# Administrative Law

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## I. INTRODUCTION

This Article surveys cases from the Georgia Supreme Court and the Georgia Court of Appeals from June 1, 2013 through May 31, 2014 in which principles of administrative law were a central focus of the case.[1] The Article begins with a discussion of cases on exhaustion of administrative remedies, followed by a series of cases discussing statutory construction. The next topic discussed will be the standard of review of an agency decision, with a review of sovereign immunity cases to follow, and the Article concludes with a brief review of enactments from the 2014 regular session of the Georgia General Assembly.

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1. For an analysis of Georgia administrative law during the prior survey period, see Martin M. Wilson, Jennifer A. Blackburn & Courtney E. Ferrell, *Administrative Law, Annual Survey of Georgia Law*, 65 MERCER L. REV. 41 (2013).

## II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

While this year saw no major changes in the well-established doctrine of exhaustion of administrative remedies, the courts had the opportunity to reaffirm the doctrine across a wide range of topics including commercial loans, the firing of a school superintendent, and the Cavalia traveling horse show. Two cases, *Olde Towne Tyrone, LLC v. Multibank 2009-1 CRE Venture, LLC*[2] and *Gravitt v. Bank of the Ozarks*,[3] both decided within three days of each other, re-examined the limitation on judicial review imposed by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).[4]

In *Olde Towne Tyrone, LLC*, the court of appeals noted that in enacting FIRREA, Congress established an administrative review process for claims against failed banks for which the Federal Deposit Insurance Corporation (FDIC) has been appointed as receiver.[5] Anticipating the large number of claims the FDIC would receive from various parties, Congress included limitations on judicial review of such claims.[6] Claimants who fall within the scope of these limitations must first exhaust their administrative remedies through the FDIC prior to appealing to the court.[7] Failure to do so divests courts of subject matter jurisdiction over the claim.[8] Furthermore, these protections are available to an entity that purchases a failed lending institution's assets from the FDIC, thereby allowing them to pursue dismissal of the case for failure to exhaust administrative remedies.[9] While the claimant argued that FIRREA was not applicable because the FDIC chose not to assign the purchasing entity its "other rights, powers or privileges"[10] under 12 U.S.C. § 1821(d),[11] the court clarified that FIRREA's administrative exhaustion provision is a jurisdictional prerequisite that is binding on the courts and not a "right, power or privilege" at the discretion of the FDIC to assign.[12]

In *Gravitt*, the appellants urged the court to adopt an alternative approach used by the United States Court of Appeals for the District of

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2. 326 Ga. App. 322, 756 S.E.2d 558 (2014).
3. 326 Ga. App. 461, 756 S.E.2d 695 (2014).
4. 12 U.S.C. § 1821(d)(13)(D) (2012).
5. *Old Town Tyrone, LLC*, 326 Ga. App. at 325, 756 S.E.2d at 561.
6. *Id.*
7. *Id.* at 325-26, 756 S.E.2d at 562.
8. *Id.* at 326, 756 S.E.2d at 562.
9. *Id.*
10. *Id.* at 328, 756 S.E.2d at 563.
11. 12 U.S.C. § 1821(d) (2012).
12. *Old Town Tyrone, LLC*, 326 Ga. App. at 328, 756 S.E.2d at 563.

Columbia Circuit and the United States Court of Appeals for the Ninth Circuit that does not recognize FIRREA as a jurisdictional bar for claims brought against a purchasing entity for its own actions after purchasing a failed lending institution's assets and liabilities from the FDIC. The court rejected this request and instead relied on the United States Court of Appeals for the Eleventh Circuit's broad construction of FIRREA, holding that because appellants asserted their counterclaims after the appointment of the FDIC as receiver, the claims were within the scope of FIRREA's protections.[13] Since the appellants failed to exhaust their administrative remedies regarding such claims, the superior court lacked subject matter jurisdiction, and the counterclaims were properly dismissed.[14]

In *Miller County Board of Education v. McIntosh*,[15] interpretation of the administrative remedies available under an employment agreement (the Employment Agreement)'s termination clause was at issue.[16] The Miller County Board of Education (the Board) terminated Robert McIntosh as superintendent of the Miller County Schools by letter on November 13, 2012. The letter stated there would be a hearing before a Board-appointed tribunal, provided that McIntosh requested such a hearing by December 7, 2012. Otherwise, his right to a hearing would be waived. In his reply on November 21, 2012, McIntosh disputed the basis for his termination and stated that both parties would have to work together to obtain a mutually agreeable hearing date. No tribunal was ever appointed and no hearing date was ever set. Following the filing of a suit by McIntosh against the Board on January 29, 2013, alleging breach of the Employment Agreement, the Board responded that McIntosh failed to exhaust his administrative remedies because his response was both late and substantively insufficient.[17]

While the Board asserted the Employment Agreement's seven-day response period to the written statement of charges commenced with their mailing of the letter, the clause provided McIntosh was to be given the written statement of charges and then must respond within seven days. The Board's interpretation that McIntosh was given the charges on the date the letter was mailed would put him at the mercy of the vagaries of the mail regarding the time he had to respond once the letter was received.[18] The court warned that "any interpretation of the

13. *Gravitt*, 326 Ga. App. at 467-68, 756 S.E.2d at 701.
14. *Id.* at 468, 756 S.E.2d at 702.
15. 326 Ga. App. 408, 756 S.E.2d 641 (2014).
16. *Id.* at 408, 756 S.E.2d at 643.
17. *Id.* at 409-10, 756 S.E.2d at 644.
18. *Id.* at 412, 756 S.E.2d at 645-46.

termination provision that possibly results in McIntosh being prevented from filing a timely response is patently absurd and will not be adopted by this Court."[19] Instead, the date McIntosh was given the charges would be the date he received the letter.[20] Since the last day McIntosh was permitted to file his response fell on a holiday, the response was not due until the following business day.[21] McIntosh met this filing deadline, and therefore, his response was timely.[22]

Regarding the sufficiency of the response, nothing in the Employment Agreement required McIntosh to provide a detailed response to the Board's statement of charges.[23] As such, the court held that McIntosh's response was sufficient to meet his contractual obligations under the Employment Agreement.[24] Since McIntosh's response was both timely and sufficient, the Board's contention that he failed to exhaust his administrative remedies was incorrect, and the superior court properly dismissed it.[25]

The final case discussed in this section involves an unsuccessful, albeit creative, argument asserting the defendant was barred from defending an action brought by a third party for failure to exhaust its administrative remedies with the city.[26] The dispute arose from Noble Parking, Inc. (Noble)'s non-conforming use of a parking lot as a park-for-hire lot following the use of the lot for the Cavalia USA, Inc.'s traveling horse show. The City of Atlanta Office of Buildings informed Noble that the legal non-conforming use of the parking lot as a park-for-hire facility had been superseded by the permitted use of the parking lot for the horse show. Centergy North and Tuff Parking, the owners of the property where the parking lot was located, subsequently filed for injunctive relief seeking to enjoin Noble from operating its park-for-hire business on the property. The city intervened in the action and similarly filed a complaint for injunctive relief. The trial court ruled that Noble's claim was barred for failure to exhaust administrative remedies because they did not appeal the city's zoning decision regarding the non-conforming use within thirty days as required under the city code.[27]

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19. *Id.* at 412, 756 S.E.2d at 646.
20. *Id.*
21. *Id.* at 413, 756 S.E.2d at 646.
22. *Id.*
23. *Id.*
24. *Id.* at 414, 756 S.E.2d at 647.
25. *Id.*
26. *See* Noble Parking, Inc. v. Centergy One Assoc., LLC, 326 Ga. App. 455, 458, 756 S.E.2d 691, 694 (2014).
27. *Id.* at 456-57, 756 S.E.2d at 692-93.

The court of appeals noted that it found no authority, nor did the appellees cite any cases, holding that a defendant is barred from defending an action brought initially by a third party for failure to exhaust its administrative remedies with the city.[28] Here, the action arose over a dispute between two private parties, with one party seeking to enjoin the other party's use of its property.[29] While the city later intervened in the action, Noble did not seek a "declaration [by] a court of equity,"[30] nor did it "circumvent the review process" by issuing a collateral attack of the city's zoning decision.[31] Noble could have appealed the city's zoning decision to the Board of Zoning Appeals, but instead chose not to pursue an appeal; thus, Noble became subject to penalty for violating the city's zoning ordinance.[32] The court held that Noble was under no obligation to exhaust its administrative remedies with the city in order to defend itself in an action brought by private parties.[33]

## III. STATUTORY CONSTRUCTION

An agency's construction of the governing statute that it is charged with administering and a court's interpretation of that agency's construction can at times become the central issue in a case. For example, in *Georgia Department of Revenue v. Moore*,[34] the court of appeals denied the Georgia Department of Revenue (the Department)'s attempt to collect sales taxes from a second responsible party after the Department voluntarily settled a refund action with the first responsible party.[35] The voluntary payment doctrine, section 13-1-13 of the Official Code of Georgia Annotated (O.C.G.A.),[36] was the basis for the court's decision.[37] The Georgia Supreme Court reversed and remanded, holding that the voluntary payment doctrine is a concept applicable to contracts, not tax indebtedness.[38]

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28. *Id.* at 457, 756 S.E.2d at 693.
29. *Id.*
30. *Id.* (quoting Powell v. City of Snellville, 266 Ga. 315, 316, 467 S.E.2d 540, 541 (1996)).
31. *Id.* (quoting Mortg. Alliance Corp. v. Pickens Cnty., 316 Ga. App. 755, 757, 730 S.E.2d 471, 473 (2012)).
32. *Id.* at 458, 756 S.E.2d at 693.
33. *Id.* at 458, 756 S.E.2d at 694.
34. 294 Ga. 20, 751 S.E.2d 57 (2013).
35. *Id.* at 20, 751 S.E.2d at 58.
36. O.C.G.A. § 13-1-13 (2010).
37. *Moore*, 294 Ga. at 20, 751 S.E.2d at 58.
38. *Id.* at 22, 751 S.E.2d at 59.

In *Fulton County Board of Education v. D.R.H.*,[39] the Georgia Court of Appeals dealt with the parameters of judicial review of local board decisions.[40] In this case, the court of appeals determined that the trial court overstepped its authority when it failed to confine its review of a student's expulsion to the record.[41] As O.C.G.A. § 20-2-1160(e)[42] requires review to be confined to the record, the court of appeals ruled that the superior court's consideration of future injury (evidence of which was not presented during the hearing before the local school board) was improper and in violation of the statute.[43]

The last case in this section, *Center for a Sustainable Coast, Inc. v. Turner*,[44] involved the ever-compelling issue of standing.[45] This case discusseded the Erosion and Sedimentation Act of 1975,[46] which the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources is charged with enforcing.[47] The EPD determined that a property owner was violating the Act by failing to maintain an adequate buffer along the banks of a salt-water marsh area, but entered into a consent order with the property owner that would allow him to maintain the non-compliant bulkhead within the buffer zone. The administrative law judge and the superior court concluded that the Center for a Sustainable Coast had standing to appeal.[48] The Georgia Court of Appeals, however, vacated the superior court's decision, relying on O.C.G.A. § 12-7-12(a),[49] which states that the director of the EPD *may* issue an order against a landowner when the landowner is violating the Act.[50] As this provision is discretionary, the court determined that the Center for a Sustainable Coast's claimed "injury" was due to the landowner's violation and that the consent order was unlikely to be redressed by a favorable decision.[51]

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39. 325 Ga. App. 53, 752 S.E.2d 103 (2013).
40. *Id.* at 53-54, 752 S.E.2d at 104.
41. *See id.* at 58, 752 S.E.2d at 107.
42. O.C.G.A. § 20-2-1160(e) (2012).
43. *Fulton Cnty. Bd. of Educ.*, 325 Ga. App. at 58, 752 S.E.2d at 107; *see also* O.C.G.A. § 20-2-1160(e).
44. 324 Ga. App. 762, 751 S.E.2d 555 (2013).
45. *Id.* at 762, 751 S.E.2d at 557.
46. O.C.G.A. tit. 12 ch. 7 (2012).
47. *See Turner*, 324 Ga. at 762, 751 S.E.2d at 557; *see also* O.C.G.A. § 12-7-12(a) (2012).
48. *Turner*, 324 Ga. at 762-63, 766-67, 751 S.E.2d at 557, 559-60.
49. O.C.G.A. § 12-7-12(a).
50. *Turner*, 324 Ga. App. at 768, 751 S.E.2d at 560; *see also* O.C.G.A. § 12-7-12(a).
51. *Turner*, 324 Ga. App. at 768, 751 S.E.2d at 561.

## IV. STANDARD OF REVIEW

The biggest standard of review issue in the Georgia courts this year was the application of the "any evidence" standard to administrative decisions. No less than four significant decisions discussing and applying this standard were written this year.[52] In *Case v. Butler*,[53] the court of appeals chastised the superior court for exceeding the scope of its review by making its own findings.[54] Specifically, the court of appeals noted that the superior court improperly based its decision that a terminated employee was correctly denied unemployment benefits on a policy that was not referenced in the Board of Review (the Board)'s decision.[55] As the court of appeals stated, "The court based its ruling on a Magnolia Manor policy that was not referenced in the Board's decision and made specific findings with regard to Case's behavior based on that policy. Therefore, the superior court engaged in factfinding, which it is not permitted to do."[56] The court of appeals applied the any evidence standard to the Board's decision—without engaging in any improper additional factfinding—and determined that the evidence did not support the Board's decision to deny unemployment benefits.[57]

## V. SOVEREIGN IMMUNITY

An unusual number of cases evaluating Georgia's rules regarding the doctrine of sovereign immunity were heard during this survey period, and Georgia's courts reached varied outcomes. For example, in *Georgia Department of Natural Resources v. Center for a Sustainable Coast, Inc.*,[58] the Georgia Supreme Court overruled its own precedent, holding that sovereign immunity bars claims for injunctive relief against the State at common law.[59] Yet, in *Georgia Department of Corrections v. Couch*,[60] that same court held that sovereign immunity did not bar an

52. In addition to the cases discussed in detail in this section, see also *Georgia Professional Standards Committee v. James*, 327 Ga. App. 810, 761 S.E.2d 366 (2014), and *Johnson v. Butler*, 323 Ga. App. 743, 748 S.E.2d 111 (2013).

53. 325 Ga. App. 123, 751 S.E.2d 883 (2013).

54. *Id.* at 125, 751 S.E.2d at 885.

55. *Id.*

56. *Id.*

57. *Id.* at 125-26, 751 S.E.2d at 885.

58. 294 Ga. 593, 755 S.E.2d 184 (2014).

59. *Id.* at 593, 755 S.E.2d at 185-86.

60. 295 Ga. 469, 759 S.E.2d 804 (2014).

award of attorney fees and expenses under Georgia's "offer of settlement" statute.[61]

In *Center for a Sustainable Coast, Inc.*, the Georgia Supreme Court granted certiorari to determine whether sovereign immunity bars claims for injunctive relief at common law.[62] In that case, the Center for a Sustainable Coast and two individuals (collectively, the Center) sought to enjoin the State from issuing Letters of Permission (LOPs) to third parties authorizing alterations to the coast that the Center contended required a permit under the Shore Protection Act (the Act).[63] To obtain a permit under the Act, an applicant must comply with strict requirements.[64] The permit is then submitted to a Shore Protection Committee, and the interested parties and adjoining landowners are provided notice before any permit is granted.[65] In considering whether to grant the permit, the granting authority must then consider whether the proposed action is unreasonably harmful and whether the project will unreasonably interfere with conservation of marine life or public access and enjoyment of the shore.[66]

While the Act contains no provision allowing for the circumvention of the permitting process, the Department of Natural Resources (DNR) often issued LOPs for certain projects without requiring a formal application for actions ranging from the rebuilding of houses to the construction of a film set.[67] The Center contended that by issuing the LOPs to authorize land alterations under the Act's jurisdiction without adhering to the permitting requirement, "the State [was] without legal authority under the Act to issue LOPs, and that under the State's illegal scheme circumventing the permit process, the Center [was] denied its rights to public notice and comment."[68] The trial court granted the State's motion to dismiss the Center's petition, finding that the Center could not seek declaratory relief because the State had not waived sovereign immunity for such a suit. Accordingly, the trial court dismissed the Center's request for injunctive relief based upon the

61. *Id.* at 482, 759 S.E.2d at 815; *see also* O.C.G.A. § 9-11-68 (2014).

62. 294 Ga. at 593, 755 S.E.2d at 185.

63. *Id.* at 593, 755 S.E.2d at 186; *see also* O.C.G.A. § 12-5-230 to -248 (2012 & Supp. 2014).

64. *See* O.C.G.A. § 12-5-235 (a)-(b).

65. O.C.G.A. § 12-5-239(b).

66. O.C.G.A. § 12-5-239(i).

67. Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 207, 734 S.E.2d 206, 208 (2012).

68. *Ctr. for a Sustainable Coast, Inc.*, 294 Ga. at 595, 755 S.E.2d at 187.

conclusion that the claim for injunctive relief was directly dependent on the viability of its declaratory judgment claim.[69]

The court of appeals held that the trial court correctly dismissed the Center's claim for declaratory judgment but improperly dismissed the claim for injunctive relief, concluding that "[p]retermitting whether [the Shore Protection Act] permits a claim for injunctive relief, the Center [was] able to bring such a claim without running afoul of sovereign immunity."[70] To make this determination, the court of appeals relied on the Georgia Supreme Court's holding in *IBM v. Evans*[71] that "an exception to sovereign immunity [exists] where a party seeks injunctive relief against the state or a public official acting outside the scope of lawful authority."[72] The court then found that the Center had sufficiently alleged that the State's issuance of LOPs constituted ultra vires conduct and that common law prohibits the State from "cloak[ing] itself in sovereign immunity while [it] perform[s] illegal acts to the detriment of its citizens."[73]

The Georgia Supreme Court, however, disagreed, stating that its rationale in *IBM* was

> unsound for four reasons: (1) the clear language of our Constitution authorizes only the General Assembly to waive sovereign immunity; (2) our Constitution does not provide for an exception to the General Assembly's exclusive authority to waive sovereign immunity; (3) in *IBM v. Evans* [the Court] mischaracterized a waiver of sovereign immunity as an exception to sovereign immunity; and (4) cases [the Court] relied on in *IBM v. Evans* either predate the incorporation of sovereign immunity into our state Constitution or ignored the impact thereof.[74]

In rendering its decision, the court stated that it was creating "a bright line rule that only the Constitution itself or a specific waiver by the General Assembly can abrogate sovereign immunity [which] is more

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69. *Id.* at 593, 755 S.E.2d at 186.

70. *Ctr. for a Sustainable Coast, Inc.*, 319 Ga. App. at 209, 734 S.E.2d at 209.

71. 265 Ga. 215, 453 S.E.2d 706 (1995).

72. *Ctr. for a Sustainable Coast, Inc.*, 319 Ga. App. at 209, 734 S.E.2d at 209 (quoting *IBM*, 265 Ga. at 216, 453 S.E.2d at 708).

73. *Id.*

74. *Ctr. for a Sustainable Coast, Inc.*, 294 Ga. at 597, 755 S.E.2d at 188. After the court of appeals decision, in May of 2013, legislation was enacted expressly allowing the DNR to issue LOPs under the Act upon certain circumstances. *Id.* at 595, 755 S.E.2d at 187. The court, nonetheless, held that the Center's claims were not moot. *Id.* at 596, 755 S.E.2d at 188.

workable than *IBM v. Evans'* scheme allowing judicially created exceptions."[75]

However, in *Georgia Department of Corrections v. Couch*, the Georgia Supreme Court affirmed, under a different rationale than the court of appeals, a ruling that sovereign immunity did not bar an award for attorney fees under O.C.G.A. § 9-11-68(b)[76] in spite of the fact that there is no explicit waiver.[77] In that case, the plaintiff, David Lee Couch, was injured when a dry-rotted joist gave way as he and other inmates were painting the warden's house. Couch filed a premises liability tort action against the Georgia Department of Corrections (the Department). Before the trial, Couch made a written offer of settlement of $24,000, which the Department rejected. After trial, the jury returned a verdict in favor of Couch in the amount of $105,417.[78] Because the jury's verdict was more than 125% of Couch's offer of settlement, he sought attorney fees and expenses under O.C.G.A. § 9-11-68[79] (the offer of settlement statute).[80] Based on Couch's 40% contingency fee arrangement with his attorneys, the trial court ordered the Department to pay Couch $49,542 in attorney fees as well as $4,782 in expenses. In a unanimous decision, the court of appeals upheld that award, concluding that the state had waived immunity with regard to attorney fees under O.C.G.A. § 9-11-68(b). The Georgia Supreme Court then granted certiorari.[81]

The supreme court noted that there was "no question that the preconditions for an award of attorney fees and litigation expenses under [the offer of settlement statute] were satisfied in this case."[82] However, the Department contended that sovereign immunity barred any such award.[83] The court evaluated the Georgia Tort Claims Act (GTCA),[84] noting that its waiver of sovereign immunity allowed Couch to bring the tort lawsuit against the Department and to recover damages for his

75. *Id.* at 602, 755 S.E.2d at 191.
76. O.C.G.A. § 9-11-68(b) (2014).
77. *Couch*, 295 Ga. at 482, 759 S.E.2d at 815.
78. *Id.* at 469-70, 759 S.E.2d at 806-07.
79. O.C.G.A. § 9-11-68 (2014).
80. *Couch*, 295 Ga. at 470, 759 S.E.2d at 807.
81. *Id.* at 469, 470, 759 S.E.2d at 806, 807.
82. *Id.* at 472, 759 S.E.2d at 808; *see also* O.C.G.A. § 9-11-68(b). This statute applies to a written offer to settle a tort claim made more than thirty days after the summons or complaint and not less than thirty days before trial. O.C.G.A. § 9-11-68(b). If that offer of settlement is rejected, and the plaintiff recovers a final judgment in an amount greater than 125% of the offer, under the statute, the plaintiff is entitled to recover reasonable attorney fees and litigation expenses. *See id.*
83. *Couch*, 295 Ga. at 472, 759 S.E.2d at 808.
84. O.C.G.A. §§ 50-21-20 to -37 (2013 & Supp. 2014).

injuries.[85] The Department argued that an award of attorney fees under the offer of settlement statute did not fall within the scope of the GTCA's waiver.[86] However, Couch argued that "the statutory authority for an award of attorney fees against the state under [the offer of settlement statute was] found in the GTCA's definitions of 'claim' and 'loss'"[87] and that attorney fees were merely "[an]other element of actual damages recoverable in actions for negligence."[88]

The court noted that although an award under the offer of settlement statute is neither an independent tort "claim" nor a component of tort damages, it is one of the many potential costs associated with inappropriate tort litigation.[89] As such, the court held that sovereign immunity did not bar an award of attorney fees and expenses under the offer of settlement statute.[90] In announcing its holding, the court stated,

> [A]llowing [offer of settlement statute] awards against state defendants ultimately should advance the fundamental purpose of sovereign immunity, since it is entirely in the interest of the taxpayers who fund the state treasury that the state act appropriately in litigating tort suits brought against it pursuant to the GTCA, rather than wasting resources in continuing to litigate weak cases after rejecting reasonable settlement offers.[91]

In a case of first impression, the Georgia Court of Appeals evaluated the Georgia Department of Correction's claim that the doctrine of sovereign immunity protected it from a surety's subrogation claims.[92] In *Georgia Department of Corrections v. Developers Surety & Indemnity Co.*,[93] the Georgia Court of Appeals disagreed with the Department's claims.[94] In that case, the Department entered into a construction contract with Lewis Walker Roofing (Walker Roofing) to re-roof certain buildings at the Valdosta State Prison. After a two-year-long delay in completing the work, the Department declared the contract in default, and the payment and performance bonds of the Department as an

85. *Couch*, 295 Ga. at 473, 759 S.E.2d at 809.
86. *Id.*
87. *Id.* at 474, 759 S.E.2d at 809.
88. *Id.* (alteration in original) (quoting O.C.G.A. § 50-21-22(3)).
89. *Id.* at 480, 759 S.E.2d at 814.
90. *Id.* at 482, 759 S.E.2d at 815.
91. *Id.*
92. *See* Ga. Dep't of Corr. v. Developers Sur. & Indem. Co., 324 Ga. App. 371, 375, 750 S.E.2d 697, 700 (2013).
93. 324 Ga. App. 371, 750 S.E.2d 697 (2013).
94. *Id.* at 374, 376, 377, 379, 750 S.E.2d at 700-03.

obligee, issued by Developers Surety and Indemnity Company (Developers Surety), were invoked.[95]

Developers Surety then filed suit against the Department, alleging that the Department breached its contract with Walker Roofing, and sought declaratory judgment. Developers Surety argued that the Department's breach negated Developers Surety's obligations under the payment and performance bond it issued to Walker Roofing on behalf of the Department. The Department argued that the State's waiver of sovereign immunity for contract actions did not apply because Developers Surety was not a party to the construction contract between the Department and Walker Roofing. However, Developers Surety argued that the Department waived sovereign immunity by entering into a contract with Walker Roofing and that the doctrine of equitable subrogation gave Developers Surety the ability to "step into the shoes" of Walker Roofing and file suit against the Department once Developers Surety incurred liability by paying the obligations of its principal under the bond.[96]

Looking to federal law, the court of appeals determined that the federal government's waiver of sovereign immunity under the Tucker Act[97] for "any claim against the United States founded . . . upon any express or implied contract with the United States was not limited to claims asserted [only] by the original parties to the contract," but that the waiver applied to subrogees as well.[98] Analogous to that language, the court noted that the Constitution of Georgia does not limit the waiver of sovereign immunity in contract actions to any particular claimants.[99] Accordingly, the court held that a subrogee stepping into the shoes of its principal government contractor may rely upon the waiver of sovereign immunity that applied to the government contractor.[100] In a footnote, the court observed that "[i]f the rule were otherwise, what rational business would agree to issue a payment or performance bond to benefit the State government?"[101]

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95. *Id.* at 371, 750 S.E.2d at 698.

96. *Id.* at 371-72, 374-75, 750 S.E.2d at 698, 700.

97. 28 U.S.C § 1491(a)(1) (2012).

98. *Ga. Dep't of Corr.*, 324 Ga. App. at 375, 750 S.E.2d at 701 (first alteration in original) (quoting 28 U.S.C. § 1491(a)(1)) (internal quotation marks omitted).

99. *Id.*

100. *Id.* at 376, 750 S.E.2d at 701.

101. *Id.* at 376 n.4, 750 S.E.2d at 701 n.4.

## VI. RECENT LEGISLATION

Possibly due to a short session and the fact that 2014 is an election year, the Georgia General Assembly did not pass many enactments with major changes to administrative agencies at its regular session. The following are the more prominent measures that were enacted:

1. The Georgia World Congress Center Authority has acquired the power to provide benefit programs to its employees.[102]

2. Two enactments revised the authority and powers of the Jekyll Island-State Park Authority.[103]

3. A Georgia Geospatial Advisory Council was created.[104]

4. The Flint River Drought Protection Act was changed to provide new powers to the director and to provide irrigation requirements.[105]

5. The Georgia Child Support Commission has received additional powers in an enactment primarily aimed at child support calculations.[106]

6. A new High School Athletics Overview Committee was created primarily to oversee athletic association activities.[107]

7. The Georgia Student Finance Commission and the Georgia Student Finance Authority have received revisions to their powers and duties.[108]

8. There is no longer a Georgia Medical Center Authority.[109]

9. The Georgia Government Transparency and Campaign Finance Commission (formerly the ethics commission) is now assigned to the State Accounting Office for budgetary purposes.[110]

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102. Ga. H.R. Bill 246 §§ 1-2, Reg. Sess. (2014) (codified at O.C.G.A. § 10-9-4(b)(4) (Supp. 2014) & O.C.G.A. § 45-18-54(d) (Supp. 2014)).

103. Ga. H.R. Bill 715 §§ 1-3, Reg. Sess. (2014) (codified at O.C.G.A. §§ 12-3-231, -243, -243.1 (Supp. 2014)); Ga. S. Bill 296, §§ 1-3, Reg. Sess. (codified at O.C.G.A. §§ 12-3-231, -243, -243.1).

104. Ga. S. Bill 361 § 1, Reg. Sess. (2014) (codified at O.C.G.A. § 12-5-9 (Supp. 2014)).

105. Ga. S. Bill 213 §§ 1-6, Reg. Sess. (2014) (amending O.C.G.A. §§ 12-5-541, -542, -544, -546, -549 (Supp. 2014), and enacting O.C.G.A. §§ 12-5-546.1, -546.2 (Supp. 2014)).

106. Ga. S. Bill 282 §§ 1-13, Reg. Sess. (2014) (amending various provisions of O.C.G.A. tit. 19 ch. 6 & tit. 19 ch.11 (Supp. 2014)).

107. Ga. S. Bill 288 § 1A, Reg. Sess. (2014) (enacting O.C.G.A. §§ 20-2-2100 to –2104 (Supp. 2014)).

108. Ga. H.R. Bill 697 §§ 1-7, Reg. Sess. (2014) (codified at O.C.G.A. §§ 20-3-236, -264, -314, -316, -316.1 (Supp. 2014), and repealing O.C.G.A. § 20-3-409 (2012)).

109. Ga. H.R. Bill 513 § 1, Reg. Sess. (2014) (formerly codified at O.C.G.A. tit. 20 ch. 15 (2012 & Supp. 2014)).

110. Ga. S. Bill 297 §§ 1-2, Reg. Sess. (2014) (codified at O.C.G.A. §§ 21-5-30, -34 (Supp. 2014)).

10. There is now a Georgia Council on Lupus Education and Awareness.[111]

11. An Alzheimer's Disease Registry was created within the Department of Public Health.[112]

12. A Maternal Mortality Review Committee is required to be created under the Department of Public Health.[113]

13. The Department of Behavioral Health and Developmental Disabilities has received altered powers, duties, and administrative responsibilities.[114]

14. The Georgia State Board of Accountancy has received statutory updates and has become a division of the State Accounting Office.[115]

15. The Georgia Auctioneers Commission may no longer issue apprentice auctioneer licenses.[116]

16. The State Board of Barbers has received limitations on the amount of fines that it may impose.[117]

17. Likewise, the State Board of Cosmetology has also received limitations on fines, along with lower minimum-age requirements for the occupation.[118]

18. There is a new Interstate Compact on Juveniles, along with provisions for a commission, administrator, and a state council.[119]

19. There is now a Georgia Downtown Renaissance Fund Act created for local government assistance and handled by the commissioner of community affairs.[120]

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111. Ga. S. Bill 352 § 2, Reg. Sess. (2014) (codified at O.C.G.A. tit. 31 ch. 49 (Supp. 2014)).

112. Ga. H.R. Bill 966 § 1, Reg. Sess. (2014) (codified at O.C.G.A. § 31-2A-17 (Supp. 2014)).

113. Ga. S. Bill 273 § 1, Reg. Sess. (2014) (codified at O.C.G.A. § 31-2A-16 (Supp. 2014)).

114. Ga. S. Bill 349 §§ 1-8, Reg. Sess. (2014) (codified at O.C.G.A § 37-1-20 (Supp. 2014), and various sections of O.C.G.A. tit. 37 ch. 2 (Supp. 2014)).

115. Ga. H.R. Bill 291 §§ 1-1 to 1-3, Reg. Sess. (2014) (codified at O.C.G.A. § 43-1-9 (Supp. 2014), and various sections of O.C.G.A. tit. 43 ch. 3 (Supp. 2014) & O.C.G.A. § 50-5B-2 (Supp. 2014)).

116. Ga. H.R. Bill 1042 §§ 1-12 (2014) (codified at various sections of O.C.G.A. tit. 43 ch. 6 (Supp. 2014)).

117. Ga. S. Bill 337 § 1, Reg. Sess. (2014) (codified at O.C.G.A. § 43-7-23 (Supp. 2014)).

118. Ga. S. Bill 336 § 1, Reg. Sess. (2014) (codified at O.C.G.A. § 43-10-14 (Supp. 2014)).

119. Ga. H.R. Bill 898 §§ 1-1 to 3-3, Reg. Sess. (2014) (repealing former O.C.G.A. tit. 39 ch. 3 (2012), enacting O.C.G.A. tit. 49 ch. 4B (Supp. 2014), and amending O.C.G.A. §§ 15-11-10 (2014), 49-4A-7 (Supp. 2014), 49-5-8 (Supp. 2014)).

120. Ga. H.R. 128 § 1, Reg. Sess. (2014) (codified at O.C.G.A. §§ 5-8-260, -261 (Supp. 2014)).