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HB 239 - Business Courts

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COURTS

Courts: Amend Title 15 of the Official Code of Georgia Annotated, Relating to Courts, so as to Establish the Georgia State-Wide Business Court Pursuant to the Constitution of this State; Provide for Terms of Court and where such Court Shall Sit; Provide for Location of Proceedings; Provide for Subject Matter Jurisdiction; Provide for Filings, Pleadings, and Fees; Provide for a Judge of the Georgia State-Wide Business Court; Establish Qualifications; Provide for Appointment and Approval of such Judge; Provide for Terms of Office; Provide for Salary and Other Compensation; Authorize Rule Making; Provide for the Appointment of a Clerk of the Georgia State-Wide Business Court; Provide for an Interim Clerk of the Georgia State-Wide Business Court; Provide for Law Assistants and Other Employees; Amend Article 4 of Chapter 7 of Title 45 of the Official Code of Georgia Annotated, Relating to General Provisions Regarding Salaries and Fees, so as to Designate a Salary for the Judge of the Georgia State-Wide Business Court; Amend Title 5 of the Official Code of Georgia Annotated, Relating to Appeal and Error, so as to Make Conforming Changes Regarding Appeals; Amend Chapter 4 of Title 9 and Title 23 of the Official Code of Georgia Annotated, Relating to Declaratory Judgments and Equity, respectively, so as to Make Conforming Changes Regarding Equity; Amend Article 2 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, Relating to Commencement of Action and Service, so as to Revise Provisions Regarding the Electronic Service of Pleadings; Amend Article 6 of Chapter 13 of Title 24 of the Official Code of Georgia Annotated, Relating to Depositions to Preserve Testimony in Criminal Proceedings, so as to Revise the Manner by which Depositions Are Paid When Taken at the Instance of the State; Clarify How Depositions Shall Be Taken and Filed; Amend Title 15 of the Official Code of Georgia Annotated, Relating to Courts, so as to Exclude Certain Types of Filings from the Electronic Filing Requirements of Superior and State Courts; Provide that Fees for Electronic Filings Shall Not Be Charged for Pleadings or Documents Filed by Certain Entities and Persons Acting in Certain

Capacities or for the Filing of Leaves of Absence and Conflict Notices; Provide that Certain Postjudgment Proceedings Shall Be Given a New Case Number for Improved Record Keeping; Revise a Definition; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 15-5A-1, -16 (new); 45-7-4 (amended); 5-5-1 (amended); 5-6-33 (amended); 5-6-34 (amended); 5-6-41 (amended); 9-4-2 (amended); 9-4-5 (amended); 9-4-10 (amended); 23-1-1 (amended); 23-4-3 (amended); 23-4-33 (amended); 23-4-37 (amended); 9-11-5 (amended); 24-13-132 (amended); 24-13-133 (amended); 15-6-11 (amended); 15-6-61 (amended); 15-6-77 (amended); 15-7-5 (amended)

BILL NUMBER: HB 239

Act Number: 271

GEORGIA LAWS: 2019 Ga. Laws 845

SUMMARY: Georgia voters passed a constitutional amendment in November 2018, endorsing the establishment of a state-wide business court. The Act serves as the enabling legislation for the state-wide business court's creation and implementation. Among other provisions, the Act provides the court's location alternatives, jurisdictional limitations, filing fee, amount in controversy requirements, filing and transfer procedures, consent and objection rights for parties with cases and controversies slated for adjudication in state-wide business court, and minimum experience requirements for the presiding judge.

Effective Date: May 7, 2019

History

The State of Georgia takes great pride in being the top-ranked state in which to do business, earning that honor for the sixth consecutive year in 2018.¹ During his tenure as Georgia's Governor, Nathan Deal (R) focused his priorities on not only continuing to make Georgia attractive for businesses but also pushing for state improvements to further support Georgia's homegrown businesses and businesses considering a move to Georgia.² Businesses contemplating a move to Georgia consider a myriad of factors, including the state's judicial climate.³ More specifically, when Georgia found itself losing to neighboring states like North Carolina in company site selection processes, economic developers often cited the draw of North Carolina's business court as being one of the deciding factors.⁴

To further his economic development priority, among other priorities, Governor Deal signed an Executive Order in March 2017, "establishing the Court Reform Council to 'review current practices and procedures within the judicial court system and the administrative law hearing system and make recommendations to improve efficiencies and achieve best practices for the administration of justice.'"⁵ The Court Reform Council created three subcommittees for its work, one being the Statewide Business Court subcommittee.⁶ This subcommittee delivered on its purpose by evaluating whether a specialized state-wide court to handle complex business litigation would be useful, efficient, and effective.⁷

Specialized courts to adjudicate complex litigation are not new concepts in the United States, with the Delaware Court of Chancery, created in 1792, being the first of this kind.⁸ While some other states

1. *Site Selection Ranks Georgia's Business Climate No. 1 for Sixth Straight Year*, GEORGIA® (Nov. 5, 2018), <https://www.georgia.org/newsroom/press-releases/site-selection-ranks-georgias-business-climate-no-1-sixth-straight-year>.

2. *Id.*

3. Interview with Brad Carver, Partner, Hall Booth Smith, P.C. (May 30, 2019) (on file with the Georgia State University Law Review) [hereinafter Carver Interview].

4. *Id.*

5. COURT REFORM COUNCIL, STATE OF GEORGIA, FINAL REPORT SUBMITTED TO GOVERNOR NATHAN DEAL 2 (2017) [hereinafter FINAL REPORT].

6. *Id.*

7. *Id.* at 16.

8. *Id.* at 19.

followed Delaware’s lead, Georgia pursued a similar lead but at the local level with the creation of the Metro Atlanta Business Case Division—a division of the Fulton County Superior Court—and similar divisions in other counties like Gwinnett.⁹ These business divisions in local superior or state courts have proven effective and efficient, resolving complex business cases 50%–60% faster than similar cases on the court’s regular, nonspecialized docket.¹⁰ Even though local circuits are allowed to create these divisional, specialized courts, not all circuits can or will support such a creation.¹¹ These divisional courts need funds to operate and sufficiently full case dockets to warrant the additional spend.¹² Some counties simply do not have the size or amount of business activity necessary to make the case for a specialized court in their particular circuit.¹³ Through extensive study, Governor Deal’s Court Reform Council identified specific advantages found with specialized business courts:

- (1) Certainty and predictability of outcome—judicial expertise gives business interests the security that their complex business issues will be heard in front of a judge who has substantial familiarity with complex business issues like fiduciary duties, disclosure issues, and duty of care.
- (2) Because of the specialized nature of the courts and the lawyers who practice before it, complex issues can be expedited.
- (3) Specialization, generally, leads to consistent case management and lower costs, with more efficient outcomes.¹⁴

Completing its work in November 2017, the Court Reform Council recommended “the constitutional creation of a statewide business court” with limited subject matter jurisdiction for complex business cases.¹⁵

9. *Id.* at 20.

10. *Id.*

11. Carver Interview, *supra* note 3.

12. *Id.*

13. *Id.*

14. FINAL REPORT, *supra* note 5, at 19.

15. *Id.* at 17.

When Georgians traveled to the polls on November 6, 2018, they were asked to vote on Georgia Amendment Two, the Business Court Amendment.¹⁶

Shall the Constitution of Georgia be amended so as to create a state-wide business court, authorize superior court business court divisions, and allow for the appointment process for state-wide business court judges in order to lower costs, improve the efficiency of all courts, and promote predictability of judicial outcomes in certain complex business disputes for the benefit of all citizens of this state?¹⁷

Georgia Amendment Two received overwhelming support with 69% of Georgia voters voting “yes” to the creation of a state-wide business court.¹⁸ After this constitutional amendment passed, Georgia’s legislators became responsible for drafting and passing enabling legislation to bring this state-wide business court to life.¹⁹ Hence, the birth of House Bill (HB) 239 as this legislation.

Bill Tracking of HB 239

Consideration and Passage by the House

Representatives Chuck Efstoration (R-104th) and Barry Fleming (R-121st) sponsored HB 239 in the House.²⁰ The House read the bill for the first time on February 12, 2019, referring the bill to the House Judiciary Committee, and then read the bill for the second time on February 13, 2019.²¹ On February 27, 2019, the House Judiciary Committee favorably reported the bill by Committee substitute.²² The

16. *Georgia Amendment 2, Establish a State Business Court Amendment (2018)*, BALLOTPEdia, [https://ballotpedia.org/Georgia_Amendment_2,_Establish_a_State_Business_Court_Amendment_\(2018\)](https://ballotpedia.org/Georgia_Amendment_2,_Establish_a_State_Business_Court_Amendment_(2018)) [https://perma.cc/6QHM-CN93] (last visited Sept. 13, 2019).

17. *Id.*

18. *Id.*

19. Telephone Interview with Rep. Chuck Efstoration (R-104th) (May 30, 2019) (on file with the Georgia State University Law Review) [hereinafter Efstoration Interview].

20. Georgia General Assembly, HB 239, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20192020/HB/239> [hereinafter HB 239, Bill Tracking].

21. State of Georgia Final Composite Status Sheet, HB 239, May 15, 2019.

22. *Id.*

Committee substitute altered a significant amount of the bill's text but only amended four material components.²³

First, the Committee added an explicit enabling provision allowing superior and state courts to continue both operating current and creating new local business court divisions, if so desired.²⁴ As initially introduced, the bill did not preclude superior or state courts from creating local business courts but did remain silent on the topic.²⁵ With the success of local business courts like those in both Fulton and Gwinnett counties, the Committee had no desire or intention to intrude on those courts' current jurisdiction nor prevent future counties with sufficient case volumes from creating local business courts.²⁶

Second, the Committee added specificity around the one-party request for a jury trial in light of the business court's bench trial default provision.²⁷ Although the bill, as introduced, was not intended to remove the right to trial by jury as protected by Georgia law, the initial bill's language only allowed for jury trial where such trial was *required*.²⁸ The Committee amended this section to instead allow any party to *request* a jury trial and asserted that such jury trial would receive the business court judge's services—presiding over such jury trial where venue was proper.²⁹

Third, the Committee amended which controversies the newly created business court could hear.³⁰ The substitute raised the amount in controversy necessary for non-equity and non-commercial real property claims in the newly created business court from at least \$100,000 to at least \$250,000.³¹ Additionally, though the business

23. Compare HB 239, as introduced, 2019 Ga. Gen. Assemb., with HB 239 (HCS), 2019 Ga. Gen. Assemb.

24. HB 239 (HCS), § 1-1, p. 2, ll. 25–27, 2019 Ga. Gen. Assemb.

25. HB 239, as introduced, 2019 Ga. Gen. Assemb.

26. Compare HB 239, as introduced, 2019 Ga. Gen. Assemb., with HB 239 (HCS), 2019 Ga. Gen. Assemb. See Video Recording of House Judiciary Committee Meeting at 23 min., 57 sec. (Feb. 26, 2019) (remarks by Rep. Chuck Efstoration (R-104th)), <https://www.youtube.com/watch?v=UKEDGYzpNXc> [hereinafter House Judiciary Committee Video]; see also Carver Interview, *supra* note 3.

27. HB 239 (HCS), § 1-1, p. 2, ll. 42–44, 2019 Ga. Gen. Assemb.

28. HB 239, as introduced, § 1-1, p. 2, ll. 41–44, 2019 Ga. Gen. Assemb. (emphasis added).

29. Compare HB 239, as introduced, § 1-1, p. 2, ll. 41–44, 2019 Ga. Gen. Assemb., with HB 239 (HCS), § 1-1, p. 2, ll. 42–44, 2019 Ga. Gen. Assemb. (emphasis added).

30. HB 239 (HCS), § 1-1, p. 3, ll. 66–116, 2019 Ga. Gen. Assemb.

31. Compare HB 239, as introduced, § 1-1, p. 3, l. 83, 2019 Ga. Gen. Assemb., with HB 239 (HCS),

court's limited jurisdiction only allowed certain subject matters into the court, the Committee added, for the avoidance of doubt, an enumerated list of exclusions to this court's purview.³² Specifically, the newly created business court's exclusions were from matters involving: "(1) physical injury inflicted upon the body of a person or death; (2) mental or emotional injury inflicted upon a person; (3) residential landlord and tenant disputes; or (4) foreclosures."³³

Fourth, the Committee included amendments regarding how parties might find themselves litigating in the newly created state-wide business court.³⁴ The Committee added language to protect plaintiffs' rights to file in business court so long as the action was not already pending in a superior or state court.³⁵ Of utmost importance, the Committee did not alter its position that only one party in the suit needs to consent to be in the state-wide business court—a position in contrast to the two-party consent requirement supported by the Senate.³⁶

The Committee substitute also amended a few minor procedural items, including but not limited to flexibility for the Senate Judiciary Committee and the House Judiciary Committee on convening to vote for the Governor's appointees for both the judge and clerk of the state-wide business court and empowerment for the court to set its own rules and guidelines, so long as such activities conform with the Georgia Civil Practice Act.³⁷ The House read the bill for the third time on March 5, 2019.³⁸ The House then passed the Committee substitute of HB 239 on March 5, 2019, by a vote of 156 to 8.³⁹

§ 1-1, p. 4, ll. 108–09, 2019 Ga. Gen. Assemb.

32. *Compare* HB 239, as introduced, 2019 Ga. Gen. Assemb., *with* HB 239 (HCS), 2019 Ga. Gen. Assemb.

33. HB 239 (HCS), § 1-1, p. 4, ll. 117–22, 2019 Ga. Gen. Assemb.

34. *Compare* HB 239, as introduced, 2019 Ga. Gen. Assemb., *with* HB 239 (HCS), 2019 Ga. Gen. Assemb.

35. HB 239 (HCS), § 1-1, p. 4, ll. 126–27, 2019 Ga. Gen. Assemb.

36. *Compare* HB 239, as introduced, 2019 Ga. Gen. Assemb., *with* HB 239 (HCS), 2019 Ga. Gen. Assemb. *See* Video Recording of Senate Proceedings at 5 min., 54 sec. (Apr. 2, 2019, PM 3) (remarks by Sen. Jesse Stone (R-23rd)), <https://www.youtube.com/watch?v=Ooj-BeOyEsE> [hereinafter Senate Video PM 3].

37. *Compare* HB 239, as introduced, 2019 Ga. Gen. Assemb., *with* HB 239 (HCS), 2019 Ga. Gen. Assemb.

38. State of Georgia Final Composite Status Sheet, HB 239, May 15, 2019.

39. Georgia House of Representatives Voting Record, HB 239, #129 (Mar. 5, 2019).

Consideration and Passage by the Senate

Senator Jesse Stone (R-23rd) sponsored HB 239 in the Senate.⁴⁰ The Senate read the bill for the first time on March 7, 2019, and referred the bill to the Judiciary Committee.⁴¹ On March 22, 2019, the Senate Committee favorably reported the bill by Committee substitute.⁴² The Committee substitute made significant changes to the House Committee substitute.

First, the Committee renamed the court and moved the court's location.⁴³ The Senate Committee substitute replaced all references to the court's name with "State-wide Business Court" as opposed to the House bill, as introduced and amended by substitute, which named this court the "Georgia Business Court."⁴⁴ Additionally, the newly created court's location provided by the House bill was Atlanta, Georgia.⁴⁵ The Senate Judiciary Committee moved the court's location to Macon-Bibb County.⁴⁶

Second, the Senate Committee substitute added, as appropriate subject matters for this court's limited jurisdiction, new causes of action.⁴⁷ Specifically, the Committee expanded jurisdiction to claims arising from the Georgia Trade Secrets Act, cases involving trademarks and trade names, and disputes involving noncompetition covenants—areas not explicitly included in the House bill as introduced or amended.⁴⁸

Third and most importantly, the Senate Committee substitute amended how parties might find themselves in business court.⁴⁹ The Senate substitute required two-party agreement for jurisdictional assignment to the newly created court versus the House position that one party's desire to be in the business court would do, unless both

40. HB 239, Bill Tracking, *supra* note 20.

41. State of Georgia Final Composite Status Sheet, HB 239, May 15, 2019.

42. *Id.*

43. *Compare* HB 239 (HCS), 2019 Ga. Gen. Assemb., *with* HB 239 (SCS), 2019 Ga. Gen. Assemb.

44. *Compare* HB 239 (HCS), § 1-1, p. 2, ll. 24–25, 2019 Ga. Gen. Assemb., *with* HB 239 (SCS), § 1-1, p. 2, ll. 27–28, 2019 Ga. Gen. Assemb.

45. HB 239 (HCS), § 1-1, p. 2, ll. 31–32, 2019 Ga. Gen. Assemb.

46. HB 239 (SCS), § 1-1, p. 2, ll. 34–35, 2019 Ga. Gen. Assemb.

47. *Compare* HB 239 (HCS), 2019 Ga. Gen. Assemb., *with* HB 239 (SCS), 2019 Ga. Gen. Assemb.

48. *Compare* HB 239 (HCS), § 1-1, pp. 3–4, ll. 66–103, 2019 Ga. Gen. Assemb., *with* HB 239 (SCS), § 1-1, p. 3, ll. 73–74, 89–92, 2019 Ga. Gen. Assemb.

49. *Compare* HB 239 (HCS), 2019 Ga. Gen. Assemb., *with* HB 239 (SCS), 2019 Ga. Gen. Assemb.

parties were previously engaged in business through a contract that stipulated the state-wide business court for dispute resolution.⁵⁰ Although the Senate substitute did not require both parties affirm their submission to business court, a sixty-day time period allowed one party to unilaterally move the case out of business court and back to either the superior or state court vested with jurisdiction.⁵¹ The Committee substitute also added an express exclusion that contracts with consumers would not be allowed in this newly created business court, a concept on which the House bill was silent.⁵² Finally, the Senate substitute amended the court's filing fee from the House substitute's \$5,000 fee to a \$1,000 fee, a fee expected to generate sufficient case volume for the newly created court.⁵³

The Senate substitute also amended a few minor procedural items.⁵⁴ The substitute included flexibility for the Senate and House Judiciary Committees on convening to vote for the Governor's appointee for the business court's judge and clerk, and empowerment for the court to hire both law clerks and staff attorneys versus only law assistants as provided in the House bill.⁵⁵ The Senate read the bill for the second time on March 25, 2019, tabled the bill on March 29, 2019, and took the bill from the table and read the bill for the third time on April 2, 2019.⁵⁶ Senator Zahra Karinshak (D-48th) offered a floor amendment to the Senate Judiciary Committee substitute to HB 239 to revise lines 18, 519, and 520; however, she voluntarily withdrew the amendment with no floor debate before the Senate's vote.⁵⁷ The Senate then passed the Senate Committee substitute of HB 239 on April 2, 2019, by a vote of 51 to 3.⁵⁸

50. Compare HB 239 (HCS), § 1-1, pp. 4–5, ll. 126–27, 132–50, 2019 Ga. Gen. Assemb., with HB 239 (SCS), § 1-1, p. 5, ll. 131–62, 2019 Ga. Gen. Assemb.

51. HB 239 (SCS), § 1-1, p. 5, ll. 131–40, 152–57, 2019 Ga. Gen. Assemb.

52. Compare HB 239 (HCS), 2019 Ga. Gen. Assemb., with HB 239 (SCS), § 1-1, p. 5, ll. 139–40, 2019 Ga. Gen. Assemb.

53. Compare HB 239 (HCS), § 1-1, p. 5, ll. 162–63, 2019 Ga. Gen. Assemb., with HB 239 (SCS), § 1-1, p. 6, ll. 183–84, 2019 Ga. Gen. Assemb.

54. See generally HB 239 (SCS), 2019 Ga. Gen. Assemb.

55. Compare HB 239 (HCS), 2019 Ga. Gen. Assemb., with HB 239 (SCS), 2019 Ga. Gen. Assemb.

56. State of Georgia Final Composite Status Sheet, HB 239, May 15, 2019.

57. Withdrawn Senate Floor Amendment to HB 239 (SFA 41 0440), introduced by Sen. Zahra Karinshak (D-48th), April 2, 2019; see Senate Video PM 3, *supra* note 36, at 5 min., 24 sec. (remarks by Sen. Jesse Stone (R-23rd)).

58. Georgia Senate Voting Record, HB 239, #406 (Apr. 2, 2019).

Final Consideration and Passage by Both Chambers

The House then amended the Senate substitute, finding a compromise between the two chambers to pass the bill on the legislative session's final day in 2019.⁵⁹ Though minor language changes appeared throughout the bill, the significant matters addressed were: (1) the court's location; (2) two-party versus one-party consent; (3) removal of particular permitted causes of action; (4) addition of specified cause of action exclusions; (5) increased amount in controversy requirement; and (6) increased filing fee.⁶⁰

The House and Senate did not find agreement on the court's location; therefore, rather than holding this enabling legislation over to the next legislative session, the House amendment to the Senate Committee substitute included the court's location as either Atlanta or Macon-Bibb County.⁶¹ Next, the most contentious topic between both chambers involved the two-party versus one-party consent requirement.⁶² In the House amendment to the Senate substitute, the House acquiesced to the Senate's two-party consent provision but reduced the number of days for an opposing party to object to a filing in or transfer to the state-wide business court from the Senate's sixty-day allowance to only a thirty-day objection window.⁶³

The House reverted back to its permitted cause of action enumerations by removing jurisdiction for claims arising from the Georgia Trade Secrets Act, cases involving trademarks and trade names, and disputes involving noncompetition covenants.⁶⁴ Additionally, the House amendment to the Senate substitute contained additional jurisdictional exclusions for the state-wide business court, specifically adding exclusions for an insult or

59. Video Recording of House Proceedings at 1 hr., 16 min., 20 sec. (Apr. 2, 2019, PM 4) (remarks by Rep. Chuck Efstation (R-104th)), <https://www.youtube.com/watch?v=TsVJLeq6gcs&list=PLtnbuO1Wh9L4QnJonbAVcdChOwajp1Ja7&index=194> [hereinafter House Video PM 4].

60. Compare HB 239 (SCS), 2019 Ga. Gen. Assemb., with HB 239 (AM 41 0469), 2019 Ga. Gen. Assemb.

61. HB 239 (AM 41 0469), § 1-1, p. 2, ll. 49–51, 2019 Ga. Gen. Assemb.

62. Compare HB 239 (SCS), 2019 Ga. Gen. Assemb., with HB 239 (AM 41 0469), 2019 Ga. Gen. Assemb.

63. Compare HB 239 (SCS), § 1-1, p. 5, ll. 131–57, 2019 Ga. Gen. Assemb., with HB 239 (AM 41 0469), § 1-1, p. 6, ll. 172–75, 187–89, 199–200, 2019 Ga. Gen. Assemb.

64. Compare HB 239 (SCS), § 1-1, pp. 3–4, ll. 62–104, 2019 Ga. Gen. Assemb., with HB 239 (AM 41 0469), § 1-1, pp. 3–4, ll. 90–130, 2019 Ga. Gen. Assemb.

provocation of physical contact with a person's body, a threat of physical violence to another, Title 19 matters, individual consumer claims involving retail goods and services intended for personal use, and collections in family farm matters.⁶⁵

Additionally, the House amendment adjusted the amount in controversy threshold from \$250,000 to \$500,000, focusing on the court's efficiency through adjudication of significant business matters.⁶⁶ Finally, the House and Senate not finding agreement on the court's filing fee—\$5,000 versus \$1,000 in their respective prior bill substitutes—split the difference here, offering a filing fee of \$3,000 in the House amendment to the Senate Committee substitute.⁶⁷

The House agreed to the Senate substitute as amended by the House on April 2, 2019, and passed by a vote of 120 to 40 the same day.⁶⁸ The Senate then agreed to the House amendment to the Senate Committee substitute and passed it by a vote of 53 to 2 on April 2, 2019.⁶⁹ The House sent the bill to Governor Brian Kemp (R) on April 12, 2019, and the Governor signed the bill into law on May 7, 2019, making the law effective the same day.⁷⁰

The Act

The Act amends the Official Code of Georgia Annotated Title 15 by adding Chapter 5A; amending various portions of Title 5 relating to appeal and error; amending various portions of Title 9, Chapter 4 relating to declaratory judgments; amending Title 23 relating to equity, appeal, and error; and amending Code section 45-7-4 relating to salaries and fees.⁷¹ The overall purpose of the Act is to make Georgia a more attractive state for businesses by establishing a state-

65. Compare HB 239 (SCS), § 1-1, p. 4, ll. 122–27, 2019 Ga. Gen. Assemb., with HB 239 (AM 41 0469), § 1-1, p. 5, ll. 143–58, 2019 Ga. Gen. Assemb.

66. Compare HB 239 (SCS), § 1-1, p. 4, ll. 109–10, 2019 Ga. Gen. Assemb., with HB 239 (AM 41 0469), § 1-1, p. 4, ll. 134–35, 2019 Ga. Gen. Assemb.

67. Compare HB 239 (SCS), § 1-1, p. 6, ll. 183–84, 2019 Ga. Gen. Assemb., with HB 239 (AM 41 0469), § 1-1, p. 7, ll. 222–23, 2019 Ga. Gen. Assemb.

68. State of Georgia Final Composite Status Sheet, HB 239, May 15, 2019; Georgia House of Representatives Voting Record, HB 239, #412 (Apr. 2, 2019).

69. State of Georgia Final Composite Status Sheet, HB 239, May 15, 2019; Georgia Senate Voting Record, HB 239, #427 (Apr. 2, 2019).

70. State of Georgia Final Composite Status Sheet, HB 239, May 15, 2019.

71. 2019 Ga. Laws 845, at 845–46.

wide business court that litigants located in any jurisdiction throughout the state can use.⁷²

Section 1

Section 1 amends Title 15 by adding Chapter 5A, which establishes the location of the Georgia State-wide Business Court (GSWBC), its terms, the process of bringing and having a case before the GSWBC, and its jurisdiction.⁷³ Notwithstanding the creation of a state-wide business court, superior and state courts are still free to establish their own separate, local business courts.⁷⁴

Location and Venue

The terms of the GSWBC will be the same as the Supreme Court of Georgia.⁷⁵ The court seat will be either in Atlanta or in Macon-Bibb County.⁷⁶ In the judge's sole discretion, the GSWBC may conduct pretrial proceedings using nontraditional means to conserve resources for the court and the parties, including video, telephone, or other forms of distance communication; or, at the request of a party, it may hold proceedings in the county where the trial would be conducted.⁷⁷

Although bench trials are the default method of procedure, the business court judge must grant a party's request for a jury trial and may preside over both bench and jury trials.⁷⁸ Although the original language of HB 239 stated that business court trials would be bench trials unless otherwise provided for by law, some legislators were concerned that the language of the bill could be construed to force an unwilling party to submit to a bench trial and deny that party its constitutional right to a jury trial.⁷⁹ Legislators amended the bill to

72. *See infra* Analysis.

73. O.C.G.A. §§ 15-5A-1–16 (Supp. 2019).

74. *Id.* § 15-5A-1.

75. *Id.* § 15-5A-2(a).

76. *Id.* § 15-5A-2(b).

77. *Id.* § 15-5A-2(c)(1)-(2).

78. *Id.* § 15-5A-2(d).

79. House Judiciary Committee Video, *supra* note 26, at 1 hr., 2 min., 30 sec. (remarks by Rep. Chuck Efration (R-104th)); *id.* at 1 hr., 13 min., 45 sec. (remarks by Rep. Trey Kelley (R-16th)).

include express language ensuring that each party's constitutional right to a jury trial was preserved.⁸⁰

Venue is as prescribed by law or by agreement of the parties, but if multiple venues would be proper, the party initiating the litigation may select the venue.⁸¹ If a judge is disqualified and no other business court judge is available, which will likely occur because the Act provides for only one judge, the Supreme Court of Georgia may designate a judge from the Court of Appeals or a superior or state court.⁸²

Jurisdiction

Code section 15-5A-3 defines and limits the jurisdiction of the GSWBC to specific types of claims.⁸³ The GSWBC has jurisdiction over equitable claims regardless of the amount in controversy when the claim arises under one or more of the following: the Georgia Arbitration Code, the International Commercial Arbitration Code, the Georgia Trade Secrets Act of 1990, the Uniform Commercial Code, the Georgia Business Corporation Code, the Uniform Partnership Act, the Georgia Revised Uniform Limited Partnership Act and Uniform Limited Partnership Act, or the Georgia Limited Liability Company Act.⁸⁴ It also has equity jurisdiction over claims involving securities; a business's internal affairs; professional malpractice if arising from a business dispute; tort claims, but only those between businesses or between individuals if the claim relates to their business or investment activities; breach of contract, fraud, or misrepresentation between businesses if the claims arise from business transactions or relationships; intellectual property; commercial real property; and federal claims if Georgia courts have concurrent jurisdiction.⁸⁵

For damages claims, jurisdiction is limited to cases where the amount in controversy is at least \$1 million for claims involving

80. O.C.G.A. § 15-5A-2(d) (Supp. 2019); House Judiciary Committee Video, *supra* note 26, at 1 h, 0 min., 29 sec.

81. § 15-5A-2(e)(1), (3).

82. *Id.* § 15-5A-2(f).

83. *Id.* § 15-5A-3.

84. *Id.* §§ 15-5A-3(a)(1)(A)(i)–(x).

85. *Id.* §§ 15-5A-3(a)(1)(A)(xi)–(xvii).

commercial real property and \$500,000 for claims not involving such property.⁸⁶ The GSWBC also has supplemental jurisdiction over related claims.⁸⁷ The GSWBC has power to punish contempt by fines limited to \$1,000, a prison sentence limited to twenty days, or both.⁸⁸

The GSWBC does not have jurisdiction over claims where businesses may be parties to the litigation but the claim does not involve complex business matters. Excluded claims include physical injury or death to a person; mental or emotional injury; insulting or provoking physical contact with another person; threats of physical violence toward a person; claims arising under Title 19; residential landlord and tenant disputes; foreclosures; individual consumer claims when the goods involved in the claim were intended for personal or family use, except for class actions; and collections involving a family farm or a farmer.⁸⁹

Filings and Transfer Mechanism

A party may file an initial pleading directly in the business court and, if so, the defending party has thirty days from the date of service to object and request transfer of the case to state or superior court.⁹⁰ If a defendant objects, the business court judge is required to transfer the case out of the GSWBC unless the claim involves a contract where both parties are businesses and the contract in question includes a forum selection clause providing that a business court will handle all disputes relating to the contract.⁹¹ Parties may transfer a case from state or superior court to the GSWBC upon agreement of both parties or at the petition of one party.⁹² In the latter situation, the business court judge will determine whether the case falls within the GSWBC's jurisdiction and, if so, will allow the transfer unless a party objects within thirty days of the petition to transfer.⁹³ Notably, the business court judge also has authority to remove any claim filed

86. O.C.G.A. §§ 15-5A-3(a)(1)(B)(i)–(ii) (Supp. 2019).

87. *Id.* § 15-5A-3(a)(2).

88. *Id.* § 15-5A-3(a)(3).

89. *Id.* §§ 15-5A-3(b)(1)–(9).

90. *Id.* § 15-5A-4(a)(1).

91. *Id.*

92. O.C.G.A. §§ 15-5A-4(a)(2)–(3) (Supp. 2019).

93. *Id.* §§ 15-5A-4(a)(3)(A)–(B).

with the GSWBC to a state or superior court or reject a petition to transfer, even if the claims are within the jurisdiction of the GSWBC.⁹⁴ The filing fee is \$3,000 to be paid by the party requesting the business court or, if both parties agree to remove the case to the business court, by both parties equally.⁹⁵

Judges and Support Staff

Code sections 15-5A-6 through 15-5A-16 describe the process for selecting a judge for the GSWBC and grant the judge authority to govern the court and acquire a support staff. Currently, there is only one judge and one division of the GSWBC.⁹⁶ The GSWBC will begin operating on January 1, 2020, and taking cases on August 1, 2020.⁹⁷ To be qualified, judges must have been admitted to practice law in Georgia for at least seven years; been a resident of Georgia and a United States citizen for at least seven years; and have “[a]t least [fifteen] years of legal experience as an attorney or judge in complex business litigation.”⁹⁸

The judge is appointed by the Governor, subject to approval by a majority vote of both the Senate Judiciary Committee and the House Judiciary Committee.⁹⁹ Judges will serve a term of five years and may be reappointed with no limit on the number of consecutive terms of reappointment as long as the judge continues to meet the qualifications.¹⁰⁰ The judge will be paid an annual salary plus mileage.¹⁰¹ The business court clerk is appointed in the same manner as the judge and has the same term and method of reappointment.¹⁰²

The business court judge has authority to create and revise the GSWBC rules, provided the proposed rules are submitted to the Supreme Court of Georgia for approval and conform to the Georgia Civil Practice Act.¹⁰³ The judge is also authorized to create a panel of

94. *Id.* § 15-5A-4(b).

95. *Id.* §§ 15-5A-5(a)(1)–(2).

96. *Id.* § 15-5A-6(a).

97. *Id.* § 15-5A-6(b).

98. O.C.G.A. §§ 15-5A-6(c)(1)–(3) (Supp. 2019).

99. *Id.* § 15-5A-7(a).

100. *Id.* § 15-5A-7(b)(3).

101. *Id.* §§ 15-5A-9(a)(1)–(3).

102. *Id.* §§ 15-5A-11(a)–(b).

103. *Id.* § 15-5A-10(a).

individuals to assist in creating and revising the rules.¹⁰⁴ The judge has the authority to hire and fire legal assistants, who must be admitted to practice law in Georgia on the date of their appointment or within a year of appointment.¹⁰⁵ The judge may hire other employees and purchase supplies as necessary to operate the GSWBC.¹⁰⁶

Section 1-2

Section 1-2 amends Code section 45-7-4 to set the annual salary of the business court judge at \$174,500.¹⁰⁷

Section 2

Section 2 amends Title 5 of the Official Code of Georgia Annotated relating to appeal and error by adding the GSWBC to the list of other courts already listed in Title 5.¹⁰⁸ Specifically, Section 2-1 amends Code section 5-5-1 relating to the powers of the courts; Section 2-2 amends Code section 5-6-33 regarding the right to appeal; Section 2-3 amends Code section 5-6-34 regarding judgments and rulings that can be directly appealed and the procedure for review; and Section 2-4 amends Code section 5-6-41 that relates to transcripts.¹⁰⁹

Section 3

Section 3 amends Chapter 4 of Title 9 of the Official Code of Georgia Annotated relating to appeal and error by adding the GSWBC to the list of other courts already listed in that Code section.¹¹⁰ Specifically, Section 3-1 amends Code section 9-4-2 relating to declaratory judgments; Section 3-2 amends Code section 9-4-5 relating to filing, service, time of trial, and drawing of jury;

104. O.C.G.A. § 15-5A-10(b) (Supp. 2019).

105. *Id.* § 15-5A-13(a).

106. *Id.* §§ 15-5A-14 to 15.

107. 2019 Ga. Laws 845, § 1-2, at 855 (codified at O.C.G.A. § 45-7-4(a)(19.1) (Supp. 2019)).

108. 2019 Ga. Laws 845, §§ 2-1 to 2-4, at 855–57.

109. *Id.*

110. 2019 Ga. Laws 845, §§ 3-1 to 3-7, at 875–59.

Section 3-3 amends Code section 9-4-10 relating to equity jurisdiction; Section 3-4 amends Code section 23-1-1 relating to equity jurisdiction; Section 3-5 amends Code section 23-4-3 relating to defendant claims for legal and equitable relief; Section 3-6 amends Code section 23-4-33 relating to decrees in wills or contracts and consents of guardians; and Section 3-7 amends Code section 23-4-37 relating to attachments for contempt and executions against property.¹¹¹

Parts IV through VI

Parts IV, V, and VI do not contain any provisions relating specifically to the GSWBC.¹¹²

Analysis

Attracting Businesses to Georgia

The GSWBC was the fruit of bipartisan efforts to encourage businesses to locate within the State of Georgia.¹¹³ Although Georgia is already “the number one state to do business,” legislators who supported the bill’s passage wanted to ensure that Georgia maintains that position¹¹⁴ and avoids losing businesses to other states such as North Carolina that have state-wide business courts.¹¹⁵ Before the bill’s passage, the only business court that existed in Georgia was the Metro Atlanta Business Court serving Fulton and Gwinnett counties, which started as the Fulton County Business Court (FCBC) in 2005 and expanded to include Gwinnett County in 2016.¹¹⁶ The Metro Atlanta Business Court was widely viewed as a success: 80% of

111. *Id.*

112. 2019 Ga. Laws 845, §§ 4-1 to 6-4, at 859–64.

113. Carver Interview, *supra* note 3; Efration Interview, *supra* note 19.

114. Carver Interview, *supra* note 3.

115. *Id.*

116. *Metro Atlanta Business Court*, SUPERIOR CT. FULTON COUNTY, <https://www.fultoncourt.org/business/business-project.php> [<https://perma.cc/EC2V-EZFF>] (last visited Sept. 17, 2019).

practitioners surveyed reported being highly satisfied with the business case division.¹¹⁷

Businesses prefer to have cases heard in business courts because businesses involved in complex litigation value predictability in terms of both timing and resolution.¹¹⁸ In business courts, disputes are usually resolved much faster than in state or superior court because the judge is free to focus exclusively on business litigation, and cases are resolved more consistently than in state or superior courts because the judge is highly trained in that area of law.¹¹⁹ The existence of a business court is a factor that business owners consider when determining a location for company headquarters.¹²⁰

Seeing the economic development and job growth enjoyed by other states due to those states' business courts, supporters of the Act wanted to provide that option to businesses considering locating in Georgia.¹²¹ Although Fulton and Gwinnett counties already had a business court in operation, businesses located in other Georgia counties did not have the option of a business court.¹²² Significantly, smaller jurisdictions were not large enough for a business court to be economically feasible.¹²³ However, businesses are located throughout the State of Georgia, even in rural jurisdictions where a separate business court may not be cost-effective: for example, Flowers Industries, a Fortune 500 company, is headquartered in Thomas County, a rural area with a total population of approximately 44,448.¹²⁴

However, while providing a state-wide option, legislators did not intend to prevent local jurisdictions from providing their own business courts.¹²⁵ Desiring to remove any confusion or ambiguity

117. FINAL REPORT, *supra* note 5, at 20.

118. Efstoration Interview, *supra* note 19.

119. Anne Tucker Nees, *Making a Case for Business Courts: A Survey of and Proposed Framework to Evaluate Business Courts*, 24 GA. ST. U. L. REV. 477, 485–87 (2007); Efstoration Interview, *supra* note 19.

120. Efstoration Interview, *supra* note 19.

121. *Id.*

122. Carver Interview, *supra* note 3.

123. *Id.*

124. *Id.*; *QuickFacts: Thomas County, Georgia, U.S. CENSUS BUREAU*, <https://www.census.gov/quickfacts/fact/table/thomascountygeorgia/INC110217> [<https://perma.cc/6AQW-EW78>] (last visited Sept. 17, 2019).

125. Efstoration Interview, *supra* note 19.

regarding this intent, the Act expressly preserves the ability of state and superior courts to create local business courts.¹²⁶

Comparison with Other States

As of May 2019, twenty-three states have business courts at a local level, state level, or both.¹²⁷ Predictably, states have chosen a wide variety of models in operating their business courts. The extent to which states limit business court jurisdiction by requiring a certain amount in controversy varies: some states require no minimum amount in controversy while others require amounts ranging from a few thousand dollars to Georgia's \$1 million requirement for claims involving real property.¹²⁸ Many states have multiple divisions of the business court within the state as well as several judges.¹²⁹ Other states, similar to Georgia before the passage of HB 239, have local business courts but not a state-wide court.¹³⁰ In developing the GSWBC, legislators primarily looked to the North Carolina Business Court and the Delaware Chancery Court as models.¹³¹

Constitutional Issues

No constitutional issues are apparent with the Act. In 2018, a wide majority of Georgia voters approved the amendment to the Georgia Constitution that authorized a state-wide business court.¹³² A state-wide business court is thus constitutional in Georgia pursuant to the 2018 amendment.¹³³ However, legislators were very sensitive to preserving parties' constitutional right to a jury trial.¹³⁴

126. *Id.*

127. *Map of U.S. Business Courts (May 2019)*, FINEMAN KREKSTEIN & HARRIS: BUS. CTS. BLOG (June 25, 2019), <https://www.businesscourtsblog.com/map-of-u-s-business-courts-may-2019/> [<https://perma.cc/NJQ5-PXBP>].

128. Nees, *supra* note 119, at 505–11.

129. *Id.*

130. *Id.*

131. Efration Interview, *supra* note 19.

132. House Judiciary Committee Video, *supra* note 26, at 24 min., 36 sec. (remarks by Rep. Chuck Efration (R-104th)).

133. Efration Interview, *supra* note 19.

134. House Judiciary Committee Video, *supra* note 26, at 1 hr., 1 min., 24 sec. (remarks by Rep. Chuck Efration (R-104th)).

Limited Opposition

The Act enjoyed widespread bipartisan support.¹³⁵ There was little opposition to the concept of a state-wide business court, and what opposition existed was largely limited to representatives in the House at the far right and left ends of the political spectrum.¹³⁶ Industries, predictably, supported the measure as well.¹³⁷

The more liberal representatives who opposed the Act expressed concerns regarding the selection of business court judges and the shift of control of business cases from local courts to a state-wide court.¹³⁸ They did not support the provision requiring that business court judges be appointed by the Governor rather than elected.¹³⁹ They also opposed the lack of term limits for business court judges.¹⁴⁰ In addition, they found the concept of local courts losing control over business cases to a state-wide court to be troublesome.¹⁴¹

The more conservative contingency that opposed the Act did so primarily for fiscal reasons: they did not believe a real need existed for an additional court and the accompanying increase in government spending.¹⁴² Concerned about government efficiency, they argued that the Georgia judiciary branch already had the resources to handle complex business cases and that many circuits simply failed to use the resources they already had.¹⁴³ Responding to the argument that larger counties are overworked and have significant case backlogs, one opponent expressed that it would be more appropriate for circuits having a legitimate need for a business court to create one at the local level rather than creating a court that encompassed the entire state.¹⁴⁴

Generally, even the far left and right representatives who voted against HB 239 were not entirely opposed to the concept of a

135. Carver Interview, *supra* note 3.

136. *Id.*

137. *Id.*

138. State Rep. Bee Nguyen, FACEBOOK (Oct. 17, 2018), <https://ms-my.facebook.com/beeforgeorgia/posts/568347506918597> [<https://perma.cc/RJA4-2N73>] [hereinafter Nguyen].

139. *Id.*

140. *Id.*

141. *Id.*

142. Carver Interview, *supra* note 3.

143. *Id.*

144. *Id.*

business court. Representative Bee Nguyen (D-89th), a Democrat from DeKalb County who did not support the bill,¹⁴⁵ nevertheless stated that a state-wide business court would likely make the courts more efficient because business court judges specialize in complex business cases and a business court would reduce superior and state court caseloads.¹⁴⁶ Likewise, Representative Scot Turner (R-21st), a Republican who opposed the bill, did not oppose individual circuits creating their own business courts; instead, he disapproved of having a business court that the entire state funded rather than only the individual jurisdictions that needed it.¹⁴⁷

Procedural Issues: Transfer Mechanism

The greatest area of contention surrounding the creation of the GSWBC was not whether to have a business court but rather what details of operation would best further the purpose of the Act. The most hotly debated provision of the Act was the transfer mechanism: the means by which a case pending in state or superior court could be moved to the business court.¹⁴⁸ Transfer mechanisms are a “crucial element” of a business court’s structure because they determine whether the judge or the litigants control which cases are heard in the business court, and they “determine the scope of the program.”¹⁴⁹ The key debate in the discussion surrounding the transfer mechanism of the GSWBC was whether both parties had to consent to transfer a case to business court or whether a case could be transferred on the motion of one party with the consent of the business court judge.¹⁵⁰

The first version of the bill passed by the House allowed for transfer *upon the motion of one party* and approval by the business court judge, even if the other party objected.¹⁵¹ The Senate did not agree with that provision.¹⁵² As passed, the bill allowed a party to petition to transfer a case to business court but gives the other party

145. *Id.*

146. Nguyen, *supra* note 138.

147. Carver Interview, *supra* note 3.

148. Efstation Interview, *supra* note 19.

149. Nees, *supra* note 119, at 515.

150. Efstation Interview, *supra* note 19.

151. *Id.*

152. *Id.*

thirty days to object to the transfer, effectively requiring all parties to agree for a case to be heard in the GSWBC.¹⁵³

Those supporting transfer on the motion of one party and consent of the business court judge pointed to the example of the FCBC to show that the two-party consent requirement was not practical.¹⁵⁴ When it was first created, the FCBC required that all parties voluntarily consent to the jurisdiction of the business court before a case could be transferred.¹⁵⁵ However, there was a lack of participation in the FCBC because it was difficult to get all parties to agree.¹⁵⁶ Evidence suggested that “a litigation mindset (‘if you are for it then I am against it’) impeded cases transferring into the FCBC under the voluntary consent rules.”¹⁵⁷ Accordingly, the FCBC amended the transfer mechanism in 2007 to allow cases to transfer “upon the recommendation of the originally assigned judge or the motion of one party.”¹⁵⁸ Although a party could object to a proposed transfer, the business court could still hear a case despite a party’s objections.¹⁵⁹ The history of the FCBC thus indicates that the GSWBC may have difficulty engendering participation under the current two-party consent rule. In addition, the purpose of the business court suggests the importance of a mechanism that allows a party with a case that belongs in the business court to be there despite another party’s objection.¹⁶⁰

However, those supporting the two-party consent system, including Senate Judiciary Committee Chairperson Jesse Stone (R-23rd), responded that the two-party requirement failed in the FCBC because the FCBC did not allow enough time for litigants to develop confidence in the FCBC.¹⁶¹ The FCBC went from requiring two-party consent to one-party consent in approximately a year and a half,

153. *Id.*

154. Senate Video PM 3, *supra* note 36, at 9 min. (remarks by Sen. Jesse Stone (R-23rd)); Efration Interview, *supra* note 19.

155. Efration Interview, *supra* note 19.

156. House Judiciary Committee Video, *supra* note 26, at 29 min., 16 sec. (remarks by Rep. Chuck Efration (R-104th)).

157. Nees, *supra* note 119, at 529 n.184.

158. *Id.* at 525.

159. Efration Interview, *supra* note 19.

160. House Judiciary Committee Video, *supra* note 26, at 29 min., 16 sec. (remarks by Rep. Chuck Efration (R-104th)).

161. Senate Video PM 3, *supra* note 36, at 9 min., 16 sec. (remarks by Sen. Jesse Stone (R-23rd)).

which Chairperson Stone argued was not enough time for the concept of a business court to spread among potential business litigants.¹⁶² Business litigants will be attracted to the business court “because it is expeditious, and the decisions are made by judges who are experts in the area of business law.”¹⁶³ According to Chairperson Stone, when business litigants hear of the advantages of the GSWBC, they will require the business court as the forum in their forum selection clauses to provide the required two-party consent.¹⁶⁴ Because most business contracts have forum selection clauses, once businesses begin requiring that forum in their contracts, the GSWBC will experience sufficient growth to be effective.¹⁶⁵

Only time will tell whether the two-party consent rule will encourage enough participation for the GSWBC to be effective. The issue will likely be debated again in the future, especially if there is scant participation in the new business court as there was under the FCBC.¹⁶⁶ However, if the GSWBC quickly becomes popular under the two-party consent system, there may not be as much future debate on the issue as is currently anticipated.

Procedure for Selecting Business Court Judges

Another area of concern for many is that the business court judge is not elected but appointed.¹⁶⁷ The Court Reform Council that recommended the creation of a state-wide business court also recommended that the business court judge be appointed rather than elected to further the purpose of the court by “providing judicial resources tailored to the unique needs of complex litigation” and ensuring that judges “have a demonstrable track record of experience

162. *Id.*

163. *Id.* at 7 min., 42 sec. (remarks by Sen. Jesse Stone (R-23rd)).

164. O.C.G.A. § 15-5A-4(a)(1) (Supp. 2019); Senate Video PM 3, *supra* note 36, at 7 min., 42 sec. (remarks by Sen. Jesse Stone (R-23rd)).

165. Senate Video PM 3, *supra* note 36, at 9 min., 16 sec.

166. Efration Interview, *supra* note 19.

167. Ashley M. Bowcott, *See You in (Business) Court: Georgia Gets New Statewide Specialty Court*, BERMAN FINK VAN HORN, P.C. (Apr. 15, 2019), https://www.bfvlaw.com/see-you-in-business-court-georgia-gets-new-statewide-specialty-court/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original [<https://perma.cc/D67X-UR9E>].

in complex litigation practice.”¹⁶⁸ Although both supported the creation of a state-wide business court, the director of political affairs for the Georgia Trial Lawyers Association, Bill Clark, and Georgia State Senator Jennifer Jordan (D-6th) both thought the business court judge should be elected rather than appointed.¹⁶⁹ Clark thought the election process was necessary to hold judges accountable and allow citizens to be involved in selecting judges.¹⁷⁰ Senator Jordan’s argument was similar: “[w]hat we don’t want to do is create this concierge court system for businesses that the taxpayers are going to fund.”¹⁷¹

On the other hand, having business court judges who are elected rather than appointed would have the tendency to erode public confidence in the court because it would create at least the appearance that the judge could be influenced by businesses contributing to his or her campaign.¹⁷² In a specialized court such as a business court, it is vital to avoid any appearance of impropriety.¹⁷³ In addition, the very purpose of business courts is to have judges who are specifically qualified to hear certain types of complex business cases.¹⁷⁴

Future Expansion of the Georgia State-wide Business Court

Currently, the Act provides for only one statewide district and one judge.¹⁷⁵ This is problematic, particularly considering the likelihood that a business court judge with years of experience in business litigation may have conflicts with some of the business litigants and be required to recuse themselves.¹⁷⁶ Moreover, the fact that there is only one statewide district may undermine confidence in the court

168. FINAL REPORT, *supra* note 5, at 24.

169. Johnny Kauffman, *GOP Gov. Deal Wants Special Court for Businesses, He’ll Need Aid of Democrats*, WABE (Jan. 17, 2018), <https://www.wabe.org/gop-gov-deal-wants-special-court-businesses-hell-need-aid-democrats/> [<https://perma.cc/FF3F-832G>].

170. *Id.*

171. *Id.*

172. Interview with W. Charles “Chuck” Ross, Member, State Bar of Georgia Business Court Committee (June 25, 2019) (on file with the Georgia State University Law Review) [hereinafter Ross Interview].

173. *Id.*

174. FINAL REPORT, *supra* note 5, at 24.

175. Efration Interview, *supra* note 19.

176. Ross Interview, *supra* note 172.

due to at least the appearance of an unfair advantage for litigants located in the same district as the GSWBC. As expressed by Bill Clark: “[w]hy should you have to bring your case to Atlanta, where only the Atlanta silk-stocking law firm lawyers know the judges? You want local judges, or a judge that’s from your area.”¹⁷⁷

However, there has been discussion and debate about ultimately expanding the GSWBC to have multiple districts to allow disputes arising in a particular district to be heard in a business court located in that district by a judge from that district.¹⁷⁸ There is already discussion about expanding the GSWBC in the future to include additional judges and districts, similar to the structure in North Carolina, if there is enough interest and participation.¹⁷⁹ There does not appear to be disagreement regarding the need for expansion; it simply is not an economically feasible option currently, considering the court’s novelty.¹⁸⁰ If participation is high, expansion thus appears likely in the future.

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177. Kauffman, *supra* note 169.

178. Efration Interview, *supra* note 19.

179. House Judiciary Committee Video, *supra* note 26, at 26 min., 15 sec. (remarks by Rep. Chuck Efration (R-104th)).

180. *See supra* Analysis.