

The Senate Judiciary Committee offered the following substitute to SB 307:

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 18 of Title 15 of the of the Official Code of Georgia Annotated, relating
 2 to prosecuting attorneys, Chapter 11 of Title 19 of the Official Code of Georgia Annotated,
 3 relating to enforcement of the duty of support, Title 45 of the Official Code of Georgia
 4 Annotated, relating to public officers and employees, and Title 47 of the Official Code of
 5 Georgia Annotated, relating to retirement and pensions, so as to transfer ministerial functions
 6 of the Department of Administrative Services relating to the payment of salaries, benefits,
 7 fees, and expenses of district attorneys, personnel of district attorneys, and solicitors or
 8 solicitors-general of the state courts to the Prosecuting Attorneys' Council of the State of
 9 Georgia; to transfer certain records, documents, software, equipment, property, and
 10 personnel from the Department of Administrative Services to the Prosecuting Attorneys'
 11 Council of the State of Georgia; to provide for rights of transferred personnel; to provide for
 12 services and assistance to the council; to provide procedures for the payment of certain
 13 assistant district attorneys performing child support duties; to provide for budgeting for
 14 victim assistance programs in district attorneys' offices; to provide for alternate hiring
 15 procedures and compensation for certain personnel; to change the definition of a certain term
 16 relating to accounting for public funds; to provide procedures for the payment of certain
 17 contracts of liability and indemnity insurance on behalf of personnel of district attorneys; to
 18 change the provisions relating to the payment of certain employer costs under the state
 19 employees' health insurance plan; to change the procedures for payment of certain
 20 deductions, employer contributions, and other contributions to the Employees' Retirement
 21 System of Georgia and the Georgia Judicial Retirement System so as to transfer
 22 responsibility for making such contributions to the Prosecuting Attorneys' Council of the
 23 State of Georgia; to provide for other matters relating to the foregoing; to provide an
 24 effective date; to repeal conflicting laws; and for other purposes.

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 18 of Title 15 of the of the Official Code of Georgia Annotated, relating to prosecuting attorneys, is amended by striking subparagraph (a)(1)(B) of Code Section 15-18-14, relating to appointment of attorneys and assistant district attorneys and qualifications, compensation, personnel actions, transfers, and promotions related thereto, and inserting in its place the following:

"(B) Subject to the availability of funding and at the option of the Department of Human Resources, at least one assistant district attorney to perform duties described specifically under Code Sections 19-11-23 and 19-11-53 and generally under Article 1 of Chapter 11 of Title 19, the 'Child Support Recovery Act,' Article 2 of Chapter 11 of Title 19, the 'Uniform Reciprocal Enforcement of Support Act,' and Article 3 of Chapter 11 of Title 19, the 'Uniform Interstate Family Support Act.' The district attorney retains the authority to appoint one or more assistant district attorneys, who shall be county employees, to perform the aforementioned statutory duties, so long as such appointments are pursuant to a contract for such services with the Department of Human Resources. Once the election to make this position a state position is made, under this statutory provision, it shall be irrevocable. Contractual funds shall be paid by the Department of Human Resources to the ~~Department of Administrative Services~~ Prosecuting Attorneys' Council of the State of Georgia in accordance with the compensation provisions of this Code section, or at the election of the appointed attorney, to the appointed attorney's judicial circuit, in accordance with the compensation provisions of that judicial circuit; and"

SECTION 2.

Said chapter is further amended by striking subsection (d) of Code Section 15-18-14.2, relating to victim assistance programs and personnel of the district attorneys, and inserting in its place the following:

"(d) Not later than June 1 of each year, the Prosecuting Attorneys' Council of the State of Georgia shall furnish to each district attorney ~~and the Department of Administrative Services~~ a budget for the judicial circuit based on the amount appropriated by the General Assembly or otherwise available for personnel and operations of victim assistance programs authorized by this Code section."

SECTION 3.

1 Said chapter is further amended by striking subsection (a) of Code Section 15-18-18, relating
2 to alternate hiring procedures for secretaries of district attorneys and their status and
3 compensation, and inserting in its place the following:

4 "(a) In lieu of hiring a secretary under Code Section 15-18-17, each district attorney, with
5 the written consent of the governing authority of any county or counties within his or her
6 judicial circuit, may employ a secretary who shall be an employee of the county which
7 pays the compensation of the secretary and in which the governing authority has given its
8 consent to compensate the secretary. Upon employing the secretary, it shall be the duty of
9 the district attorney to notify the ~~commissioner of administrative services~~ Prosecuting
10 Attorneys' Council of the State of Georgia of such fact and of the amount of the
11 compensation to be paid to the secretary. It shall be the further duty of the district attorney
12 to notify the ~~commissioner~~ Prosecuting Attorneys' Council of the State of Georgia of any
13 change in the status or compensation of the secretary. The ~~commissioner of administrative~~
14 ~~services~~ Prosecuting Attorneys' Council of the State of Georgia shall reimburse the county
15 or counties paying the compensation from funds appropriated or otherwise available for the
16 operation of the ~~superior courts~~ district attorneys for the compensation paid to the secretary
17 plus any employer contribution paid for the secretary under the act of Congress approved
18 August 14, 1935, 49 Stat. 620, known as the Social Security Act, as amended; but such
19 payments shall not exceed the maximum amount payable directly to or for a secretary
20 under Code Section 15-18-17."

21 SECTION 4.

22 Said chapter is further amended by striking paragraph (5) of subsection (e) of Code Section
23 15-18-19, relating to state paid personnel employed by district attorneys, and inserting in its
24 place the following:

25 "(5) The compensation of state paid personnel appointed pursuant to this article shall be
26 paid in equal installments by the ~~Department of Administrative Services~~ Prosecuting
27 Attorneys' Council of the State of Georgia as provided by this subsection from funds
28 appropriated for such purpose. The council may, ~~with the consent of the Department of~~
29 ~~Administrative Services~~, authorize employees compensated pursuant to this Code section
30 to participate in voluntary salary deductions as provided by Article 3 of Chapter 7 of Title
31 45."

32 SECTION 5.

33 Said chapter is further amended by striking Code Section 15-18-20.1, relating to additional
34 personnel for district attorneys' offices, and inserting in its place the following:

1 "15-18-20.1.

2 Notwithstanding any other provision of law, the governing authority of any county or
 3 municipality within the judicial circuit which provides additional personnel for the office
 4 of district attorney may contract with the ~~Department of Administrative Services~~
 5 Prosecuting Attorneys' Council of the State of Georgia to provide such additional
 6 personnel in the same manner as is provided for state paid personnel in this article. Any
 7 such personnel shall be considered state employees and shall be entitled to the same fringe
 8 benefits as other state paid personnel employed by the district attorney pursuant to this
 9 article. The governing authority of such county or municipality shall transfer to the
 10 ~~department~~ Prosecuting Attorneys' Council of the State of Georgia such funds as may be
 11 necessary to cover the compensation, benefits, travel, and other expenses for such
 12 personnel."

13 SECTION 6.

14 Said chapter is further amended by adding at the end of Code Section 15-18-40, relating to
 15 the establishment, purpose, and function of the Prosecuting Attorneys' Council of the State
 16 of Georgia, a new subsection (d) to read as follows:

17 "(d)(1) Effective July 1, 2002, all those ministerial functions of the Department of
 18 Administrative Services relating to the payment of salaries, benefits, and expenses of
 19 district attorneys, personnel of district attorneys, and solicitors or solicitors-general of the
 20 state courts shall be transferred to and performed by the Prosecuting Attorneys' Council
 21 of the State of Georgia.

22 (2) Effective July 1, 2002, all personnel of the Department of Administrative Services
 23 whose duties relate solely and exclusively to the payment of salaries, benefits, and
 24 expenses of district attorneys, personnel of district attorneys, and solicitors or solicitors-
 25 general of the state courts are transferred to and shall become employees of the
 26 Prosecuting Attorneys' Council of the State of Georgia. Each employee transferred
 27 pursuant to this subsection shall be entitled to and shall retain all rights which he or she
 28 possessed as an employee of the Department of Administrative Services immediately
 29 prior to the transfer, including all rights of rank or grade, rights to vacation, sick pay, and
 30 leave, rights under any retirement or personnel plan, and any other rights under any law
 31 or administrative policy. This paragraph is not intended to create any new rights for any
 32 employee, but to continue only those rights in effect before the effective date of the
 33 transfer. It shall be the duty of the commissioner of administrative services to determine
 34 which employees of the department are to be transferred pursuant to this subsection.

1 (3) The Department of Administrative Services shall transfer all documents, records, and
 2 reports relating to the payment of such salaries, benefits, and expenses, together with all
 3 computer hardware, computer software, data, and technical manuals necessary for the
 4 assumption of such duties by the Prosecuting Attorneys' Council of the State of Georgia
 5 without any disruption in the payment of such salaries, benefits, or expenses. Effective
 6 July 1, 2002, all physical property which was purchased by the Department of
 7 Administrative Services out of funds which were appropriated for the operation of the
 8 superior courts in order to carry out the duties assigned to the department or any of its
 9 divisions pursuant to Section 408 of the "Executive Reorganization Act of 1972,"
 10 approved April 6, 1972 (Ga. L. 1972, p. 1015), as amended, relative to district attorneys
 11 or as otherwise provided by law, shall be transferred to the Prosecuting Attorneys'
 12 Council of the State of Georgia in a manner to be mutually agreed upon by the
 13 commissioner of administrative services and the chairperson of the Prosecuting
 14 Attorneys' Council of the State of Georgia.

15 (4) The commissioner of administrative services is directed to make available without
 16 cost for a period not to exceed one fiscal year such technical assistance as may be
 17 requested by the Prosecuting Attorneys' Council of the State of Georgia or such persons
 18 or entities designated by the council to ensure that the transfer of said functions and
 19 personnel shall be accomplished without any disruption in the payment of salaries and
 20 expenses to district attorneys, personnel of district attorneys, and solicitors or solicitors-
 21 general of the state courts."

22 SECTION 7.

23 Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to enforcement
 24 of the duty of support, is amended by striking Code Section 19-11-58, relating to the
 25 designation of the Department of Human Resources as the state information agency under
 26 the "Uniform Reciprocal Enforcement of Support Act," and inserting in its place the
 27 following:

28 "19-11-58.

29 The Department of Human Resources is designated as the state information agency under
 30 this article and it shall be its duty:

31 (1) To compile a list of the courts in this state having jurisdiction under this article and
 32 their addresses and to transmit the same to the state information agency of every other
 33 state which has adopted this article or a substantially similar act;

1 (2) To maintain a register of such lists received from other states and to transmit copies
2 thereof, as soon as possible after receipt, to every court in this state having jurisdiction
3 under this article;

4 (3) To approve as to form all orders for payment of the district attorneys' fees and
5 forward same to the ~~commissioner of administrative services~~ Prosecuting Attorneys'
6 Council of the State of Georgia for payment; and

7 (4) To furnish to the district attorneys necessary forms, information, and assistance in
8 proceedings under this article."

9 SECTION 8.

10 Said chapter is further amended by striking Code Section 19-11-59, relating to payment of
11 the district attorney's fee under the "Uniform Reciprocal Enforcement of Support Act," and
12 inserting in its place the following:

13 "19-11-59.

14 The fee of the district attorney arising under this article shall be paid by the ~~commissioner~~
15 ~~of administrative services~~ Prosecuting Attorneys' Council of the State of Georgia upon
16 receipt of the order for the payment of such fees that has been approved by the state
17 information agency. ~~Payment shall be made from funds appropriated for the operation of~~
18 ~~the superior courts."~~

19 SECTION 9.

20 Said chapter is further amended by striking subsection (b) of Code Section 19-11-127,
21 relating to authority and fees of district attorneys under the "Uniform Interstate Family
22 Support Act," and inserting in its place the following:

23 "(b) Where a support order is established pursuant to Code Section 19-11-140 incident to
24 representation of the department by the district attorney, ~~there shall be paid to the county~~
25 ~~in which the petition is handled~~ the sum of \$50.00 for each such support order established
26 shall be transferred to the state operating budget of such district attorney, whether this state
27 is the initiating or responding jurisdiction. The funds of the district attorney arising under
28 this article shall be paid by the Prosecuting Attorneys' Council of the State of Georgia from
29 such funds as may be appropriated for the operation of the district attorneys upon receipt
30 of the order for the payment of such fees that has been approved by the state information
31 agency."

SECTION 10.

Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees, is amended by striking Code Section 45-8-1, relating to definitions of terms relating to accounting for public funds, and inserting in its place the following:

"45-8-1.

As used in this chapter, the term:

(1) 'Collecting officer' means any person who is either generally or specifically elected, appointed, or employed, in whole or in part, to collect any tax, revenue, or other moneys on behalf of the state or any of its political subdivisions or on behalf of any board, commission, bureau, or department thereof. The term shall not mean any state, municipality, or county tax collector or revenue agent pursuant to Title 48.

(2) 'County authority' means the judge of the probate court or the board of county commissioners or other tribunal, body, or officer having jurisdiction over the fiscal affairs of the county.

(3) 'Custodian' means the director of the Office of Treasury and Fiscal Services or any bank, savings association, or trust company that:

(A) Is organized and existing under the laws of this state, any other state, or the United States;

(B) Has executed all forms required under this chapter or any rule adopted under this chapter;

(C) Agrees to be subject to the jurisdiction of the courts of this state or of courts of the United States which are located within this state for the purpose of any litigation arising out of this chapter; and

(D) Has been approved by the director to act as a custodian;

and which holds a pool of collateral for public deposits established by a depository pursuant to Code Section 45-8-13.

(4) 'Daily pool balance' means the daily balance of deposits of public funds held by a depository which balance is secured by the pooled method as specified in paragraph (2) of subsection (b) of Code Section 45-8-13. Insured deposits and deposits of public funds for which no collateral is required under subsection (b) or (d) of Code Section 45-8-12 or special deposits and operating funds for which collateral has been duly waived pursuant to subsection (b) of Code Section 45-8-11 or paragraph (3) of Code Section 50-17-53 shall be excluded from the balance of deposits of public funds for purposes of determining the daily pool balance.

(5) 'Default' includes, without limitation, the failure or refusal of a public depository to pay any check or warrant drawn upon sufficient and collected funds by any public

1 depositor or to return any deposit on demand or at maturity together with interest as
 2 agreed; the issuance of an order by any supervisory authority restraining such depository
 3 from making payments of deposit liabilities; or the appointment of a receiver for such
 4 depository.

5 (6) 'Depository' means any bank designated, named, or appointed from time to time:

6 (A) By the State Depository Board as qualified to serve as a depository of state funds
 7 pursuant to Code Section 50-17-50;

8 (B) By county authorities or others as depositories for county and other public funds
 9 pursuant to Code Section 45-8-14; or

10 (C) By collecting officers and officers holding public funds as a depository for public
 11 funds pursuant to Code Section 45-8-11.

12 (7) 'Director' means the director of the Office of Treasury and Fiscal Services.

13 (8) 'Officer to hold public funds' means not only the director of the Office of Treasury
 14 and Fiscal Services, municipality or county treasurers, the State School Superintendent,
 15 municipality or county school superintendents, and treasurers of school districts, but also
 16 every other person, by whatever name or title called, who shall be either generally or
 17 specially elected, appointed, or employed with the duty, in whole or in part, to receive,
 18 hold, or disburse any public money or revenue on behalf of the state or any of its political
 19 subdivisions or on behalf of any board, commission, bureau, or department. Such term
 20 shall also include the Council of Superior Court Judges of Georgia and the Prosecuting
 21 Attorneys' Council of the State of Georgia and such officers, employees, or agents as
 22 they may authorize to hold public funds, and this chapter shall be fully applicable to such
 23 councils and such officers, employees, and agents.

24 (9) 'Proper authority' means the officer, board, commission, or other tribunal or body
 25 having the jurisdiction to act in the particular matter.

26 (10) 'Public body' means not only the state, municipalities, counties, school districts,
 27 drainage districts, and other districts created for special purposes, but also every other
 28 political subdivision of the state and every board, bureau, commission, and department
 29 of the state or any subdivision thereof, as the context may require.

30 (11) 'State authority' means the officer or officers or board, bureau, commission, or other
 31 person or persons who, in their official capacity, shall have, according to the laws of this
 32 state, the duty or jurisdiction to act on behalf of the state in the particular matter."

SECTION 11.

Said title is further amended by striking Code Section 45-9-3, relating to insuring and indemnification of law enforcement personnel serving on temporary assignments, and inserting in its place the following:

"45-9-3.

(a) Law enforcement personnel who are participants in any program coordinated and administered by the Georgia Organized Crime Prevention Council, which program provides for the temporary assignment or loan of local law enforcement personnel to other local law enforcement agencies for the purpose of such law enforcement officers serving as undercover agents in criminal investigations or in any other manner or capacity assisting such local agencies in criminal investigations, may be provided protection against personal liability for damages sustained by third parties and arising out of the performance of such law enforcement personnel's duties while serving on such temporary assignment or loan. The commissioner of administrative services shall prescribe the terms and conditions under which such personnel may be covered by any liability insurance policy or contract of indemnity or other like or similar programs administered by the commissioner pursuant to this article to provide such protection, ~~provided that persons employed by the district attorneys of the state, irrespective of the source of the funds used to pay such persons, shall be allowed to purchase policies of liability insurance and contracts of indemnity insurance and for the purpose of this article shall be considered to be state employees.~~

(b) All personnel employed by the district attorneys of this state, irrespective of the source of funds used to pay such persons, shall be provided policies of liability insurance and contracts of indemnity insurance the same as other state employees and for the purpose of this article shall be considered to be state employees. Any costs associated with such coverage shall be paid out of such funds as may be appropriated for the operations of the district attorneys."

SECTION 12.

Said title is further amended by striking Code section 45-18-14, relating to deductions from compensation and benefit payments under the state employees' health insurance plan and the payment of contributions to the health insurance fund by departments, boards, and agencies of the state, and inserting in its place the following:

"45-18-14.

During any period in which an employee is covered under this article prior to the date of his or her retirement, there shall be withheld from each salary payment or other compensation of such employee, as his or her share of the cost of coverage under this plan,

1 such portion of the premium or subscription charges under the terms of any contract or
 2 contracts issued in accordance with this article as may be established by the board. During
 3 any month in which benefits are being paid by the Employees' Retirement System of
 4 Georgia to an individual so covered under this program, contributions in the amounts
 5 prescribed by the board shall be deducted from such payments with the consent of the
 6 recipient. The various departments, boards, and agencies of the executive and judicial
 7 branches of state government shall contribute to the health insurance fund such portions
 8 of the cost of such benefits as may be established by the board and the Governor as funds
 9 become available in each department, board, and agency, based on a percentage of the total
 10 outlay for personal services in addition to an amount to be established by the board to
 11 defray the cost of administration and the state's portion of the cost of benefits payable for
 12 annuitants. The legislative fiscal officer shall contribute to the health insurance fund as an
 13 employer payment for and on behalf of all members of the General Assembly and its
 14 administrative and clerical personnel. The Department of Administrative Services shall
 15 contribute to the fund as an employer payment for and on behalf of ~~district attorneys,~~
 16 ~~assistant district attorneys appointed pursuant to Code Section 15-18-14,~~ and secretaries
 17 and law clerks of the superior courts of the state ~~and secretaries employed by district~~
 18 ~~attorneys.~~ The amount of such contributions shall be such portions of the costs of such
 19 benefits as may be established by the board as a percent of the total outlay of services
 20 rendered by members of the General Assembly; and its administrative and clerical
 21 personnel, ~~and the district attorneys of the superior courts of the state;~~ and, in addition
 22 thereto, an amount to be established by the board shall be contributed to defray the costs
 23 of administration.

24 If an employee has been eligible for coverage under the state health insurance plan for a
 25 period of ten years and is discharged from employment and the discharge is under appeal
 26 to the State Personnel Board, such employee shall be entitled to continue coverage by
 27 paying the employee contribution under the health insurance plan until the State Personnel
 28 Board has rendered a decision or for a period of six months, whichever is less."

29 SECTION 13.

30 Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, is
 31 amended by striking subsections (b), (c), and (d) of Code Section 47-2-260, relating to
 32 continuation in the Employees' Retirement System of Georgia of membership, rights, and
 33 benefits of judges of the superior courts and district attorneys, notices of elections, and
 34 contributions, and inserting in its place the following:

1 other publicly supported retirement or pension system or fund may elect to become a
 2 member of the retirement system in lieu of membership in such other publicly supported
 3 retirement or pension system or fund by notifying the board of trustees of such election
 4 within 90 days after becoming employed with the Prosecuting Attorneys' Council of the
 5 State of Georgia. Any such employee who fails to notify the board of trustees within such
 6 time shall not at any time thereafter be eligible for membership in the retirement system.
 7 The state salary paid to employees who become members of the retirement system shall be
 8 the basis for employee and employer contributions for such employees. All employer
 9 contributions required by this chapter for such members shall be paid from funds
 10 appropriated or otherwise made available for the operation of the ~~superior courts~~ district
 11 attorneys. The ~~commissioner of administrative services~~ fiscal officer shall deduct from the
 12 state salaries payable to such members the employee contributions required by this
 13 chapter."

14 SECTION 15.

15 Said title is further amended by striking subsection (a) of Code Section 47-2-264, relating
 16 to membership in the Employees' Retirement System of Georgia of secretaries employed by
 17 judges of the superior courts and district attorneys, and inserting in its place the following:

18 "(a) Each secretary employed by a judge of the superior court or a district attorney under
 19 Code Section 15-6-25 or 15-18-17 shall be a member of the Employees' Retirement
 20 System of Georgia with a commencement date of July 1, 1975. Any such secretary who is
 21 already a member of the retirement system by virtue of service with another employer shall
 22 be entitled to credit for all service rendered while an employee under the retirement system.
 23 All contributions required under this chapter shall be paid from funds appropriated or
 24 otherwise available for the operation of the ~~superior courts~~ judicial branch, and all such
 25 payments shall be in addition to the regular compensation provided by law for such
 26 secretaries."

27 SECTION 16.

28 Said title is further amended by striking subsection (d) of Code Section 47-2-265, relating
 29 to membership in the Employees' Retirement System of Georgia of district attorney
 30 investigators, and inserting in its place the following:

31 "(d) The state salaries paid to district attorney investigators who become members of the
 32 retirement system pursuant to this Code section shall be the basis for employee and
 33 employer contributions to the retirement system for such members. All employer
 34 contributions, including employee contributions made by the employer on behalf of

1 members, which are required by this chapter for such members shall be paid from funds
 2 appropriated or otherwise made available for the operation of the ~~superior courts~~ district
 3 attorneys. ~~The Department of Administrative Services shall deduct from the state salaries~~
 4 ~~payable to such members~~ the additional employee contributions required by this chapter
 5 shall be deducted from the state salaries payable to such members."

6 SECTION 17.

7 Said title is further amended by striking Code Section 47-2-267, relating to membership in
 8 the Employees' Retirement System of Georgia of employees of district attorneys, and
 9 inserting in its place the following:

10 "47-2-267.

11 Except as provided in Code Section 47-2-265, each full-time employee of a district
 12 attorney, which employee is compensated through funds appropriated by the General
 13 Assembly, shall be a member of this retirement system as a condition of employment. Any
 14 such employee who is already a member of this retirement system by virtue of service with
 15 another employer shall be entitled to credit for all service rendered while an employee
 16 under the retirement system. All contributions required under this chapter shall be paid
 17 from funds appropriated or otherwise available for the operation of the ~~superior courts~~
 18 district attorneys. ~~The Department of Administrative Services~~ fiscal officer shall deduct
 19 from the state salaries paid to such members the employee contributions required by this
 20 chapter."

21 SECTION 18.

22 Said title is further amended by adding at the end of Code Section 47-2-290, relating to
 23 judges, solicitors-general, and other employees of state courts and their membership in the
 24 Employees' Retirement System of Georgia, a new subsection (e) to read as follows:

25 "(e) Effective July 1, 2002, the employer contribution required by subsection (a) of this
 26 Code section shall be paid by the superior courts except that any employer contributions
 27 to be paid on behalf of a solicitor or solicitor-general of a state court or an employee of
 28 such solicitor or solicitor-general shall be paid by the Prosecuting Attorneys' Council of
 29 the State of Georgia."

30 SECTION 19.

31 Said title is further amended by striking subsection (a) of Code Section 47-23-80, relating
 32 to contributions to the Georgia Judicial Retirement System by superior court judges and
 33 district attorneys, and inserting in its place the following:

