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LOCAL GOVERNMENT General Provisions: Amend Title 36 of the Official Code of Georgia Annotated, Relating to Local Government, so as to Require that Certain Contracts Shall be Honored by Municipalities or Other Government Entities; Provide for Definitions; Provide for Certain Restrictions on Certain Actions Taken by Local Governments; Place Certain Requirements on Solid Waste Collection Firms; Provide for Additional Requirements Regarding Certain Excess Funds of Special Districts Divided into Noncontiguous Areas; Provide for Related Matters;

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LOCAL GOVERNMENT

General Provisions: Amend Title 36 of the Official Code of Georgia Annotated, Relating to Local Government, so as to Require that Certain Contracts Shall be Honored by Municipalities or Other Government Entities; Provide for Definitions; Provide for Certain Restrictions on Certain Actions Taken by Local Governments; Place Certain Requirements on Solid Waste Collection Firms; Provide for Additional Requirements Regarding Certain Excess Funds of Special Districts Divided into Noncontiguous Areas; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes.

Code Section: O.C.G.A. §§ 36-80-22 (new), 36-31-12 (amended)
Bill Number: SB 154
Act Number: 759
Georgia Laws: 2008 Ga. Laws 1019
Summary: The Act establishes definitions and protocols in order to provide protection to waste management companies providing waste collection services in newly formed municipalities. Further, the Act provides for the spending of funds in a newly incorporated area.
Effective Date: May 14, 2008

History

Recently, a waste management company in Savannah had its commercial waste collection contracts terminated by the annexation of its clients' property into a municipal corporation.¹ SB 154 was introduced by Senators Jack Murphy (R-27th), Chip Pearson (R-51st), Eric Johnson (R-1st), Chip Rogers (R-21st), David Shafer (R-

1. Video Recording of House Rules Committee Meeting, Mar. 28, 2008 at 8 min., 55 sec. (remarks by Sen. Jack Murphy (R-27th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_103744292,00.html [hereinafter House Rules Video]; Interview with Senator Jack Murphy (R-27th) (transcript on file with GSU Law Review).

48th), and John Douglas (R-17th) as an effort to protect the rights of both the shopping centers and the waste haulers in Georgia after Sen. Murphy was approached by representatives of waste haulers in Georgia.² In essence Senator Murphy sought to prevent the problems that arise when waste management contracts are not honored, following an annexation of property owned by their clients into a municipal corporation. Specifically, Senator Murphy noted the bill was proposed so that waste haulers “just [do not] lose a lot of money.”³ Senator Murphy further pointed out that the bill was also to protect the large investment waste haulers make when purchasing the expensive equipment necessary to provide waste collection services and that the purpose of the bill was to ensure that the parties to a waste collection contract honor their obligations.⁴ Finally, Senator Murphy argued that the parties should have a right to contract free of interference and direction from the local municipality.⁵

SB 154 was introduced in the 2007 Session of the General Assembly and passed the Senate before the conclusion of that session.⁶ The bill went through its first reading in the House during the 2007 session, but failed to reach a floor vote in the House prior to the conclusion of the session because it was tabled by the House Judiciary Committee.⁷

Bill Tracking of SB 154

Consideration and Passage by the Senate

Senators Jack Murphy (R-27th), Chip Pearson (R-51st), Eric Johnson (R-1st), Chip Rogers (R-21st), David Shafer (R-48th), and John Douglas (R-17th), respectively, sponsored SB 154.⁸ On February 14, 2007, the Senate first read SB 154 and referred the bill

2. House Rules Video, *supra* note 1, at 8 min., 55 sec (remarks by Sen. Murphy (R-27th)); Interview with Senator Jack Murphy (R-27th) (transcript on file with GSU Law Review).

3. House Rules Video, *supra* note 1, at 6 min., 20 sec. (remarks by Rep. Jack Murphy (R-27th)).

4. *Id.*

5. *Id.* at 9 min., 11 sec. (remarks by Rep. Jack Murphy (R-27th)).

6. Georgia Senate Voting Record, SB 154 (Mar. 20, 2007).

7. Video Recording of House Judiciary Committee Meeting, Apr. 16, 2007 at 1 hr., 9 min., 22 sec., <http://media.legis.ga.gov/hav/judy/judy41607.wmv> [hereinafter House Judiciary Video].

8. See SB 154, as introduced, 2007 Ga. Gen. Assem.

to the Senate Committee on Economic Development.⁹ The committee favorably reported on March 1, 2007.¹⁰ The bill was read before the Senate a second time on March 19, 2007.¹¹

As introduced in the Senate, SB 154 would have amended the Georgia Code to add an additional code section.¹² Section (a) of SB 154 provided definitions, section (b) provided the criteria for bringing a firm under the protection of SB 154, section (c) provided guidance to municipalities in terminating their relationships with various firms, and section (d) determined the notice municipalities must give to firms in order to terminate their service.¹³

As introduced, SB 154 defined “displacement” and “displace” as any action by a municipality having the effect of terminating the waste collection activity by a firm engaging in such solid waste collection at the time of the municipal action.¹⁴ The bill defined “economic loss” as “a sum equal to 36 times the average gross monthly revenue for the three months prior to the passage of the resolution or any other act communicating a governing entity’s intent to displace the firm, collected or due the firm for residential, commercial, and industrial collection service in the territory where the displacement is to occur.”¹⁵ SB 154 further defined “firm” as a private solid waste collection firm.¹⁶ A “franchise agreement” was defined as the right and privilege to collect solid waste granted to the firm by the government entity responsible for waste collection in the territory to be annexed or to experience displacement.¹⁷ The bill defined “local act” as an act passed by the General Assembly granting an original charter and establishing a municipal corporation under Chapter 31 of Title 36.¹⁸ SB 154 defined a “municipal corporation” or “municipality” as an entity formed under Article 4 of Chapter 36 or Chapter 31 of O.C.G.A.¹⁹ A “resolution” was defined

9. State of Georgia Final Composition Status Sheet, SB 154, Feb. 14, 2007 (Apr. 4, 2008).

10. *Id.* at Mar. 1, 2007.

11. *Id.* at Mar. 19, 2007.

12. *See* SB 154, as introduced, 2007 Ga. Gen. Assem.

13. *Id.*

14. *See* SB 154, § (a)(1), as introduced, 2007 Ga. Gen. Assem.

15. *Id.* at § (a)(2).

16. *Id.* at § (a)(3).

17. *Id.* at § (a)(4).

18. *Id.* at § (a)(5).

19. *Id.* at § (a)(6).

as a resolution required by Article 4 of Chapter 36 of Title 36 required for a municipal corporation to annex territory.²⁰ Finally, “referendum” was defined in the bill as a referendum ratifying a resolution, pursuant to Article 4 of Chapter 36 of Title 36.²¹

The bill, as introduced, also set forth the requirements a firm must satisfy before gaining any benefits pursuant to subsection (d) of the newly created Code section.²² To qualify for any benefits under section (d) of the newly created Code section, a firm had to establish that (1) it was providing waste collection services in the displacement area 30 days prior to the displacement; (2) on the date of the referendum, local Act, or other displacement action, the firm was providing waste collection in the area where the displacement is to occur; and (3) the termination of services will occur as a result of the displacement.²³

As introduced, SB 154 would have required the municipality to give public notice of the intent to take actions which would displace a firm at least 120 days prior to the referendum.²⁴ Also, the bill would have allowed the municipality to go forward with displacement actions provided that the municipality either gave four years notice to the firm or paid the firm’s economic loss.²⁵ The bill also would have allowed the municipality and firm to negotiate a settlement satisfactory to both parties.²⁶

Once SB 154 reached the Senate floor, the bill was amended twice.²⁷ In the first amendment, SB 154 was modified to refine the purpose of the bill by changing the language to reflect that one purpose of the bill was to provide notice to waste collection firms prior to displacement.²⁸ The first amendment also added the definition of “agreement” as “any subscription agreement or franchise agreement for solid waste collection services.”²⁹ This

20. See SB 154, § (a)(7), as introduced, 2007 Ga. Gen. Assem.

21. *Id.* at § (a)(8).

22. *Id.* at § (b).

23. *Id.* at § (b)(1)–(3).

24. *Id.* at § (c).

25. *Id.* at § (d).

26. See SB 154, § (d), as introduced, 2007 Ga. Gen. Assem.

27. SB 154 (SFA) (07 AM 38 0026), 2007 Ga. Gen. Assem.; SB 154 (SFA) (07 AM 38 0027), 2007 Ga. Gen. Assem.

28. SB 154 (SFA) (07 AM 38 0026), 2007 Ga. Gen. Assem.

29. *Id.*

amendment also altered the definition of “displacement” to mean action by a municipality that has the effect of prohibiting a firm from providing all or part of the waste collection services which the firm was providing at the time that is not subsequent to a material breach of the terms of a subscription agreement or franchise agreement by the firm.³⁰ Further, this amendment added the definition of “displacement territory” as the area where the firm was providing service at the time of displacement.³¹ Lastly, the amendment removed the definition for “economic loss.”³²

The second amendment changed the thirty days notice requirement to only apply when the municipality was taking displacement action in regards to a firm who was already operating, pursuant to an agreement or contract with the municipality, in the displacement territory.³³ The amendment also removed, in its entirety, the money damages portion of the legislation.³⁴ Lastly, the amendment allowed the municipality to proceed with displacement actions as long as the entity taking the action allowed the firm to continue to provide waste collection services for a period of thirty months or the remainder of the contract, whichever was less.³⁵

The two amendments were the result of compromises and negotiations between the Georgia Municipal Authority and other interested parties.³⁶ The amendments served the purpose of removing the “economic gloss” of the damages, reducing the notice requirement, removing the publication of notice requirement, and adding language clearly stating that a municipality or other government entity terminating a waste collection service contract for material breach by the firm would not fall under the definition of

30. *Id.*

31. *Id.*

32. *Compare* SB 154 (SFA) (07 AM 38 0026), 2007 Ga. Gen. Assem. *with* SB 154, as introduced, 2007 Ga. Gen. Assem.

33. SB 154 (SFA) (07 AM 38 0027), 2007 Ga. Gen. Assem.

34. *Compare* SB 154 (SFA) (07 AM 38 0027), 2007 Ga. Gen. Assem. *with* SB 154, as introduced, 2007 Ga. Gen. Assem.

35. *Id.*

36. Video Recording of Senate Proceedings, Mar. 20, 2007 at 0 hr., 22 min., 50 sec. (remarks by Sen. Jack Murphy (R-27th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_72682316,00.html [hereinafter Senate Video]

displacement.³⁷ The first amendment passed by a vote of forty to one and the second amendment passed by a vote of forty-six to one.³⁸

Therefore, as passed by the Senate, SB 154 prevented a municipality from canceling or terminating a waste service contract, whether the contract was between the firm and an individual or between the firm and the municipality, without allowing the firm to continue to provide service for 30 months or the remainder of the contract, whichever was less.³⁹ The Senate passed the bill, by a vote of 48 to 4, on March 20, 2007.⁴⁰

Consideration and Passage by the House

On March 27, 2007, the House of Representatives first read SB 154.⁴¹ The House read the bill for a second time on March 27, 2007 and the Speaker of the House⁴² referred SB 154 to the House Judiciary Committee.⁴³ On March 28, 2008, the House Judiciary Committee favorably reported an amended version of the bill.⁴⁴

The House Judiciary Committee altered the bill in many distinct ways from the version that passed in the Senate. Representative Tom Knox (R-24th) presented the bill to the Committee as a way for the legislature to provide security to the investment made by waste collection firms.⁴⁵ Several witnesses came before the Committee to explain the potential impact of the bill.⁴⁶

In considering the Senate's version of SB 154, the committee had many concerns regarding the bill's potential effects on municipalities and raised the following issues: (1) what is unique about waste collection firms that warrants the protection offered by SB 154; (2)

37. *Id.*

38. *Id.* at 0 hr., 31 min., 35 sec. (remarks by Lt. Gov. Casey Cagle).

39. SB 154, as passed Senate, 2007 Ga. Gen. Assem.

40. Georgia Senate Voting Record, SB 154 (Mar. 20, 2007).

41. State of Georgia Final Composition Status Sheet, SB 154, Mar. 27, 2007 (Apr. 4, 2008).

42. Speaker Glen Richardson, the editors are proud to note, is an alum of the Georgia State University College of Law.

43. State of Georgia Final Composition Status Sheet, SB 154, Mar. 27, 2007 (Apr. 4, 2008).

44. *Id.* at Mar. 28, 2007.

45. House Judiciary Video, *supra* note 7, at 0 hr., 21 min., 35 sec. (remarks by Rep. Tom Knox (R-24th)) (“[SB 154] gives [waste collection firms] an opportunity to ... not be lost with respect to the investment they have made.”)

46. *See* House Judiciary Video, *supra* note 7.

whether limiting a municipality's ability to provide solid waste collection services would have any implications under Georgia's Constitution; and (3) whether the protection violated the principle that a present county commission or city counsel cannot bind a succeeding county commission or city counsel.⁴⁷ The Committee was also particularly concerned with the possibility that SB 154 could provide up to thirty months of "mandated" service from the waste collection firm.⁴⁸

In response to the numerous concerns over the Senate's version of SB 154, the House Judiciary Committee proposed a substitute to SB 154.⁴⁹ The Committee substitute included "counties" and "other government entities" in the preamble to the bill and removed the definition of "municipality" from the text of the bill itself.⁵⁰ The Committee substitute, deviating substantially from the Senate version, defined "agreement" as "any written private contract for solid waste collection services between a firm and any commercial client."⁵¹ The Committee further limited the applicability of SB 154 by defining "commercial client" as a "private, nonresidential business entity or person required to have a business license who contracts with a firm for solid waste collection services."⁵² The Committee substitute limited the displacement action to "annexation, deannexation, or incorporation of a municipality."⁵³ The Committee substitute also added the definition of "governmental action" as an

47. House Judiciary Video, *supra* note 7, at 0 hr., 26 min., 33 sec. (remarks by Rep. Mary Oliver (D-83rd)); *id.* at 0 hr., 37 min., 18 sec. (remarks by Rep. Barry Fleming (R-117th)); *id.* at 0 hr., 39 min., 3 sec. (remarks by Rep. Barry Fleming (R-117th)).

48. See House Judiciary Video, *supra* note 7, at 0 hr., 40 min., 1 sec. (remarks by Rep. Mary Oliver (D-83rd)). In particular, Representative Oliver was concerned that SB 154 was a means of mandating a liquidated buyout provision in a contract between a municipality or other government entity and a waste collection firm. *Id.*

49. SB 154 (HCS), 2008 Ga. Gen. Assem.

50. *Id.* at preamble; compare SB 154 (HCS), 2008 Ga. Gen. Assem. with SB 154, as passed Senate, 2007 Ga. Gen. Assem.

51. SB 154 (HCS), § (a)(1), 2008 Ga. Gen. Assem. The Senate version of SB 154 defined "agreement" as any franchise agreement, which would typically be with the municipality, or as any subscription agreement, which would typically be with an individual or commercial entity. See SB 154, § (a)(1), as passed Senate, 2007 Ga. Gen. Assem.

52. SB 154 (HCS), § (a)(2), 2008 Ga. Gen. Assem.

53. *Id.* at § (a)(3). This addressed the concerns of Representative Rick Crawford (D-16th) in the House Judiciary Committee meeting that SB 154, as passed by the Senate, was overbroad by applying to "any action." See House Judiciary Video, *supra* note 7, at 0 hr., 31 min., 47 sec. (remarks by Rep. Rick Crawford (D-16th)).

action that invalidated a firm's existing agreement by local law, rule, or regulation provided that such action was not taken pursuant to an emergency.⁵⁴ Further the substitute defined "local government" as a "county, municipal incorporation, or any county-municipal consolidated government."⁵⁵ The protection offered by the House Judiciary Committee substitute was that a government action could not invalidate an existing agreement between a firm and a private commercial entity, so long as the firm could establish it was providing the service at least thirty days prior to displacement.⁵⁶ Lastly, the Committee's substitute to SB 154 included a provision giving local governments the authority to establish "standards and procedures" in order to protect the public health and safety.⁵⁷

SB 154 was heavily debated on the House floor, and several floor amendments were considered by the House. The first proposed amendment, referred to as the Mills' amendment during debate, called for the Committee's substitute to be amended to add language disallowing a municipality from entering into exclusive franchise agreements for the provision of "rolloff dumpsters."⁵⁸ The Mills amendment was subsequently adopted by the House in a vote of 97 yeas to 66 nays.⁵⁹

Representatives Sheila Jones (D-44th), Mark Burkhalter (R-50th), and Tom Knox (R-24th) offered a second floor amendment to the House Judiciary Committee substitute. The proposal amended subsection (b) of O.C.G.A. § 36-31-12, a Code section relating to

54. SB 154 (HCS), § (a)(5), 2008 Ga. Gen. Assem.

55. *Id.* at § (a)(6).

56. *Id.* at § (c). However, it is noteworthy that the substitute did explicitly provide for the ability of a private, commercial entity to end the contracts pursuant to the terms of the contract, which seemingly addresses the issue of mandating a buyout provision as noted by Representative Oliver. *Id.*; House Judiciary Video, *supra* note 7, at 0 hr., 40 min., 1 sec. (remarks by Rep. Mary Oliver (D-83rd)).

57. SB 154 (HCS), § (d), 2008 Ga. Gen. Assem. This particular change may have been intended to address the concerns raised about the constitutionality of limiting a municipality's authority to provide for solid waste collection services. *See* House Judiciary Video, *supra* note 7, at 0 hr., 37 min., 18 sec. (remarks by Rep. Barry Fleming (R-117)); GA. CONST. art. IX, § 2, para. 3.

58. Representative Mills was concerned about reports that several municipalities were granting exclusive agreements for certain companies to provide rolloff dumpsters to the exclusion of other companies, and that this exclusion was against free enterprise. *See* Video Recording of House Proceedings, Apr. 1, 2008 at 1 hr., 5 min. 20 sec. (remarks by Rep. James Mills (R-25th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_103744292,00.html [hereinafter House Video].

59. Georgia House of Representatives Voting Record, SB 154 (Apr. 1, 2008).

special districts divided into noncontiguous areas.⁶⁰ This amendment required that taxes in areas which are incorporated by change in the jurisdiction lines will be apportioned on a pro rata basis to the new city or the new county area formed by the change in the jurisdictional lines.⁶¹ There was little discussion of the Jones-Burkhalter-Knox Amendment, except a recommendation by Representative Knox (R-24th) that the amendment be adopted and some concerns that the proposed amendment would be rejected by the Senate.⁶² The Jones-Burkhalter-Knox amendment was adopted by the House without objection.⁶³

Next, the House considered and rejected two proposed amendments by Representative Brian Thomas (D-100th).⁶⁴ The Thomas amendments would have added the language “or recycling” in an attempt to provide recyclers the same protection being given to waste haulers.⁶⁵ Representative Thomas also proposed to amend the Committee substitute to SB 154 by removing the language relating to the public health and safety.⁶⁶ These amendments were overwhelmingly rejected by the members of the House.⁶⁷ Representative Thomas proposed two additional amendments; however both were considered out of order following the adoption of

60. SB 154 (HCSFA), 2008 Ga. Gen. Assem.

61. *Id.*

62. See House Video, *supra* note 58, at 1 hr., 0 min., 47 sec. (remarks by Rep. Tom Knox (R-24th)); *Id.* at 1 hr., 29 min., 24 sec. (remarks by Rep. Wendell Willard (R-49th)).

63. See *id.* at 1 hr., 29 min., 24 sec. (remarks by Rep. Glenn Richardson (R-19th)).

64. Representative Thomas wanted to add language granting the same protection to recyclers as to waste haulers in general because the recyclers had similar contracts and similar concerns regarding their ability to retain those contracts in the face of annexation. Interview with Rep. Brian Thomas (D-100th) (transcript on file with GSU Law Review).

65. Failed House Floor Amendment to SB 154, introduced by Rep. Brian Thomas (D-100th), Apr. 1, 2008. See House Video, *supra* note 58, at 1 hr. 08 min. 39 sec. (remarks by Rep. Brian Thomas (D-100th)).

66. Failed House Floor Amendment to SB 154, introduced by Rep. Brian Thomas (D-100th), Apr. 1, 2008. This proposal was rejected by members of the House of Representatives who felt the language was commonplace in many statutes and that removal of the language could give municipalities unfettered discretion. See House Video, *supra* note 58, at 1 hr., 11 min., 59 sec. (remarks by Rep. Barry Fleming (R-117th)); *Id.* at 1 hr., 13 min., 30 sec. (remarks by Rep. Rich Golick (R-34th)).

67. House members voiced concerns that the proposed Thomas amendments would “gut” the carefully crafted bill put forth by the Judiciary Committee. See House Video, *supra* note 58, at 1 hr., 29 min., 24 sec. (remarks by Rep. Wendell Willard (R-49th)). See also *id.* at 1 hr., 38 min., 30 sec. (remarks by Rep. Mike Jacobs (R-80th)) (stating that the proposed changes by Rep. Brian Thomas would “gut the intent of the original bill”).

the Jones-Burkhalter-Knox amendment.⁶⁸ The House Judiciary Committee substitute to SB 154, as amended on the House floor, passed the House of Representatives on April 1, 2008 by a vote of 157 to 15.⁶⁹

Consideration and Passage by the Conference Committee

The Georgia Senate and Georgia House of Representatives created a Conference Committee on SB 154.⁷⁰ The Conference Committee removed all references to rolloff dumpsters from SB 154.⁷¹ Otherwise, the Conference Committee left SB 154, as passed by the House, intact.⁷²

The Act

The Act amends the Georgia Code to add section 36-80-22 to protect private waste collection firms from losing their contracts with municipalities and private consumers following an area's incorporation into a municipal entity.⁷³

The Act provides relevant definitions.⁷⁴ An "agreement" under the Act is a private contract between a waste collection firm and any commercial client for waste collection services.⁷⁵ A "commercial client" is "any private, nonresidential business entity or person required to have a business license who contracts with a firm for solid waste collection services."⁷⁶ "Displacement" is the "displacing of any firm's agreement by annexation, deannexation, or incorporation of a municipality."⁷⁷ A "firm" is a private waste collection firm.⁷⁸

68. See House Video, *supra* note 58, at 1 hr., 42 min., 40 sec. (remarks by Rep. Glenn Richardson (R-19th)).

69. Georgia House of Representatives Voting Record, SB 154 (Apr. 1, 2008).

70. State of Georgia Final Composite Status Sheet, SB 154, Apr. 4, 2008 (Apr. 4, 2008).

71. Compare SB 154 (CCR), 2008 Ga. Gen. Assem. with SB 154, as passed House, 2008 Ga. Gen. Assem.

72. *Id.*

73. SB 154, as passed, 2008 Ga. Gen. Assem.

74. O.C.G.A. § 36-80-22 (Supp. 2008).

75. O.C.G.A. § 36-80-22(a)(1) (Supp. 2008).

76. O.C.G.A. § 36-80-22(a)(2) (Supp. 2008).

77. O.C.G.A. § 36-80-22(a)(3) (Supp. 2008).

78. O.C.G.A. § 36-80-22(a)(4) (Supp. 2008).

The Act defines “government action” as the “invalidation of any firm’s existing agreement by a local government by law, rule, or regulation, provided that such law, rule, or regulation is not enacted pursuant to an emergency as declared by the governing authority of the local government.”⁷⁹ A “local government” is a “county municipal incorporation, or any county-municipal consolidated government.”⁸⁰

The Act provides that a firm must establish that it was providing waste collection services in the affected area thirty days prior to the government action causing displacement to receive protection under the act.⁸¹ If the firm meets the requirements of being eligible for protection, a contract between a waste collection firm and a commercial client shall not be invalidated by any government action or displacement.⁸²

The Act also amends Code section 36-31-12 relating to special districts that are located in noncontiguous areas. The Act provides that in the event of municipal incorporation within a county which has a special district to provide services to noncontiguous areas that the special district taxes, fees and assessments taken from the noncontiguous area are to be spent for services in that noncontiguous area.⁸³ Further, the Act provides that in the event an incorporated special district has excess funds, those funds shall be disbursed on a pro rata basis to the new municipality within sixty days.⁸⁴ The Act provides that in the event a special district has excess funds and is split by incorporation into two different municipalities, each municipality shall receive a pro rata portion of the excess funds within sixty days.⁸⁵

Analysis

This Act has three potential problems. First, as noted in the House Judiciary Committee, limiting the ability of a municipality to provide

79. O.C.G.A. § 36-80-22(a)(5) (Supp. 2008).

80. O.C.G.A. § 36-80-22(a)(6) (Supp. 2008).

81. O.C.G.A. § 36-80-22(b) (Supp. 2008).

82. O.C.G.A. § 36-80-22(c) (Supp. 2008).

83. O.C.G.A. § 36-31-12(b)(1) (Supp. 2008).

84. O.C.G.A. § 36-31-12(b)(2) (Supp. 2008).

85. O.C.G.A. § 36-31-12(b)(3) (Supp. 2008).

waste collection services might be unconstitutional.⁸⁶ Second, the Act creates a possible incentive for other industries to seek similar protections from the legislature.⁸⁷ Third, the Act does not resolve many of the concerns voiced by the waste haulers, which may result in subsequent legislation.⁸⁸

In the House Judiciary Committee meeting, there was some discussion that the Act could have some negative constitutional implications.⁸⁹ In particular, the Georgia Municipal Authority, many Committee members, and others were concerned that the Act placed a limit on the authority granted under the supplemental powers provision of the Georgia Constitution.⁹⁰ The Georgia Constitution confers a specific grant of authority to municipalities to be able to provide garbage and waste collection services.⁹¹ The testimony of Tom Gail, on behalf of the Georgia Municipal Association, and the remarks of Representative Barry Fleming (R-117th) pointed out that the Act may not be constitutional in Georgia because it potentially limits a municipality's ability to provide waste collection services to its residents.⁹² While this may be true, the supplemental powers provision of the Georgia constitution also provides that "nothing contained within [Article IX, Section 2, Para. 3] shall operate to prohibit the General Assembly from enacting general laws relative to the subject matters listed in [other areas of this paragraph] or to prohibit the General Assembly by general law from regulating, restricting, or limiting the exercise of the powers listed [herein]."⁹³ In short, the supplemental powers provision of the Georgia constitution, by its very terms, contemplates the necessity of the General Assembly to have the ability to limit the grant of the supplemental powers given to municipalities. Only if the Act withdrew the

86. See *infra* notes 89–97 and accompanying text.

87. See *infra* notes 98–103 and accompanying text.

88. See *infra* notes 104–108 and accompanying text.

89. See House Judiciary Video, *supra* note 7, at 0 hr., 37 min., 18 sec. (remarks by Rep. Barry Fleming (R-117)). See also *id.* at 0 hr., 43 min., 42 sec. (remarks by Tom Gail, representing the Georgia Municipal Authority).

90. *Id.*

91. GA. CONST. art. IX, § 2, para. 3.

92. See House Judiciary Video, *supra* note 7, at 0 hr., 37 min., 18 sec. (remarks by Rep. Barry Fleming (R-117)). See also *id.* at 0 hr., 43 min., 42 sec. (remarks by Tom Gail, representing the Georgia Municipal Authority).

93. GA. CONST. art. IX, § 2, para. 3.

authority of a municipality to provide waste collection services altogether would the Act present a constitutional issue.⁹⁴ The Act does not withdraw the authority conferred on a municipality to provide waste collection services, but rather prohibits a municipality from canceling an existing contract between a waste collection firm and a commercial client.⁹⁵ Furthermore, the House Judiciary Committee took time establishing the language of the Act and explicitly gave a municipality the power to establish standards and procedures for the collection of waste generated by a commercial client within its territory.⁹⁶ Lastly, the Act was heavily debated, negotiated, and was crafted to ensure that the Act would not raise any issues regarding Georgia's constitution.⁹⁷ Therefore, the Act is seemingly within the limits of the Georgia constitution.

Secondly, the Act has the potential of giving rise to a situation where other industries may look to the General Assembly for similar protections. Representative Mary Oliver (D-83rd), a member of the House Judiciary Committee, in particular, questioned the uniqueness of the waste collection industry's need for this protection.⁹⁸ Representative Oliver was concerned that other industries, providing different services, would look for the same protections.⁹⁹ No specific answer to this concern was given by anyone in support of the bill. Representative Tom Knox (R-24th) and Mike Huff, testifying before the House Judiciary Committee on behalf of the Georgia chapter of the National Solid Waste Management Association, did point to the high cost of "infrastructure" and the potential for the waste management companies to lose out on their investment as the rationale for the protection of that particular industry.¹⁰⁰ However, this reasoning could apply to any industry with a similarly large

94. *Id.*

95. O.C.G.A. § 36-80-22(c) (Supp. 2008).

96. *Id.* See also House Video, *supra* note 58, at 1 hr., 29 min., 24 sec. (remarks by Rep. Wendell Willard (R-49th)).

97. Interview with Sen. Jack Murphy (R-27th) (transcript on file with GSU Law Review).

98. See House Judiciary Video, *supra* note 7, at 0 hr., 26 min., 33 sec. (remarks by Rep. Mary Oliver (D-83rd)).

99. See *id.* at 0 hr., 28 min., 31 sec. (remarks by Rep. Mary Oliver (D-83rd)).

100. See *id.* at 0 hr., 27 min., 27 sec. (remarks by Mike Huff, representing the Georgia chapter of the National Solid Waste Management Association) (pointing out that the waste haulers are looking for time to recoup some of their investment); *id.* at 0 hr., 28 min., 47 sec. (remarks by Rep. Tom Knox (R-24th)) (noting the significant investment that could be lost if the contract is invalidated).

investment in a county, municipality, or other defined area. This concern, however, should not be an issue because the Act only prohibits a municipality from invalidating a contract that was in existence at the time of the displacement action.¹⁰¹ In short, the Act does not prohibit a local government from refusing to allow private waste collection firms into an already incorporated area where that firm has no existing commercial contracts.

As to whether the recycling industry in Georgia may seek similar protections, there may be a difference of opinion. Representative Brian Thomas (D-100th) believes that the recyclers may not come to the legislature for similar protection because they are not quite as organized as the waste haulers and because there is seemingly not the same level of interest in recycling.¹⁰² On the other hand, Senator Jack Murphy (R-27th) believes the recyclers may come back to the legislature, but that possibility seems more remote as there were many entities adamantly opposed to adding recyclers to the protection of the Act.¹⁰³

Lastly, the Act failed to address one important issue and concern raised by the proponents of the Senate version of the bill. First, the Senate version would have applied to franchise agreements and subscription agreements, whether the subscription agreement was with an individual or a commercial client.¹⁰⁴ However, by limiting the meaning of “agreement,” the Act only applies to contracts between a waste management firm and a commercial client, a business entity required to have a business license.¹⁰⁵ By doing so, the Act fails to address the concern of many of the waste haulers that they may lose residential clients as a result of the incorporation, annexation, or deannexation of an area.¹⁰⁶ By not addressing this situation at all, the Act creates an incentive for waste haulers to lobby for subsequent legislation addressing that particular point. Senator Murphy (R-27th) believes that it is possible that the waste haulers

101. O.C.G.A. § 36-80-22(c) (Supp. 2008).

102. Interview with Rep. Brian Thomas (D-100th) (transcript on file with GSU Law Review).

103. Interview with Sen. Jack Murphy (R-27th) (transcript on file with GSU Law Review).

104. See SB 154, as passed Senate, 2007 Ga. Gen. Assem.

105. O.C.G.A. § 36-80-22(a)(1)-(2) (Supp. 2008).

106. See House Judiciary Video, *supra* note 7, at 0 hr., 27 min., 27 sec. (remarks by Mike Huff, representing the Georgia chapter of the National Solid Waste Management Association) (pointing out that losing a large number of customers takes a long time to recover from).

could come back to the legislature for further protection relating to residential waste contracts, but believes the Act was the product of a mutual agreement between the parties involved which may reduce this possibility.¹⁰⁷ However, this may be put off for some time as the waste haulers and their representatives worked with the legislature and the opponents of the bill to create this piece of acceptable legislation.¹⁰⁸

Adam Knight

107. Interview with Sen. Jack Murphy (R-27th) (transcript on file with GSU Law Review).

108. See House Rules Video, *supra* note 1, at 0 hr., 5 min., 30 sec. (remarks by Sen. Jack Murphy (R-27th)). See also House Video, *supra* note 58, at 1 hr., 23 min., 40 sec. (remarks by Rep. Jan Jones (R-46th)).

