



GEORGIA STATE SENATE SENATE RESEARCH OFFICE

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MEMORANDUM

Date: September 27, 2019
To: Senator Emmanuel Jones
From: Macy McFall
Re: Summary: *Senate Bill 7*

Summary

Senate Bill 7, which was passed by the General Assembly during the 2019 legislative session, requires a referendum by the voters of DeKalb County to revise the DeKalb County Board of Ethics. The bill requires the ballot question to be printed as follows: "() YES () NO Shall the Act be approved which revises the Board of Ethics for DeKalb County?" Upon the successful passage of the referendum, which will be on the ballot for DeKalb voters in 2019 – the following revisions will take effect.

Disclosures

An official or employee who has an interest that they have reason to believe may be affected by their official actions, or by the official actions of another official or employee of DeKalb County, must disclose the precise nature and value of such interest by sworn written statement to the Board of Ethics and ask for the board's opinion as to the propriety of such interest.

The legislation defines 'Official or employee' as any person elected or appointed to or employed or retained by DeKalb County or any agency, whether paid or unpaid and whether part time or full time. This definition includes retired employees or former county employees during the period of time in which they are later employed or retained by the county or any agency, but does not otherwise include retired employees or former county employees or persons elected or appointed to or retained by DeKalb County or any agency. *Meaning: Board of Ethics has to abandon investigations of elected or county employees if they resign, retire, or complete their term in office.*

Every official or employee who knowingly has any interest, direct or indirect, in any contract to which DeKalb County is or is about to become a party, or in any other business with DeKalb County, must make full disclosure of such interest to the Chief Executive and the Commission and to the ethics administrator and the Board of Ethics.

Complaints

If a violation appears to have occurred, a complaint may be communicated anonymously to the ethics administrator. Complaints may be filed along with a sworn written complaint, but prior to filing a complaint, a county employee must exhaust all administrative remedies available. Upon receipt of a complaint, the ethics administrator or the secretary of the Board of Ethics must send a written notice to the subject of the complaint by the next business day. *Meaning: A roadblock is being put up to stop employees from reporting ethical violations.*

New Board of Ethics

The current members of the Board of Ethics in office on the effective date (day referendum passes) will serve until December 31, 2019, and then their terms shall terminate. The new members are to be appointed no later than December 31, 2019, and will take office on January 1, 2020.

The members of the Board of Ethics are to serve without compensation and will elect from their own membership a chairperson. The Board of Ethics is authorized to employ its own staff and contract for the services of a competent court reporter, an attorney, and a private investigator as it deems necessary. In the event that the Board of Ethics determines that employment of full-time legal counsel is necessary, the Board of Ethics is authorized to employ an attorney. ... to substitute as an "Ethics Officer."

Board Authority

The members of the Board of Ethics shall have the authority to propose the budget of the board and must recommend the budget to the Commission, who must fund it as a priority.

In the event that the proposed budget is in excess of \$300,000.00, the Commission has the authority to authorize the additional funds requested. The Board of Ethics shall be completely independent and shall not be subject to control or supervision by the Chief Executive, the Commission, or any other official or employee or agency of the county government.

Ethics Administrator *Replaces current Ethics Officer position.*

Senate Bill 7 also provides for the creation of a full-time salaried position – an ethics administrator for DeKalb County. The ethics administrator shall be appointed by a majority of the members of the Board of Ethics for a period not to exceed six years.

The ethics administrator cannot be involved in partisan or nonpartisan political activities. The duties of the ethics administrator must include, but not be limited to, the following:

- Educating and training all county officials and employees to have an awareness and understanding of the mandate for and enforcement of ethical conduct;
- Advising officials and employees regarding disclosure statements; and *Added new duty*
- Notifying the subject of a report of any alleged violation of the ethics code;
- Notifying the Board of Ethics of any report of an alleged violation of the ethics code; and
- Filing annually with the Board of Ethics, the Chief Executive, and the Commission a written report describing the activities of the ethics administrator in carrying out the goals of his or her office and the code of ethics and reporting on the ethical health of DeKalb County.

All of these duties are currently being performed by an experienced, legally trained Ethics Officer.

Investigations

The Board of Ethics will have the authority to conduct investigations into all alleged violations of the code of ethics, hold hearings, and issue decisions. The proceedings and records of the Board of Ethics must be open unless otherwise permitted by state law.

A complaint may be filed by any resident or group of residents of DeKalb County by submitting to the office of the ethics administrator a written, verified, and sworn complaint under the penalty of perjury or false swearing. Upon receipt of the complaint, the ethics administrator must provide the complaint to the Board of Ethics, which then will conduct a preliminary investigation to determine whether it meets the jurisdictional requirements set forth. *Ethics Officer currently conducts preliminary investigation.*

This list used to also include the Ethics Officer.

The Board of Ethics is prohibited from issuing a final decision regarding any matter involving any individual who has qualified to run for any DeKalb County elected office during the 45 days preceding the election for such office. *Meaning: Voters will not be informed when they cast ballots.*

Violations

Any intentional violation of this section, including: furnishing of false or misleading information to the Board of Ethics, failure to follow an opinion rendered by the Board of Ethics, or failure to comply with a subpoena issued by the Board of Ethics pursuant to this section subjects the violator to fines, reprimands, or prosecution by the DeKalb County Solicitor.

- A. **Wrongdoers get away:** The language in the revised act is intended to **prohibit conducting an ethics investigation of an official/employee after they leave County employment**. The **current law passed in 2015** defines who is subject to the Act **at the time the violation occurs** and does not prohibit conducting or continuing an ethics violation that occurred while the person was employed with the County, even after they leave their job.
- B. **Roadblocks are being added to prevent ethics reporting:** County employees will have to exhaust all administrative remedies (file a complaint with HR.) Only after such remedies are “exhausted” may they file an ethics complaint against an immediate supervisor. The process can take months to complete with hearings and appeals. The HR director has **no defined responsibility to report ethics complaints to the Board of Ethics or to report any potential criminal activity** to the appropriate agencies. In other words, ethics complaints can be stalled permanently.
- C. **The professionalism of the County’s ethics department is reduced:** The revised act downgrades the Ethics Officer position to an administrative position. This administrative officer would not require legal training nor experience in ethics enforcement. The downgrade of this key position means important functions will essentially not be performed. Those functions include determining jurisdiction and bringing forth a legal investigation, educating staff on ethics rules, and performing legal research. Rendering legal opinions will have to be delegated to outside attorneys (at greater cost) and/or the volunteer members of the Board. **The Ethics Administrator will have neither the authority nor the duty to investigate and report criminal activity to law enforcement.** Furthermore, there is no penalty for lying to the Ethics Administrator. The current act includes a penalty for lying to the Ethics Officer.
- D. **Voters are not informed:** The revised act prohibits the Board of Ethics from issuing any final decision regarding a complaint against a candidate within 45 days of an election. This means that voters are prevented from having important information when they go to cast their ballots.