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M E M O R A N D U M

TO: Senator Bo Hatchett  
Senator Mike Hodges  
Governor's Senate Floor Leaders

FROM: David B. Dove, Executive Counsel

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QUESTIONS REGARDING THE CONSTITUTIONALITY OF SENATE BILLS 113 & 114

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Considering our present advanced position as a state, Senate Bills 113 and 114 demand evaluation for the unique constitutional and statutory challenges they pose to the skin of the body politic. Without thoughtful consideration, these bills, together, may retailor the cloth of governance for Georgia's municipalities in ways that will ripple into a future of unforeseen outcomes. The following questions should, therefore, be meaningfully addressed and resolved:

1. How does the proposed *pro rata* sharing of general obligation ("GO") bonded indebtedness between cities<sup>1</sup> not infringe on the constitutional protection of preventing laws that impair obligations of contract?<sup>2</sup>
2. It is longstanding Georgia precedent that voters must approve GO debt by referendum, regardless of whether any new jurisdiction is a successor to an older one which has incurred such debt.<sup>3</sup> How does Senate Bill 113 protect that right?
3. Cities are obligated to GO bonds by pledging their full faith and credit, supported by their current and future projected tax digests. This credit is afforded to cities, as they are enduring visible and intangible products of the past. If these bills are successful, the enduring nature supporting this proposition may be undermined. Have proponents of Senate Bills 113 and 114 considered what greater impacts this precedent may have on municipal bond ratings, underwriting considerations, the further de-annexation and incorporation of cities, and the possible widespread default that could occur?
4. When new cities are created in Georgia, under constitutional conditions those cities are incorporated from unincorporated areas of existing counties.<sup>4</sup> Residents in such areas

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<sup>1</sup> LC 47 2222ERS § 3 at 11.

<sup>2</sup> See GA. CONST. art. I, § I, para. X.

<sup>3</sup> See GA. CONST. art. IX, § V, para. I; *Fordham v. Sikes*, 141 Ga. 469 (1914).

<sup>4</sup> See O.C.G.A. § 36-31-1 *et seq.*

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continue to pay county ad valorem taxes in addition to their new city taxes, thereby ensuring county indebtedness, if any, maintains a tax digest from the newly incorporated areas.<sup>5</sup> How does Senate Bill 113 reconcile this change in policy vis-à-vis the bonded indebtedness of the City of Atlanta (“Atlanta”)?

5. What protections do Senate Bills 113 and 114 afford the State, Atlanta, or the proposed City of Buckhead City (“Buckhead”) against suit from existing bond holders who may sue to block these acts that may impair their bonds?
6. Can proponents of Senate Bills 113 and 114 ensure students currently attending Atlanta Public Schools will be able to remain (1) in the Atlanta Independent School System and (2) at the school they currently attend?
7. Senate Bill 114 assumes a local constitutional amendment from 1950<sup>6</sup> allowing the expansion of the Atlanta Independent School System’s boundaries concomitant with the expansion of the of Atlanta’s city limits will remain in effect to the extent that the school district will encompass the boundaries of Buckhead. What assurances can the proponents of Senate Bill 114 provide that interpretation is the correct application of the local constitutional amendment given the continued viability of the amendment itself has been heavily litigated in recent years?<sup>7</sup>
8. Senate Bill 114 purports to grant Buckhead the power to assess an ad valorem tax on residents to be paid, not to the city, but to the Atlanta Independent School System.<sup>8</sup> How is this action constitutional given (1) Buckhead would lie outside the jurisdictional limits of Atlanta, (2) no referendum is proposed for residents to ratify such taxation, and (3) the Georgia Constitution fails to give *any* power to cities and counties to engage in the education of their residents outside of independent school districts?<sup>9</sup>
9. If students are not able to remain in the Atlanta Independent School System, are Fulton County schools able and equipped to manage the influx of students that would then be added to their rolls?
10. The Apalachicola-Chattahoochee-Flint River Basin (“ACF Basin”) has been the source of litigation for the State of Georgia for more than four decades. Under the proposed legislation, Buckhead would be permitted to purchase meaningful water-treatment assets from Atlanta for \$200,000.00.<sup>10</sup> This provision ignores the \$2.8 billion in bonded indebtedness Atlanta currently holds which is secured by a one cent municipal option sales tax (“MOST”) levied within Atlanta for water and sewer purposes. How will Atlanta avoid default on this debt, and what impacts will this have on the ACF Basin (as well as ongoing litigation) if 30-40% of the revenue base is eliminated from Atlanta?
11. Senate Bill 113 would allow successor cities to purchase parks and other property owned by existing cities.<sup>11</sup> What happens if successor cities choose not to purchase these assets, thereby creating, in this case, Atlanta-operated properties as islands within Buckhead? Are such properties subject to Buckhead or Atlanta policing? How will this impact public safety? How can these considerations be resolved without quarrel?

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<sup>5</sup> *Id.*

<sup>6</sup> Ga. L. 1950, p. 458.

<sup>7</sup> *See City of Atlanta v. Atlanta Indep. Sch. Sys.*, 307 Ga. 877 (2020); *City of Atlanta v. Atlanta Indep. Sch. Sys.*, 300 Ga. 213 (2016).

<sup>8</sup> LC 47 2223ERS § 6.10 at 37.

<sup>9</sup> *See generally* GA. CONST. art. IX, § IV; *see e.g.*, Ga. L. 1973, p. 2167 (APS charter of 1973); Ga. L. 1973, p. 2188 (City of Atlanta charter of 1973).

<sup>10</sup> LC 47 2222ERS § 3 at 11.

<sup>11</sup> *Id.* at 10.