁷ According to Representative Holmes, the bill's proponents refused to support Atlanta even though it is the economic engine of Georgia.⁶⁸ The bill was allegedly just another example of an attempt to wrest local control from the City of Atlanta.⁶⁹

While proponents of the bill argued that Atlanta's ordinance violated the United States Constitution, opponents of the bill argued that it would create conflicts with federal law.⁷⁰ Whether the Act will conflict with the Davis-Bacon Act remains to be seen.⁷¹

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61. *Id.*

62. *See Efforts Shift in Struggle to Secure Higher Living Wages*, J. REC. (Okla. City), Sept. 17, 2001, at 1, available at 2001 WLNR 4545545.

63. *See RUI One Corp. v. City of Berkeley*, 371 F.3d 1137 (9th Cir. 2004).

64. *Id.* at 1144.

65. *Id.* at 1156.

66. *See Senate Audio*, *supra* note 38 (remarks by Sens. Chip Rogers and Vincent Fort); Telephone Interview with Rep. Bob Holmes, House District No. 61 (Apr. 18, 2005) [hereinafter Holmes Interview].

67. *See Holmes Interview*, *supra* note 66.

68. *Id.*

69. *Id.*

70. *See House Audio*, *supra* note 1 (remarks by Rep. Earl Ehrhart); *Senate Audio*, *supra* note 38 (remarks by Sen. Kasim Reed).

71. *Id.*