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STATE GOVERNMENT Tort Liability of the State and Its Political Subdivisions: Provide Exceptions to State Liability; Provide that Political Subdivisions of the State Shall Have No Liability for Computer Errors Resulting from Failure or Malfunction of Computer Software Relating to Processing of Dates and Times; Provide that the State Shall Have No Liability for Computer Errors Resulting from Failure or Malfunction of Computer Software Relating to Processing of Dates and Times

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STATE GOVERNMENT

Tort Liability of the State and Its Political Subdivisions: Provide Exceptions to State Liability; Provide that Political Subdivisions of the State Shall Have No Liability for Computer Errors Resulting from Failure or Malfunction of Computer Software Relating to Processing of Dates and Times; Provide that the State Shall Have No Liability for Computer Errors Resulting from Failure or Malfunction of Computer Software Relating to Processing of Dates and Times

CODE SECTIONS:	O.C.G.A. §§ 36-60-19 (new), 50-21-24 (amended)
BILL NUMBER:	SB 638
ACT NUMBER:	833
GEORGIA LAWS:	1998 Ga. Laws 850
SUMMARY:	The Act grants immunity, under certain circumstances, to both the State of Georgia and to county and municipal governments for computer errors related to the processing of dates and times.
EFFECTIVE DATE:	July 1, 1998

History

Computers might malfunction at the turn of the century because of an inability to distinguish the year 2000 from the year 1900.[1] These potential computer malfunctions are widely referred to as the "millennium bug" problem.[2] Historically, in the software industry, computer programmers utilized a two-digit field for calendar dates in order to save computer memory space.[3] Because of the two-digit field, computers could possibly interpret the date of a year that ends in the combination "00," such as the year 2000, as either the year 2000 or as the year 1900.[4] If a computer interprets the "00" in the two-digit field as the year 1900 instead of the year 2000, it could process incorrect

1. *See* Peter Mantius, *Georgia to Spend Millions on "Bug,"* ATLANTA J. & CONST., Feb. 11, 1998 at C2.
2. *Id.*
3. *See id.*
4. *See id.*

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information or totally cease to function.[5] The millennium bug problem could cost governments and businesses up to one trillion dollars worldwide.[6]

The millennium bug problem received significant attention during the 1998 session of the Georgia General Assembly.[7] The General Assembly appropriated $152 million to use in solving the problem.[8] If the problem is not resolved, citizens could suffer because of the computer errors. For example, the millennium bug may prevent the State from processing tax returns[9] or may cause errors in the release dates of prisoners.[10]

In 1998, the General Assembly granted local governments and the State limited immunity for problems arising as a result of the millennium bug.[11] The Act prevents citizens from suing local governments for damages arising from millennium bug computer malfunctions unless the problem was foreseeable and the State or the local government made no attempt to correct it.[12] The purpose of this Act is to protect the State and local governments from class action lawsuits so that the money potentially spent defending such lawsuits, instead, can be spent solving the problem.[13] One senator commented: "[i]f we, in all good faith, try to correct things, but there's something we miss because we didn't know it would occur, we think the State ought to be immune."[14] However, another senator opposed the Act because she believed that it was unfair to grant immunity to the State and local governments when private citizens and businesses would not

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5. *See id.*

6. *See id.*

7. *See* Telephone Interview with Sen. Sonny Perdue, Senate District No. 18 (May 7, 1998) [hereinafter Perdue Interview]; Telephone Interview with Sen. Charles C. Clay, Senate District No. 37 (Aug. 3, 1998) [hereinafter Clay Interview].

8. *See* Mantius, *supra* note 1; *see also* Clay Interview, *supra* note 7; Perdue Interview, *supra* note 7. The State's top computer expert estimated that state agencies would request an additional $100 million in the next legislative session to continue checking and rewriting the State's computer software. *See* Mantius, *supra* note 1.

9. *See* Mantius, *supra* note 1; *Senate OK's Immunity From Suits*, BRUNSWICK NEWS, Mar. 7, 1998, at 2A [hereinafter *Senate OK's*]. "The problem could affect tax records, traffic lights, welfare benefits and sewage treatment plants." *Id.*

10. *See Year 2000 Problem Will Cost State $152 Million*, SAVANNAH MORNING NEWS, Jan. 11, 1998, at C3.

11. *See* O.C.G.A. §§ 36-60-19, 50-21-24(13) (Supp. 1998).

12. *See id.; see also* Clay Interview, *supra* note 7; Perdue Interview, *supra* note 7.

13. *See Senate OK's, supra* note 9.

14. *Id.* (quoting Sen. Sonny Perdue).

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enjoy the same degree of protection for their good faith attempts to solve the millennium bug problem.[15]

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The General Assembly passed the Act because prior sovereign immunity law did not adequately address the millennium bug problem.[16] Clarifications in the new Act specifically address the problem.[17] The Act grants sovereign immunity to the State and to local governments if they proceed in good faith to correct the problem.[18] To show good faith, the State and local governments must comply with guidelines set by the Information Technology Policy Council (ITPC).[19] If the State and local governments follow the ITPC guidelines, then the ITPC will document their compliance and form an "auto-trail" for the governments to insure their eligibility for immunity under the Act.[20] The Act, however, does not grant immunity for negligence.[21] For example, if a local government is replacing a "chip" in its traffic lights and negligently omits to replace a "chip" in one light that subsequently malfunctions and causes injury to a citizen, then the local government would not gain protection under the Act.[22]

The Act went through several changes before final passage.[23] On February 16, 1998, Senator Sonny Perdue, of the 18th District, introduced SB 638 and it was assigned to the Senate Judiciary Committee. The Committee offered a substitute to the bill,[24] which was amended on the floor of the Senate.[25] After passage in the Senate, the House State Planning and Community Affairs Committee

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15. *See* Telephone Interview with Sen. Pam Glanton, Senate District No. 34 (July 31, 1998).
16. *See* Perdue Interview, *supra* note 7.
17. *See id.*
18. *See* O.C.G.A. §§ 36-60-19, 50-21-24(13) (Supp. 1998); Perdue Interview, *supra* note 7.
19. *See* Telephone Interview with Mike Hale, Chief Information Officer with the Information Technology Policy Council (Aug. 3, 1998).
20. *Id.*
21. *See* O.C.G.A. §§ 36-60-19, 50-21-24(13) (Supp. 1998); Perdue Interview, *supra* note 7.
22. O.C.G.A. §§ 36-60-19, 50-21-24(13) (Supp. 1998); Perdue Interview, *supra* note 7.
23. *See* SB 638, as introduced, 1998 Ga. Gen. Assem.; SB 638 (SCS), 1998 Ga. Gen. Assem.; SB 638 (SCSFA), 1998 Ga. Gen. Assem.; SB 638 (HCS), 1998 Ga. Gen. Assem.; O.C.G.A. §§ 36-60-19, 50-21-24(13) (Supp. 1998).
24. *See* SB 638, as introduced, 1998 Ga. Gen. Assem.; (SCS), 1998 Ga. Gen. Assem.
25. *See* SB 638 (SCSFA), 1998 Ga. Gen. Assem.

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considered and passed its own substitute,[26] which the Senate approved on March 19, 1998.[27] Governor Zell Miller signed the Act on April 10, 1998.[28]

Introduction

SB 638, as introduced, amended Code section 50-21-50 by adding a new provision that broadened the scope of state sovereign immunity.[29] The original version of the bill granted sovereign immunity "to the [S]tate and all its departments, agencies, authorities, and other entities of state government" for computer problems related to the millennium bug.[30] SB 638, as introduced, also granted sovereign immunity "to political subdivisions of the [S]tate and their departments, agencies, authorities, and other entities of local government."[31] The grants of immunity protected the State and its political subdivisions from liability caused by the "year 2000 failure or malfunction" of computers.[32]

Senate Committee Substitute

The Senate Judiciary Committee offered a substitute to SB 638.[33] Rather than amend Code section 50-21-50, as provided in the bill's introduced version, the Committee substitute amended Code section 50-21-24 of the Georgia Tort Claims Act[34] by adding a new paragraph to that Code section.[35] The Georgia Tort Claims Act provides exceptions to state liability for losses arising from certain enumerated situations.[36] For example, the State incurs no liability as the result of "[a]n act or omission by a state officer or employee exercising due care

26. *See* SB 638 (HCS), 1998 Ga. Gen. Assem.; *see also* Georgia House of Representatives Voting Record, SB 638 (Mar. 16, 1998).
27. *See* Georgia Senate Voting Record, SB 638 (Mar. 19, 1998).
28. *See* 1998 Ga. Laws 850, at 853.
29. *See* SB 638, as introduced, 1998 Ga. Gen. Assem.
30. *Id.*
31. *Id.*
32. *Id.*
33. *See* SB 638 (SCS), 1998 Ga. Gen. Assem.
34. 1992 Ga. Laws 1883 (codified at O.C.G.A. § 50-21-24(a) (1994)).
35. *See* SB 638 (SCS), 1998 Ga. Gen. Assem.
36. *See* 1992 Ga. Laws 1883, § 1, at 1886-87 (codified at O.C.G.A. §§ 50-21-24 to -25 (1994)).

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in the execution of a statute, regulation, rule, or ordinance, whether or not such statute, regulation, rule, or ordinance is valid."[37]

The Senate Committee substitute added a paragraph that recognized the possibility of computer failure or malfunction as a result of the year 2000 problem, and granted sovereign immunity if the problem was unforeseeable or if the State made a good faith attempt to prevent the problem.[38] The Committee substitute did not include a starting date for the grant of immunity because of the uncertainty surrounding when the problems might occur.[39] However, the Committee substitute did include a sunset provision that limited the grant of sovereign immunity to problems that occurred before December 31, 2005.[40] In addition to the sunset provision, the substitute differed from SB 638, as introduced, in that it removed the grant of sovereign immunity to municipalities.[41] The Senate Committee declined to extend the grant of sovereign immunity to local governments because the members felt that local governments already benefitted from a broad grant of immunity.[42]

Senate Floor Amendment

An amendment was offered on the floor of the Senate to reinsert the language "and its political subdivisions" into the preamble of the bill.[43] Thus, the Senate version of the bill amended the Georgia Tort Claims Act and granted sovereign immunity to the State and its political subdivisions for computer malfunctions related to millennium bug problems arising before December 31, 2005.[44]

House Committee Substitute

SB 638 was referred to the House State Planning and Community Affairs Committee, which offered its own substitute.[45] The House

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37. *Id.* at 1886.
38. *See* SB 638 (SCS), 1998 Ga. Gen. Assem.
39. *See* Record of Proceedings in the Senate Judiciary Committee (Mar. 2, 1998) [hereinafter Record of Proceedings] (available in Georgia State University College of Law Library).
40. *See* SB 638 (SCS), 1998 Ga. Gen. Assem.
41. *Compare* SB 638, as introduced, 1998 Ga. Gen. Assem., *with* SB 638 (SCS), 1998 Ga. Gen. Assem.
42. *See* Record of Proceedings, *supra* note 39 (remarks by Sen. Clay Land).
43. SB 638 (SCSFA), 1998 Ga. Gen. Assem.
44. *See id.*
45. *See* SB 638 (HCS), 1998 Ga. Gen. Assem.

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Committee substitute added Code section 36-60-19, which explicitly applied to the operations of local governments within the State.[46] This new Code section defined "political subdivision of the [S]tate" as "any office, agency, department, commission, board, division, and institution of any county or municipality of the State of Georgia."[47] The new Code section granted sovereign immunity to the enumerated political subdivisions for unforeseeable computer problems or for good faith attempts to correct foreseeable computer problems related to the millennium bug occurring before December 31, 2005.[48] In addition to adding Code section 36-60-19, the Committee substitute also retained the language from the Senate version of SB 638 that amended the Georgia Tort Claims Act.[49] As previously noted, the House Committee substitute passed the House and the Senate without further changes.[50]

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46. *See id.*
47. *Id.*
48. *See id.*
49. *Compare* SB 638 (HCS), 1998 Ga. Gen. Assem., *with* SB 638 (SCSFA), 1998 Ga. Gen. Assem.
50. *See* O.C.G.A. § 36-60-19, 50-21-24(13) (Supp. 1998); Georgia House of Representatives Voting Record, SB 638 (Mar. 16, 1998); Georgia Senate Voting Record, SB 638 (Mar. 19, 1998).

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