Georgia State University Law Review

Volume 5
Issue 1 *Fall 1988*

Article 71

5-16-2012

BUILDINGS AND HOUSING State Housing Trust Fund for the Homeless Act: Create Fund and Commission

Georgia State University Law Review

Follow this and additional works at: http://digitalarchive.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation
Georgia State University Law Review (1988) "BUILDINGS AND HOUSING State Housing Trust Fund for the Homeless Act: Create Fund and Commission," *Georgia State University Law Review*: Vol. 5: Iss. 1, Article 71.
Available at: http://digitalarchive.gsu.edu/gsulr/vol5/iss1/71

This Peach Sheet is brought to you for free and open access by the College of Law Publications at Digital Archive @ GSU. It has been accepted for inclusion in Georgia State University Law Review by an authorized administrator of Digital Archive @ GSU. For more information, please contact digitalarchive@gsu.edu.

BUILDINGS AND HOUSING

State Housing Trust Fund for the Homeless Act: Create Fund and Commission

CODE SECTIONS:	O.C.G.A. §§ 8-3-300 to -310 (new)
BILL NUMBER:	HB 1339
ACT NUMBER:	1248
SUMMARY:	The Act creates a state trust fund to aid the homeless. It also establishes a commission to administer trust fund monies and develop housing projects and guidelines.
EFFECTIVE DATE:	January 1, 1989

History

The number of homeless persons in the United States has risen consistently over the past several years.[1] Although the estimated number of homeless in metropolitan Atlanta varies depending on the source of information,[2] even the lowest approximation is startling.[3] While human shelter may be considered by most a necessity, no inalienable right to shelter is found in the United States Constitution.[4] Thus, it is generally the respon-

1. THE NATIONAL BOARD EMERGENCY FOOD AND SHELTER PROGRAM, STUDY OF HOMELESSNESS 1349 (Mar. 1, 1985) (copy on file at *Georgia State University Law Review* office). The precise number of homeless people on a national level is difficult to determine because these individuals do not readily identify themselves. Between 1984 and 1985 the sheltered homeless increased by 16%. Among those surveyed, the unemployed emerged as the predominant group. *Id.*

2. It is estimated that there are 8,000 to 10,000 homeless persons in the metropolitan Atlanta area, based upon data derived from present populations in community shelters, numbers of persons treated in public health care facilities, and number of meals per day provided in community kitchens. Telephone interview with David Davidson, Task Force for the Homeless (Apr. 7, 1988). The statewide homeless population is estimated at 12,000 to 15,000 persons. *Housing Trust Must Be Funded*, Atlanta Const., Feb. 12, 1988, at 18A, col. 1. There are approximately 700,000 homeless children nationwide. McGee, *Against Odds, The Young Keep Faith*, USA Today, Apr. 7, 1988, at 1A, col. 3.

3. *See* May, *State's First Program for Homeless Wins House Votes — But No Funds*, Atlanta Const., Feb. 19, 1988, at 15A, col. 1 [hereinafter *First Program*]. In support of HB 1339, Speaker of the House Tom Murphy "painted a picture of 'little children in filthy rags, sleeping' in boxes." *Id.*

4. Lindsey v. Normet, 405 U.S. 56 (1972). "[T]he Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality . . . . Absent constitutional mandate, the assurance of adequate housing . . . [is a] legislative,

Produced by The Berkeley Electronic Press, 1988

HeinOnline -- 5 Ga. St. U. L. Rev. 204 1988-1989

sibility of the individual states to address the problem of homelessness.[5] In Georgia, the introduction of HB 1339 was the first direct legislative response to the problem of homelessness.[6]

HB 1339

The Act establishes the State Housing Trust Fund for the Homeless as "a separate fund in the state treasury."[7] The Act also enumerates the various duties of the director of the Fiscal Division of the Department of Administrative Services.[8] The Act creates a nine-member commission[9] which is authorized to disburse trust fund monies to residential housing programs.[10] Further, the Act establishes criteria which the commission shall consider in making decisions regarding disbursement of the trust funds.[11]

Both the original bill and a subsequent House Ways and Means Committee substitute contained a declaration of the General Assembly's commitment to provide "safe, sanitary, decent, and affordable housing for all [of Georgia's] residents" and reflected an intent to address the desperate need for housing in the state.[12] This declaration was not included in the final version of HB 1339.[13]

---

not judicial [function]." *Id.* at 74.

5. *Id.*

6. *See, First Program, supra* note 3. Several states already have taken legislative measures to address the problem of homelessness. *See, e.g.*, N.Y. CONST. art. XVII, § 1. "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine." *See also* Prevention of Homelessness Act, N.J. STAT. ANN. §§ 52:27D-280 to -287 (West 1986). "It is the longstanding policy of this State that no person should suffer unnecessarily from cold or hunger, or be deprived of shelter." *Id.* § 52:27D-281a.

7. O.C.G.A. § 8-3-302 (Supp. 1988).

8. O.C.G.A. §§ 8-3-303 to -305 (Supp. 1988).

9. O.C.G.A. § 8-3-306(a) (Supp. 1988).

10. O.C.G.A. § 8-3-310(a) (Supp. 1988).

11. O.C.G.A. § 8-3-310(a)(1)—(5) (Supp. 1988). The criteria include, but are not limited to, factors such as "the number of persons assisted; . . . leveraging of money or in-kind services by a qualified sponsor; . . . geographic distribution of residential housing projects; . . . availability of other forms of assistance; . . . [and] [a]ny and all other factors bearing upon the advisability and necessity of the residential housing project." *Id.*

12. HB 1339, as introduced, 1988 Ga. Gen. Assem.; HB 1339 (HCS), 1988 Ga. Gen. Assem.

13. O.C.G.A. §§ 8-3-300 to -310 (Supp. 1988). Whether this deletion reflects a lack of legislative commitment to the purpose of the Act is a matter of controversy. The deletion is perceived by some as an indication that the adoption of HB 1339 was an empty gesture. Telephone interview with Keith Summa, Project Director, National Coalition for the Homeless (Apr. 4, 1988) [hereinafter Summa Interview]. Others perceived the declaration of legislative commitment and intent merely to be excess verbiage and unnecessary to the content of the bill. Telephone interview with Representative Tom Murphy, Speaker of the House, House District No. 18 (Apr. 4, 1988) [hereinafter Mur-

HeinOnline -- 5 Ga. St. U. L. Rev. 205 1988-1989

During the bill's progress through the General Assembly, the House committee substitute added language specifically designating the bill as the "State Housing Trust Fund for the Homeless Act,"[14] instead of the originally proposed "State Housing Trust Fund Act."[15] This change was incorporated into the final version of HB 1339.[16] The House committee substitute also deleted language contained in the original version designating HB 1339 as a constitutional amendment.[17]

While passage of HB 1339 is significant, it is important to note that the bill constitutes only one piece of a tripartite legislative package on homelessness sponsored by Governor Joe Frank Harris.[18] Two components of the package passed: HB 1339 and HR 587. HR 587, a constitutional amendment requiring that funds appropriated under HB 1339 not lapse, met voter approval in the November 1988 general election.[19] HR 587 allows the use of trust fund monies in various programs benefitting the homeless, including programs involving churches and other religious institutions.[20]

HB 1338 was the third component of the Governor's package. HB 1338 contained key funding for the trust fund in the form of a proposed real estate surcharge transfer tax.[21] This bill was embroiled in controversy from the beginning of the legislative session and failed to reach the House floor for a vote.[22]

---

phy Interview]. Preambles were stricken from several bills during the 1988 legislative session because of the growing perception that preamble language is cumbersome and not truly indicative of legislative intent. Telephone interview with Representative Calvin Smyre, House District No. 92 (Apr. 4, 1988) [hereinafter Smyre Interview].

14. HB 1339 (HCS), 1988 Ga. Gen. Assem.

15. HB 1339, as introduced, 1988 Ga. Gen. Assem. The name change was made to ensure that any funds appropriated to the trust fund would be utilized only for homeless programs; however, the language of the Act is still "broad enough to drive a truck through." Telephone interview with Representative Joe Mack Wilson, Chairman, House Committee on Ways and Means, House District No. 20 (Apr. 6, 1988) [hereinafter Wilson Interview].

16. O.C.G.A. § 8-3-300 (Supp. 1988).

17. *Compare* HB 1339 (HCS), 1988 Ga. Gen. Assem. *with* HB 1339, as introduced, 1988 Ga. Gen. Assem. The constitutional amendment was passed as a separate House Resolution, HR 587. *See infra* notes 19—20 and accompanying text.

18. Smyre Interview, *supra* note 13.

19. 60.8% of the voters were in favor of the amendment and 39.2% opposed it. Telephone interview with Sharon Lucas, Elections Division, Office of the Secretary of State (Nov. 21, 1988).

20. GA. CONST. art. III, § 9, ¶ 4(d). Controversy surrounded the passage of HR 587. The House Appropriations Committee vote was close. "Members raised objections ranging from charges that it would violate separation of church and state by funding programs operated by churches to worries that the program could attract the homeless from other states." May, *Harris Vows to Keep Fighting for Homeless Program*, Atlanta Const., Feb. 18, 1988, at 4C, col. 1.

21. HB 1338, as introduced, 1988 Ga. Gen. Assem.

22. The method of funding the trust fund was hotly disputed by a number of legislators and lobbyists who believed that any funding of the trust should be a statewide

HeinOnline -- 5 Ga. St. U. L. Rev. 206 1988-1989

The legislature's failure to pass HB 1338 in the 1988 session puts the General Assembly in the quixotic position of having established a trust fund for the homeless without an accompanying method for funding that program. For this reason, some view the passage of HB 1339 as an empty gesture and a political attempt to appease those advocating legislation for the homeless without making any viable commitment to the program.[23] Conversely, there are proponents of the Act who believe it constitutes a crucial first step in addressing the problem of homelessness in Georgia,[24] and that much was achieved in its passage.[25] Yet another view within the legislature is that HB 1339 was not a serious attempt to address the overall problem of homelessness but was a solution designed for a specific group of persons who are in danger of facing homelessness due to future actions which will be taken by the State.[26]

Despite the conflicting views about the overall effectiveness of the State Housing Trust Fund for the Homeless Act, the legislature removed the issue of homelessness from the realm of rhetoric and placed it before the public. The passage of HB 1339 and voter approval of HR 587 will assure that the issue of funding for the trust fund again will be paramount in the 1989 Georgia General Assembly.[27]

C. Peterson

---

responsibility of all Georgians. HB 1338 was seen as an unfair allocation of fiscal responsibility to one specific segment of the population, namely young homebuyers. Influential members of the House were adamantly opposed to the Governor's proposed method of funding the trust fund, and resolved to let it die in committee. Wilson Interview, *supra* note 15. Because of the dispute over the method of funding for the trust, funding for HB 1338 will come from the State's general fund, and support of the Homeless Trust Fund will be distributed equally among the population. Smyre Interview, *supra* note 13.

23. Summa Interview, *supra* note 13. Mr. Summa commented, "Where's the beef?"

24. This was the first time legislation of this type had been introduced in Georgia and many believe its passage is significant to the state. Murphy Interview, *supra* note 13.

25. Smyre Interview, *supra* note 13.

26. Wilson Interview, *supra* note 15. "I believe HB 1339 was really just an attempt to find funding for those persons in Vine City who will eventually be displaced by the building of the new stadium." *Id.*

27. Funding for HB 1339 was not available during the 1988 legislative session but likely will be on the agenda for the 1989 session. Murphy Interview, *supra* note 13.

HeinOnline -- 5 Ga. St. U. L. Rev. 207 1988-1989