

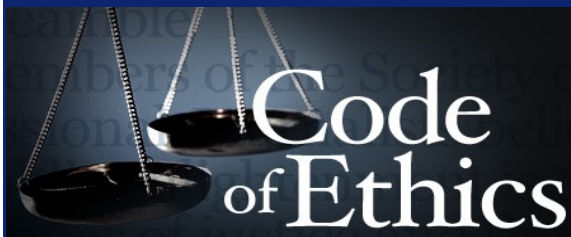
DeKalb County Ethics Bill (SB 7)



Code of Ethics

*FAQs Regarding Proposed Revisions
to the DeKalb County Ethics Act*

DeKalb Citizens Advocacy Council, Inc.



ETHICS LEGISLATION CHANGES MORE THAN THE APPOINTMENT PROCESS

- ◆ *Calls for the Board of Ethics to submit its policies and procedures to review by the county CEO and confirmation by the Board of Commissioners*
- ◆ *Requires DeKalb County employees to funnel any complaints about their immediate supervisor through the human resources department and exhaust Merit System remedies before turning to the Board of Ethics*
- ◆ *Replaces the ethics officer with an ethics administrator, a clerical position*
 - ⇒ *Requires no legal degree or work experience*
 - ⇒ *Ethics Administrator will not have authority to investigate or file ethics complaints*
- ◆ *Requires the Board of Ethics to abandon investigations of elected officials or county employees if they resign, retire or complete their terms of office*
- ◆ *Prevents Board of Ethics from rendering any final decision regarding any complaints against a candidate within 45 days of an election*

Why are we voting to revise the Ethics Act?

DeKalb citizens are required to vote on any changes to the duties of the Chief Executive Officer (CEO). Under the most recent ethics legislation passed by the General Assembly (Senate Bill 7), the CEO appoints one member of the Board of Ethics. Due to this change, a referendum must be held.

Senate Bill 7 (SB7) came about after the Georgia Supreme Court ruled last year that it was unconstitutional to allow a majority of DeKalb Board of Ethics members to be appointed by private groups, such as Leadership DeKalb and the DeKalb Bar Association.

Who appoints new Board of Ethics members?

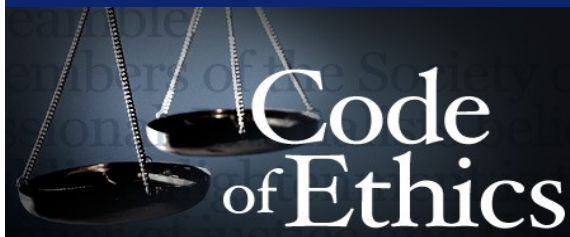
If voters approve ethics revisions, the appointments will be made as follows:

- ◆ DeKalb House and Senate delegations (two appointments each)
- ◆ County CEO (whose choice must be confirmed by a majority vote of Board of Commissioners (one appointment)
- ◆ Chief Superior Court judge and Probate Judge (one appointment each)
- ◆ **There is no requirement for citizen involvement.**

Why are these changes a problem?

The Act under which the ethics officer and Board are currently operating was:

- ◆ Researched and reviewed by several citizen and legislative committees.
- ◆ Presented and discussed at a number of public forums, and drafted with the help of the Legislative Counsel at the capitol over a period of two years.
- ◆ Based on model ordinances and passed out of the legislature with a nearly unanimous vote
- ◆ Approved by 92% of voters at the polls in 2015.
- ◆ The revision was created with limited public input and education, and was hurriedly reviewed by the DeKalb legislative delegation near the end of the General Assembly session.
- ◆ The bill calls for changes far beyond the immediate need to change board appointment process.
- ◆ The proposed changes threaten the independence and effectiveness of the ethics function and diminish the importance of the role of ethics in DeKalb County government and the Board of Ethics's credibility with the public.
- ◆ If the referendum passes, some of the current complaints will have to be dismissed, as the Board will no longer have jurisdiction over former employees and public officials.



CEO AND BOARD OF COMMISSIONERS' REVIEW OF POLICIES AND PROCEDURES

- ◆ *Presents a potential conflict of interest since the CEO and Board of Commissioners are subject to the Ethics Act.*
- ◆ *Makes no provision for the Board of Ethics to challenge changes to submitted policies and procedures that may dilute strong ethics policies or procedures.*

Why shouldn't the CEO and the Board of Commissioners review the policies and procedures of the Board of Ethics?

This provision weakens the independence of the Board of Ethics and creates an opportunity for mischief by allowing the CEO or the Board of Commissioners to establish policies and procedures for the Board of Ethics.

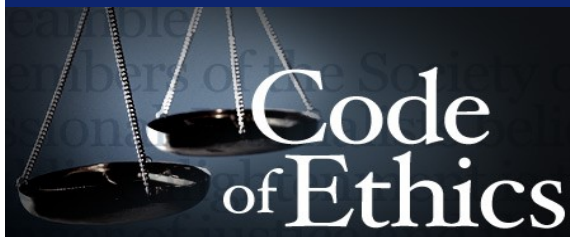
It is not a typical requirement of other citizens' boards to submit their rules and procedures to the Governing Authority for approval. Examples of DeKalb County boards not required to submit policies and procedures for approval:

- ⇒ Internal Audit Oversight Committee
 - ⇒ Zoning Board of Appeals
 - ⇒ Planning Board
 - ⇒ It is unclear what happens if the CEO or Board of Commissioners votes to disapprove the policies and procedures.
- ◆ It appears the Board of Ethics must submit new policies and procedures until they are reviewed by the CEO and eventually confirmed by the Commissioners. What happens to cases under review, when the policies and procedures change?
 - ◆ Furthermore, it is unclear what happens if the CEO or Board of Commissioners votes to disapprove the policies and procedures.
 - ◆ The policies and procedures of the Board of Ethics are not a secret; they are posted on the board's website, available for all to see.

Who does the DeKalb Code of Ethics Cover?

In Georgia, a county code of ethics covers all employees and the elected official NOT mandated in the states' constitution. Constitutional positions include superior and state judges, the district attorney, the solicitor of state court, magistrates, judges of lower courts, the sheriff, AND their respective staffs. In theory, constitutional positions are NOT covered by a county code of ethics, but by other professional state-level organizations.

In the DeKalb Code of Ethics, any person elected or appointed to or employed or retained by DeKalb County, or any agency [not including the constitutional offices mentioned above], whether paid or unpaid and whether part-time or full-time is covered by the code. Also retired employees or former county employees are covered if and when they are later employed or retained by the county or a county agency.



POTENTIAL BARRIERS TO EMPLOYEE REPORTING

- ◆ *The Merit System process can take months to complete with hearings and appeals.*
- ◆ *Creates a potential conflict of interest since the human resources director and staff subject to the Ethics Act*
- ◆ *Under the current county Merit System guidelines the last resort for employees is Superior Court*
- ◆ *County Personnel Code does not provide for the director of human resources to report ethics violations to the Board of Ethics, when identified.*
- ◆ *Human resources director has no defined responsibility to report any potential criminal activity to the appropriate agencies.*

Why not have the Human Resources Department more involved in the complaint process, especially when an employee is complaining about their immediate supervisor? Won't this help prevent false accusations?

When an ethics complaint is received, it is screened by the ethics officer to determine if the complaint is a valid ethics issue or something else.

Employee complaints relating to nepotism, discrimination, harassment, etc., that **are not** ethics related are routinely referred to the Human Resources department (HR).

- ⇒ At least two referrals are made each month to Human Resources from complaints via the hotline, and the hotline instructions encourage individuals to speak first to their immediate supervisor.
- ⇒ The referendum would require employees with ethics complaints against their immediate supervisor to first go through the Human Resources Department and the Merit System process, which will have a chilling effect on reported ethics violations.
- ◆ Employees and most citizens believe that bureaucracies have a tendency to protect senior management. Even before the 2015 Ethics Act, county leaders recognized that most employee reports of waste, fraud and abuse were not being investigated or resolved by department managers and instituted an Ethics Hotline.
- ◆ Requiring employees to go through HR, which is not perceived as independent, is taking a step backwards and will undoubtedly chill all potential employee complaints.
- ◆ Further, under the new legislation, the ethics administrator is required to report all employee complaints to the director of human resources. This provision will also discourage employees from bringing forth ethics complaints.
- ◆ As to preventing “false” attacks on individuals, there is already a hefty penalty for anyone making false accusations or reporting false information to the Board of Ethics.



DELETED LANGUAGE IMPLICATIONS

- ◆ *Replaces the ethics officer with an ethics administrator without requiring legal qualifications and expertise needed to:*
 - ✓ *Determine jurisdiction (ethical vs. criminal)*
 - ✓ *Determine whether preponderance of evidence is present to pass the threshold for an ethics claim, etc.*
 - ✓ *Removes reporting, as appropriate, of suspected criminal violations to law enforcement agencies*
 - ✓ *Eliminates the ability of the Board of Ethics to rely on the ethics officer legal research, analysis, and experience to determine jurisdiction and sufficiency of evidence, and to provide the necessary legal advice to the Board.*

What's the difference between an Ethics Officer and an Ethics Administrator?

The proposal replaces the ethics officer with an ethics administrator. Removed from the ethics administrator's responsibility is the ability to bring forth an investigation. For example, if a County Commissioner used their County website to campaign for office or to solicit campaign donations, the ethics administrator could not bring that matter to the Board of Ethics. Someone other than the ethics administrator must see the ethical violation before they are held accountable. Someone other than the ethics administrator must bring the complaint.

- ◆ Currently, the ethics officer has the responsibility to report criminal activity to law enforcement agencies. The ethics administrator does not have that duty.
- ◆ Under proposed revisions, if someone gives false or misleading information to the ethics administrator, there is no penalty; nor can the administrator bring to the Board of Ethics the fact that a person is deliberately misleading the ethics administrator.
 - ⇒ To restate the point, there is no penalty for lying to the ethics administrator.
- ◆ The original ethics legislation was based on model ordinances and best practices.
 - ⇒ An ethics officer with a law degree is the recommended standard.
 - ⇒ Lowering the educational standards and diminishing the role of the Ethics officer is an implicit statement that ethics is less important than previously determined.
- ◆ Under the revision, the law degree and five years of experience necessary for the ethics officer position is no longer needed. The ethics administrator position requires only a bachelor's degree and no work experience.
- ◆ As a result, many duties currently performed by the ethics officer would have to be assigned to the full Board. For example, the Board of Ethics would now conduct the preliminary investigation to determine if a complaint is worthy of consideration.
- ◆ The full Board would determine if the complaint includes a sworn statement, identifies specific provisions of the code, includes facts admissible in court, and determines the complainant is competent to testify.
- ◆ Instead of the ethics officer ensuring a complaint meets the minimum standards, the Board would make that decision.
- ◆ Important functions could no longer be performed by the less qualified ethics administrator. At a minimum, removing the qualifications for the ethics officer would slow the process and add more work for the volunteer Board.



PROPOSED REVISIONS

- ◆ *Require DeKalb County employees to funnel complaints about immediate supervisor through Human Resources Department and exhaust Merit System remedies before turning to the Board of Ethics.*
- ◆ *Have no requirement for the human resources director to report unethical behavior to the Board of Ethics.*
- ◆ *Have no requirement for the human resources director to report criminal activity to law enforcement agencies or the Board of Ethics.*

I've heard that the ethics officer and Board of Ethics are essentially the judge, jury, and executioner all in one? Isn't this wrong?

- ◆ The process works like this:
 - ⇒ The ethics officer investigates the complaint to determine if the Board of Ethics has jurisdiction over the matter and if there is sufficient evidence to proceed.
 - ⇒ If so, then the person filing the complaint prosecutes the complaint. The Board of Ethics hears the matter, reviews the evidence, and makes a decision.
- ◆ This unified process assures that the Board's decision making is informed and swift and that any decision can be easily appealed to Superior Court, if desired by the parties involved.

How can we implement a better Board of Ethics appointment process that meets the constitutional test established by the Georgia Supreme Court that elected officials make appointments?

Rather than having private community groups appoint board members, they can nominate candidates for the ethics board.

Members of the House and Senate delegation could consider these nominations, as well as any other nomination, when making appointments to the Board of Ethics.

What is the purpose of the Code of Ethics?

In order for the county to be properly governed and for citizens to have public confidence in that government, it is essential that the county's officials and employees are, and give the appearance of being independent and impartial, and that they do not use public office for private gain. The Code of Ethics establishes and proscribes conduct in which officials and employees SHOULD NOT engage.

The ethics office provides education and training for county officials and employees on awareness of ethical issues and compliance with the code. The ethics office also provides advisory opinions to all officials and employees who seek advance advice on ethical issues.

What is the budget for the ethics office?

The ethics office is the smallest division in DeKalb County Government. The yearly budget of the Board of Ethics and officers is \$500,000, which includes expenses, including two legal officers who:

- ◆ determine jurisdiction;
- ◆ determine whether a preponderance of evidence is present to pass the threshold for an ethics claim;
- ◆ provide ethics education to DeKalb employees and officials; and
- ◆ provide necessary legal advice to the Board which relies on the ethics officer's expertise in this area.

If the Board were to use outside legal counsel for these services, we, the citizens, would be paying much more and the operations of the Board of Ethics would not be as efficient and or cost-effective.

CHALLENGES TO PASSING ETHICS

LEGISLATION

The November 5, 2019 ethics referendum, went through several revisions between the DeKalb Senate and House Delegations.

These negotiations resulted in basically gutting the existing the current Ethics Act and replacing it with revisions that do not speak to attaining a strong ethics culture in DeKalb County.

- ◆ *Legislators are promoting that a “fix” for the ethics legislation would occur in the next General Assembly session.*
- ◆ *There is no guarantee that the votes creating the referendum would be agreeable to reversing the affects of the new law.*
- ◆ *What is guaranteed is that passage of this ethics legislation guts the current Ethics Act and erodes the independence of the Board of Ethics.*
- ◆ *The legislators voting to pass this bill cannot guarantee a different outcome should a “fix” be attempted.*
- ◆ *If this referendum is approved by voters, it is guaranteed that a strong and independent Board of Ethics will not be fulfilled in DeKalb County in the near future.*
- ◆ *Defeating the ethics legislation on November 5, 2019, and allowing the Charter Review Commission to provide some hope of restoring a meaningful and effective Board of Ethics for DeKalb County may be the best alternative.*

If this legislation is so bad, why did it pass?

The DeKalb delegation had a number of issues and bills to deal with this past General Assembly. The original revision dealt solely with the appointment process, but by the end of the session many more changes had been made.

- ◆ The existence of numerous and different versions of the bill so late in the session added to the confusion. Combined with private input from paid lobbyists, this resulted in an entirely different bill.
- ◆ The final bill received little vetting as to the full implications of its consequences, and was accompanied by:
 - ⇒ a sense of urgency to “just pass something” in order to get the Board of Ethics operating again, and
 - ⇒ a sense that everything could get “fixed” by the Charter Review Commission.

Why don’t we just pass this bill and let the newly created Charter Review Commission “fix” any problems with it?

This new legislation allows the appointment process to be muddled by an appointment by the CEO/Commissioners and the ethics officer to be replaced by an ethics administrator. We will be going backwards.

- ◆ It is possible to draft a bill changing the appointment process, without requiring a referendum, and have it passed by the DeKalb delegation early in the next General Assembly session so that the Board of Ethics can be up and running again as soon as it passes.
- ◆ Let’s use the Charter Review Commission to discuss additional “fixes” to improve the Board of Ethics and strengthen the code of ethics. For example, the Charter Review Commission could determine such improvements as;
 - ⇒ the number of terms to be served by Board of Ethics members
 - ⇒ the recusal or removal process for board members and ethics staff members, and
 - ⇒ additional unethical behaviors that should come under the jurisdiction of the Board of Ethics

Support Ethics Board Independence

What happens if we vote NO on the referendum?

The force of the public's decision in this election would communicate to the DeKalb House and Senate delegations that we want an independent ethics office.

In response to the Supreme Court decision, legislation dealing solely with the appointment process issue could be drafted and passed by the DeKalb House and Senate delegations early in next year's General Assembly.

One approach would be to have community groups nominate candidates for the Board of Ethics. Members of the House and Senate delegation would consider these nominations, as well as any other nominations, when making appointments to the Board of Ethics.

If we—the voters of DeKalb County—want ethical behavior to be the standard for county government and expect our elected officials and county staff to conduct the county's business in an ethical manner, we must stand up for an independent Board of Ethics and a strong ethics officer.

This ethics proposal does not support either of these.

FAQs—Revisions to the Ethics Act

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