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STATE GOVERNMENT State Government: Provide for Neutrality of State Law with Respect to Freedom of Decision to Provide or Not Provide Certain Benefits to Unmarried Persons; Provide that State and Local Government Entities Shall Comply with Such Policy of Neutrality

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STATE GOVERNMENT

State Government: Provide for Neutrality of State Law with Respect to Freedom of Decision to Provide or Not Provide Certain Benefits to Unmarried Persons; Provide that State and Local Government Entities Shall Comply with Such Policy of Neutrality

CODE SECTION:	O.C.G.A. § 50-1-8 (new)
BILL NUMBER:	HB 67
ACT NUMBER:	70
GA. LAWS:	2005 Ga. Laws 452
SUMMARY:	The Act prohibits state and local governments or municipalities from imposing a penalty on organizations or persons who choose to withhold benefits, rights, and privileges from unmarried persons.
EFFECTIVE DATE:	July 1, 2005

History

Representative Earl Ehrhart of the 36th district introduced HB 67 to prohibit the City of Atlanta from involvement in the "membership matters of . . . a private club."[1] Under a local antidiscrimination ordinance, the City of Atlanta bars discrimination against "any person on the basis of . . . domestic relationship status . . . in places of public accommodation."[2] After two gay members complained of unequal treatment, the City of Atlanta penalized the private Druid Hills Golf Club for not extending same sex couples the same spousal privileges the club extended to married couples.[3] The club then sued the City of Atlanta in superior court.[4] Although the bill did not name a particular group, the bill targeted the city's "ongoing spat with the Druid Hills Golf Club."[5]

1. Audio Recording of House Proceedings, Feb. 7, 2005 (remarks by Rep. Earl Ehrhart), http://www.ga.gov/00/article/0,2086,4802_6107103_33078458,00.html [hereinafter House Audio].
2. ATLANTA, GA., CODE § 94-67 (2000).
3. *See* Sonji Jacobs, *Bill Thwarts Atlanta Ordinance*, ATLANTA J. CONST., Mar. 18, 2005, at A1.
4. *Id.*
5. *Id.*

Representative Ehrhart submitted a similar bill in the 2004 legislative session, and although it passed through the Committee, he "backed away" because he thought "they weren't going to press this."[6] Ater hearing that the city planned to fine the country club, he reintroduced the bill in 2005 because "[i]t's the legislature's responsibility to conduct state policy in this arena and not the judiciary's."[7] He suggested that a judicial resolution would only result in the courts tossing out the ordinance and stopping the fine.[8] He introduced HB 67 to prevent a political subdivision from precluding an organization's constitutional rights of private association.[9]

Bill Tracking of HB 67

Consideration by the House

Representatives Earl Ehrhart, Wendell Willard, Chuck Martin, Paul Jennings, and John Junsford of the 36th, 49th, 47th, 82nd, and 110th districts, respectively, sponsored HB 67.[10] The House first read the bill on January 12, 2005, and the House Judiciary Committee favorably reported the bill on February 1, 2005.[11] No amendments were introduced and no changes were made to the bill.[12]

Floor Debate

After its introduction, a number of representatives questioned Representative Ehrhart on the bill.[13] Representative Nan Grogan Orrock of the 58th district asked how the bill would affect the longstanding principle of local control.[14] Representative Ehrhart

6. House Audio, *supra* note 1 (remarks by Rep. Earl Ehrhart); *see also* HB 1200, as introduced, 2004 Ga. Gen. Assem.

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

8. *Id.*

9. *Id.*

10. *See* HB 67, as introduced, 2005 Ga. Gen. Assem.

11. *See* State of Georgia Final Composite Status Sheet, HB 67, Jan. 12, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, HB 67, Feb. 1, 2005 (May 11, 2005).

12. *See* State of Georgia Final Composite Status Sheet, HB 67 (May 11, 2005).

13. *See* House Audio, *supra* note 1.

14. *See id.* (remarks by Rep. Nan Grogan Orrock).

responded that local control does not give local jurisdictions the ability to choose whether to follow the United States or the Georgia Constitution, comparing the City of Atlanta's decision to enforce its antidiscrimination ordinance with a local jurisdiction enacting an ordinance that hinders freedom of speech.[15] Along with Representative Tom Bordeaux of the 162nd district, Representative Ehrhart clarified that the bill would not interfere with a private organization's right of association if that organization chooses to offer benefits to same sex couples.[16]

A number of representatives spoke against the bill.[17] Representative Pat Gardner of the 57th district called HB 67 a travesty that is morally wrong because it goes beyond giving up home rule, makes the state government more intrusive in the lives of families, and interferes with individual rights.[18] Representative Gardner also noted that while this appeared to be a general bill, the bill's sponsors clearly intended it to control local entities and municipalities.[19] Representative Bob Holmes of the 61st district described the bill's interference with local control as "bad legislation, not only because it seeks to preempt the City of Atlanta from enforcing laws against discrimination based on marital status, but it establishes precedent that is . . . wrong."[20] Similarly, Representative Orrock explained that Atlanta's human rights ordinance was a reflection of its citizenry's will.[21]

Representative Wendell Willard of the 49th district and Chairman of the Judiciary Committee advised that the bill only addresses an unauthorized attempt by the City of Atlanta to enact an ordinance when it did not have the power to do so.[22] This attempt extends beyond the home power that the State of Georgia grants to local governments.[23] Representative Willard stated that "[y]ou can't penalize someone for their refusal to comply with an unauthorized

15. *See id.* (remarks by Rep. Earl Ehrhart).
16. *See id.* (remarks by Reps. Tom Bordeaux and Earl Ehrhart).
17. *See* House Audio, *supra* note 1.
18. *See id.* (remarks by Rep. Pat Gardner).
19. *See* Telephone Interview with Rep. Pat Gardner, House District No. 57 (Mar. 30, 2005) [hereinafter Gardner Interview].
20. House Audio, *supra* note 1 (remarks by Rep. Bob Holmes).
21. *See id.* (remarks by Rep. Nan Grogan Orrock).
22. *See* Telephone Interview with Rep. Wendell Willard, House District No. 49 (Apr. 5, 2005) [hereinafter Willard Interview].
23. *See id.*; *see also* House Audio, *supra* note 1 (remarks by Rep. Wendell Willard).

ordinance," and further explained that "[HB] 67 is merely an expression of what is the public policy of the state . . . a freedom or right to associate with whom you wish to associate with or not to associate with."[24]

Another concern debated on the House floor involved the bill's impact on discriminatory practices.[25] While Representative Orrock explained the bill had a "hidden gay-bashing agenda," Representative Willard stated the civil rights arguments opposing the bill were "hysteric comment."[26] Representative Bob Holmes expressed concern that the bill would establish precedent that a private association could discriminate against gays.[27] For example, a private condominium association could prevent two individuals of the same gender from purchasing a condominium.[28] Additionally, Representative JoAnn McClinton of the 84th district expressed fear that the bill harkened back to the days of Nazis and the Civil Rights era reconstruction tactics.[29] Representative Orrock compared the bill to other discriminatory laws the Southern States enacted in another era "conceived from a perspective of bias."[30]

Although Representative Edward Lindsey of the 54th district pointed out that the bill merely conformed to the recently amended Georgia Constitution, Representative Willard, a cosponsor of the bill, stated that "the Defense of Marriage Amendment is unrelated to this issue."[31] However, not all sponsors of the bill agreed that the Defense of Marriage Amendment is unrelated to HB 67.[32] Representative Steve Davis of the 109th district said "[i]t is plain that the people of Georgia voted that there is no same-sex marriage, and to force a club

24. Willard Interview, *supra* note 22; House Audio, *supra* note 1 (remarks by Rep. Wendell Willard).

25. *See* House Audio, *supra* note 1.

26. *Compare* House Audio, *supra* note 1 (remarks by Rep. Nan Grogan Orrock) *with* Willard Interview, *supra* note 22.

27. *See* House Audio, *supra* note 1 (remarks by Rep. Bob Holmes).

28. *See id.*

29. *See id.* (remarks by Rep. JoAnn McClinton).

30. *Id.* (remarks by Rep. Nan Grogan Orrock).

31. *Compare* House Audio, *supra* note 1 (remarks by Rep. Edward Lindsey), *and* Willard Interview, *supra* note 22, *with* GA. CONST. art I, § 4,¶ 1(b) ("No union between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage.").

32. *Compare* Willard Interview, *supra* note 22, *with* Telephone Interview with Rep. Steve Davis, House District No. 109 (Mar. 30, 2005) [hereinafter Davis Interview].

or an association to give marital benefits to unmarried persons shouldn't be real hard to figure out."[33]

The House passed HB 67 by a vote of 124 to 39.[34]

Consideration by the Senate

The Senate first read HB 67 on February 8, 2005.[35] The State and Local Government Committee favorably reported the bill on February 16, 2005.[36] Senator John J. Wiles of the 37th district introduced HB 67 to the Senate advising that the bill "simply [states] that state governments can't get involved in private organizations and condition benefits on how they apply decisions not to extend benefits to unmarried persons."[37]

Floor Debate

Senators also expressed concern over the likely impact of HB 67 on issues such as interference with local control and the bill's expected discriminatory impact.[38] Senator Sam Zamarripa of the 36th district questioned whether the actions of the legislature represented "the big arm of government coming into local jurisdictions."[39] Senator Zamarripa also advised that the Supreme Court of California struck down a similar California provision.[40] Senator Vincent D. Fort of the 39th district expressed fear that the bill might put the City of Atlanta's efforts to fight discrimination at risk.[41] He stated the bill represented the legislature's hypocrisy because the legislature argues for local control over issues such as law enforcement, but refuses to yield local control on issues of fighting discrimination.[42] Senator Fort stated that this bill reflected "pandering to division" and "appealing

33. Davis Interview, *supra* note 32.
34. Georgia House of Representatives Voting Record, HB 67 (Feb. 7, 2005).
35. State of Georgia Final Composite Status Sheet, HB 67, Feb. 8, 2005 (May 11, 2005).
36. State of Georgia Final Composite Status Sheet, HB 67, Feb. 16, 2005 (May 11, 2005).
37. Audio Recording of Senate Proceedings, Mar. 17, 2005, http://www.ga.gov/00/article/0,2086,4802_6107103_33091490,00.html [hereinafter Senate Audio].
38. *See id.*.
39. Senate Audio, *supra* note 37 (remarks by Sen. Sam Zamarripa).
40. *See id.*
41. *See id.* (remarks by Sen. Vincent D. Fort).
42. *See id.*

to those who hate."[43] Despite the voiced opposition, the Senate passed HB 67 by a vote of 37 to 11.[44]

The Act

The Act amends Chapter 1 of Title 50 by adding Code section 50-1-8.[45] The Act prohibits cities from creating civil rights codes that supersede those of the state.[46] The Act provides that the state's policy is that "any organization or person in this state may elect to, or elect not to, contractually provide to unmarried persons one or more benefits, rights, or privileges in the same manner that such organization or person contractually provides benefits, rights, or privileges to married persons."[47] The Act further states:

> [s]tate and local government shall not impose any penalty on or withhold any benefits, rights, or privileges from any organization or person on the basis of such organization's or person's election to or election not to contractually or otherwise provide to unmarried persons one or more benefits, rights, or privileges in the same manner that such organization or person contractually or otherwise provides benefits, rights, or privileges to married persons.[48]

The remainder of the Act defines its application to any department, agency, authority, commission, or other state or political entity and defines the term "organization."[49]

Analysis

Although the legislature enacted the bill in response to Atlanta's human rights ordinance, the Act does not overturn the ordinance.[50]

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43. *Id.*
44. Georgia Senate Voting Record, HB 67 (Mar. 17, 2005).
45. *See* O.C.G.A. § 50-1-8 (Supp. 2005).
46. *Id.*
47. *Id.* § 50-1-8(a) (Supp. 2005).
48. *Id.* § 50-1-8(b) (Supp. 2005).
49. *Id.* § 50-1-8(c)-(d) (Supp. 2005).
50. *See* Willard Interview, *supra* note 22.

Instead, the Act precludes local control.[51] The bill's sponsors proposed the bill because the City of Atlanta enacted an ordinance that exceeded the power given to it by the state, thus interfering with the right of association.[52] Representative Willard said the Act has nothing to do with the Defense of Marriage Amendment.[53] But other legislators who supported the bill believed that City of Atlanta's ordinance violated the Defense of Marriage Amendment.[54] Opponents argue that the Defense of Marriage Amendment gave Representative Ehrhart a basis for defending the bill.[55]

This Act eliminates the ability of city and county municipalities to govern their constituents.[56] Although the City of Atlanta passed its human rights ordinance to bar discrimination on the basis of domestic relationship status, in passing this Act, the State of Georgia upheld discrimination against same-sex couples.[57]

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51. *See* House Audio, *supra* note 1 (remarks by Rep. Pat Gardner).
52. *See* Willard Interview, *supra* note 22; *see also* House Audio, *supra* note 1 (remarks by Rep. Earl Ehrhart).
53. *See* Willard Interview, *supra* note 22.
54. *See* Davis Interview, *supra* note 32.
55. *See* Gardner Interview, *supra* note 19.
56. *See id.*
57. Jacobs, *supra* note 3, at A1, A19.