

Senate Bill 108

By: Senators Stephens of the 51st, Lee of the 29th and Crotts of the 17th

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 10 of Title 45 of the Official Code of Georgia Annotated, relating to
 2 codes of ethics and conflicts of interest, so as to provide for comprehensive revision of
 3 provisions regarding ethics and conflicts of interest; to change certain provisions establishing
 4 a code of ethics for government service; to provide for definitions; to change certain
 5 provisions establishing a code of ethics for members of boards, commissions, and authorities;
 6 to change certain provisions regarding rule making; to provide for recusal in certain
 7 proceedings; to change certain provisions regarding enforcement; to provide for review and
 8 enforcement by the State Ethics Commission; to provide for powers, duties, and authority
 9 of the State Ethics Commission and the Attorney General; to provide for civil and criminal
 10 penalties; to provide cumulative application of certain provisions; to provide for restrictions
 11 with respect to lobbying; to provide for restrictions with respect to nepotism; to provide for
 12 restrictions with respect to confidential information; to provide for restrictions with respect
 13 to gifts and honoraria; to provide for restrictions with respect to campaign contributors; to
 14 provide for disclosure of transactions with political subdivisions; to change the date for the
 15 filing of such disclosure statements; to provide for related matters; to provide an effective
 16 date; to repeal conflicting laws; and for other purposes.

17 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18 **SECTION 1.**

19 Chapter 10 of Title 45 of the Official Code of Georgia Annotated, relating to codes of ethics
 20 and conflicts of interest, is amended by striking Article 1, relating to codes of ethics, in its
 21 entirety and inserting in its place a new Article 1, relating to ethics and conflicts of interest,
 22 to read as follows:

"ARTICLE 1

Part 1

45-10-1.

There is established for and within the state and for and in all governments therein a code of ethics for government service which shall read as follows:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in government service should:

- I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.
- II. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.
- III. Give a full day's labor for a full day's pay and give to the performance of his or her duties his or her earnest effort and best thought.
- IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or herself or his or her family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his or her governmental duties.
- VI. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
- VII. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his or her governmental duties.
- VIII. Never use any information coming to him or her confidentially in the performance of governmental duties as a means for making private profit.
- IX. Expose corruption wherever discovered.
- X. Afford all constituents fair and equal opportunity to express their concerns and ideas regarding state programs and policies without regard to their political affiliation, sophistication, or affluence.
- XI. Carry out his or her duties and responsibilities without bias.
- XII. Never engage in conduct which is unbecoming to a person in government service or which constitutes a breach of public trust.
- XIII. Uphold these principles, ever conscious that public office is a public trust.
- XIV. Tell the truth at all times.

1 45-10-2.

2 (a) The Secretary of State is authorized and directed to have the code of ethics for
3 government service established in Code Section 45-10-1 printed upon an appropriately
4 designed card which would be suitable for framing and exhibiting to the public and
5 employees of the state and all governments therein.

6 (b) The Secretary of State is authorized and directed to have such number of said code of
7 ethics for government service printed as, in his or her discretion, will be sufficient for
8 distribution to the various departments, boards, bureaus, and other agencies of the state and
9 all governments therein.

10 (c) The Secretary of State is authorized and directed to furnish said printed code of ethics
11 for government service to the various departments, boards, bureaus, and other agencies of
12 the state and all governments therein without cost.

13 (d) The expenses incurred by the Secretary of State in carrying out this Code section shall
14 be paid from the funds appropriated to or otherwise available to the legislative branch of
15 government.

16 Part 2

17 45-10-5.

18 As used in this part, the term:

19 (1) 'Charitable organization' means any charitable organization as defined in Code
20 Section 45-20-51.

21 (2) 'Employee' means every person employed by the executive, legislative, or judicial
22 branch of state government or any department, board, bureau, agency, commission, or
23 authority thereof, including every public officer.

24 (3) 'Family member' means an individual who is related to the public officer as husband,
25 wife, father, mother, son, daughter, brother, sister, uncle, aunt, nephew, niece, first
26 cousin, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law,
27 sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister,
28 half-brother, or half-sister.

29 (4) 'Gift' means anything of value exceeding \$100.00 including, but not limited to, food,
30 beverages, lodging, travel, transportation, personal services, gratuities, subscriptions,
31 memberships, trips, loans, extensions of credit, forgiveness of debts, or advances or
32 deposits of money. Gift shall not include a bona fide loan made by a state or federally
33 chartered financial institution or a depository institution whose deposits are insured by
34 the Federal Deposit Insurance Corporation if such loan is made in the normal course of
35 business with the expectation on the part of all parties that such loan shall be repaid and

1 such loan is based on the credit worthiness of the borrower and the borrower is personally
2 liable for the repayment of the loan.

3 (5) 'Participant' includes, but is not limited to, an owner, shareholder, partner, employee,
4 or agent of a business entity involved in the proceeding.

5 (6) 'Person' means any natural person, corporation, partnership, proprietorship, firm,
6 enterprise, franchise, association, organization, or other legal entity.

7 (7) 'Public officer' means every constitutional officer, elected state official, elected or
8 appointed executive head of every state department or agency, member of the General
9 Assembly, and executive director and member of each state board, authority, or
10 commission.

11 45-10-6.

12 No public officer shall accept any economic opportunity under circumstances where he or
13 she knows or should know that there is a substantial possibility that the opportunity is being
14 afforded him or her with intent to influence his or her conduct in the performance of his or
15 her official duties.

16 45-10-7.

17 No public officer shall take any official action with regard to any matter under
18 circumstances in which he or she knows or should know that he or she has a direct or
19 indirect monetary interest in the subject matter of such matter or in the outcome of such
20 official action.

21 45-10-8.

22 (a) A public officer shall recuse himself or herself from any proceeding in which the
23 public officer's impartiality might reasonably be questioned due to the public officer's
24 personal or financial relationship with a participant in the proceeding. If the public officer
25 is uncertain whether the relationship justifies recusal, then the public officer shall disclose
26 the relationship to the person presiding over the proceeding unless another procedure is
27 specifically provided by law. The presiding officer shall determine the extent to which, if
28 any, the public officer will be permitted to participate. If the affected public officer is the
29 person presiding, then the vice chairperson or such other substitute presiding officer shall
30 make the determination.

31 (b) The provisions of this Code section shall not be construed as repealing or superseding
32 any provision of law which specifically provides procedures for the recusal or
33 disqualification of a public officer and the substitution of another for such officer or that
34 provides additional grounds for the disqualification of a public officer.

1 45-10-9.

2 On and after January 1, 2004, every public officer shall be prohibited from registering as
3 a lobbyist or engaging in lobbying under Article 4 of Chapter 5 of Title 21, as amended,
4 for a period of one year after leaving such office.

5 45-10-10.

6 (a) Every public officer is prohibited from advocating for or causing the advancement,
7 appointment, employment, promotion, or transfer of a family member to an office or
8 position that pays an annual salary of \$10,000.00 or more or its equivalent.

9 (b) Any person advanced, appointed, employed, promoted, or transferred in violation of
10 this Code section shall not be entitled to any payment, salary, or benefits received for any
11 position so illegally obtained; and any person who receives payment, salary, or benefits for
12 a position obtained in violation of this Code section shall be required to reimburse the state
13 for all amounts so received.

14 45-10-11.

15 No public officer shall use confidential information gained in the course of governmental
16 duties as a means for private benefit.

17 45-10-12.

18 (a) Except as provided in subsection (c) of this Code section, no public officer or employee
19 nor any person on such public officer's or employee's behalf shall accept, directly or
20 indirectly, any gift from any person with whom the public officer or employee interacts on
21 official state business, including, but not limited to, lobbyists within the meaning of Article
22 4 of Chapter 5 of Title 21, as amended. If a gift has been accepted, it must be returned to
23 the donor or transferred to a charitable organization.

24 (b)(1) Except as provided in subsection (c) of this Code section, no public officer shall
25 accept any monetary fee or honorarium for a speaking engagement, participation in a
26 seminar, discussion panel, or other such activity; provided, however, that a part-time
27 public officer may accept a monetary fee or honorarium if:

28 (A) The public officer's private employment or profession requires public speaking;
29 and

30 (B) The speaking engagement, seminar, discussion panel, or other activity does not
31 relate to the official duties of the public officer.

32 (2) A part-time public officer who accepts a monetary fee or honorarium in accordance
33 with this Code section shall file a financial disclosure statement in accordance with Code
34 Section 21-5-50.

1 (c)(1) For purposes of this Code section, reimbursement or payment of actual and
2 reasonable expenses for food, beverages, travel, transportation, lodging, and registration
3 for a meeting which is provided to a public officer or employee to permit such public
4 officer's or employees' participation in a panel or speaking engagement at the meeting
5 shall not be considered gifts, monetary fees, or honoraria.

6 (2) Where appropriate for purposes of tradition, ceremony, or intergovernmental
7 relations or when acting as a representative of a department, board, bureau, agency,
8 commission, or authority, a public officer or employee may accept a gift on behalf of
9 such department, board, bureau, agency, commission, or authority. If the gift retains
10 value after its acceptance, the public officer or employee must maintain custody of the
11 gift no longer than reasonably necessary to arrange for the transfer of custody of the gift
12 to the public officer's or employee's department, board bureau, agency, commission, or
13 authority or to a charitable organization on behalf of such department, board, bureau,
14 agency, commission, or authority.

15 45-10-13.

16 No elected public officer or employee or agent of an elected public officer shall advocate
17 for or cause the receipt or award of any state contract to a person who has made a campaign
18 contribution to the elected public officer or the elected public officer's campaign
19 committee in the current or immediately preceding election cycle.

20 45-10-14.

21 (a) For purposes of this Code section, the term 'commission' shall mean the State Ethics
22 Commission, as defined in paragraph (5) of Code Section 21-5-3.

23 (b) Any complaint alleging a violation of this part or Part 1 of Article 2 of this chapter
24 shall be filed with the commission and shall be in writing and verified under oath to the
25 best information, knowledge, and belief of the person making such complaint, the
26 falsification of which shall be punishable as a false swearing under Code Section 16-10-71.
27 The person against whom any complaint is made shall be furnished or mailed a copy of the
28 complaint by the commission upon the commission's receipt of such complaint and prior
29 to any other public dissemination of such complaint.

30 (c) Within 60 days following the filing of a complaint alleging a violation of this part or
31 Part 1 of Article 2 of this chapter with the commission, the commission shall conduct a
32 preliminary investigation into such complaint to determine whether there are reasonable
33 grounds to believe that such a violation has occurred. If there are found no reasonable
34 grounds to believe that a violation has occurred, the complaint shall be dismissed, subject
35 to being reopened upon discovery of additional evidence or relevant material. If the

1 commission determines that there are such reasonable grounds to believe that a violation
 2 has occurred, the commission shall conduct a hearing for purposes of receiving evidence
 3 relative to the merits of the complaint. The hearing shall be conducted in accordance with
 4 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' If the commission
 5 reaches a final decision that no violation of this part or Part 1 of Article 2 of this chapter
 6 has occurred, the complaint shall be dismissed. If the commission reaches a final decision
 7 that such a violation has occurred, the commission shall issue an order directing
 8 compliance with this part or Part 1 of Article 2 of this chapter or prohibiting the actual or
 9 threatened commission of any conduct constituting a violation of this part or Part 1 of
 10 Article 2 of this chapter. In addition, the commission may:

11 (1) Order the violator to cease and desist from committing further violations;

12 (2) Order the violator to pay a civil penalty not to exceed \$10,000.00 for each violation
 13 of this part or Part 1 of Article 2 of this chapter. The amount of any civil penalty finally
 14 assessed shall be recoverable by a civil action brought in the name of the commission.
 15 All moneys recovered pursuant to this Code section shall be deposited in the state
 16 treasury; or

17 (3) Issue a recommendation to the appropriate body that the violator be removed from
 18 office or otherwise disciplined, to the extent permitted by applicable law.

19 Any person found to have violated this part or Part 1 of Article 2 of this chapter by a final
 20 decision of the commission is entitled to judicial review in accordance with Chapter 13 of
 21 Title 50, the 'Georgia Administrative Procedure Act.'

22 (d) The Attorney General shall, upon complaint by the commission, or may, upon the
 23 Attorney General's own initiative if after examination of the complaint and evidence the
 24 Attorney General believes a violation has occurred, bring an action in the superior court
 25 in the name of the commission for a temporary restraining order or other injunctive relief
 26 or for civil penalties assessed against any person violating this part or Part 1 of Article 2
 27 of this chapter. Any action brought by the Attorney General to enforce civil penalties
 28 assessed against any person for violating this part or Part 1 of Article 2 of this chapter or
 29 any order issued by the commission ordering compliance or to cease and desist from
 30 further violations shall be brought in the superior court of the county of the residence of the
 31 party against whom relief is sought. Service of process shall lie in any jurisdiction within
 32 the state. In such an action, the superior court inquiry will be limited to whether notice was
 33 given by the commission to the violator in compliance with the Constitution and the rules
 34 of procedure of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Upon
 35 satisfaction that notice was given and a hearing was held pursuant to Chapter 13 of Title
 36 50, the 'Georgia Administrative Procedure Act,' the superior court shall enforce the orders
 37 of the commission and the civil penalties assessed under this Code section and the superior

1 court shall not make independent inquiry as to whether the violations have occurred. The
2 judgment of the superior court, if in favor of the commission, shall provide that the
3 defendant pay to the commission the costs, including reasonable attorneys' fees, incurred
4 by the commission in the prosecution of such an action.

5 45-10-15.

6 (a) The State Ethics Commission shall have the same powers and duties with respect to
7 this part and to Part 1 of Article 2 of this chapter as the commission has with respect to
8 Chapter 5 of Title 21. Without limiting the generality of the foregoing, it is specifically
9 provided that the State Ethics Commission shall have the following powers and duties with
10 respect to this part and Part 1 of Article 2 of this chapter, such powers and duties to be
11 exercised and construed in the same general manner provided for in Chapter 5 of Title 21:

12 (1) To issue subpoenas;

13 (2) To institute and prosecute actions in the superior courts;

14 (3) To adopt rules and regulations;

15 (4) To prescribe forms;

16 (5) To make investigations;

17 (6) To report suspected violations of law;

18 (7) To issue advisory opinions;

19 (8) To issue orders directing compliance with this part or Part 1 of Article 2 of this
20 chapter or prohibiting the violation of this part or Part 1 of Article 2 of this chapter and
21 to impose civil penalties not to exceed \$10,000.00 for each violation of this part or Part
22 1 of Article 2 of this chapter.

23 (b) The Attorney General shall have the same powers and duties with respect to this part
24 or Part 1 of Article 2 of this chapter as the Attorney General has with respect to Chapter
25 5 of Title 21. Without limiting the generality of the foregoing it is specifically provided that
26 the Attorney General may bring civil actions for the enforcement of this part or Part 1 of
27 Article 2 of this chapter in the same general manner as provided in Chapter 5 of Title 21.

28 (c) Upon formal charges being filed with the Governor relative to a violation of this part
29 by any public officer appointed by the Governor, the Governor or his or her designated
30 agent shall conduct a hearing for the purpose of receiving evidence relative to the merits
31 of such charges. The member so charged shall be given at least 30 days' notice prior to
32 such hearing. If such charges are found to be true, the Governor shall forthwith remove
33 such member from office and the vacancy shall be filled as provided by law. Such hearing
34 shall be held in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
35 Procedure Act,' and judicial review of any such decision shall be in accordance with such
36 chapter.

1 (d) Criminal penalties and other enforcement procedures provided in this part and Part 1
 2 of Article 2 of this chapter shall be cumulative to and not in lieu of the enforcement
 3 authority granted to the State Ethics Commission under this Code section or to the Supreme
 4 Court and the Judicial Qualifications Commission with regard to public officers subject to
 5 the jurisdiction of the Supreme Court or the Judicial Qualifications Commission; provided,
 6 however, that if the State Ethics Commission imposes a civil monetary penalty for a
 7 violation of this part or Part 1 of Article 2 of this chapter, no further civil monetary penalty
 8 may be imposed for such violation under any other provision of this part and Part 1 of
 9 Article 2 of this chapter.

10 45-10-16.

11 The provisions of this part or Part 1 of Article 2 of this chapter are in addition to or
 12 cumulative of any other criminal penalties imposed by law. Notwithstanding any other
 13 provision of law to the contrary, an administrative or civil enforcement action brought
 14 pursuant to this part or Part 1 of Article 2 of this chapter shall not bar the prosecution of
 15 any violation of the criminal law of this state."

16 SECTION 1.1.

17 Said chapter is further amended by striking subsection (a) of Code Section 45-10-26, relating
 18 to yearly disclosure statements of public officials and employees concerning business
 19 transactions with the state, and inserting in its place the following:

20 "(a) Except as provided in subsection (b) of this Code section, any public official or
 21 employee, whether for himself or herself or on behalf of any business, or any business in
 22 which such public official or employee or any member of his or her family has a substantial
 23 interest who transacts business with the state or any agency thereof or with any political
 24 subdivision of the state shall disclose such transactions. In addition, if any business in
 25 which the children of any such public official have a substantial interest transacts business
 26 with the state or any agency or any political subdivision, such public official shall also
 27 disclose such transactions if the public official has actual knowledge of such ownership
 28 interest or knowledge of facts which put a reasonable and prudent person on notice of such
 29 ownership. Such disclosure shall be submitted prior to January 31 not before the first day
 30 of January nor later than July 1 of each year to the Secretary of State on such forms as he
 31 or she shall prescribe and shall include an itemized list of the previous year's transactions
 32 with the dollar amount of each transaction reported and totaled. Such disclosure statements
 33 shall be public records. As used in this subsection, the term 'political subdivision' means
 34 the state or any local subdivision of the state or public instrumentality or public corporate
 35 body created by or under authority of state law, including, but not limited to,

1 municipalities, counties, school districts, special taxing districts, conservation districts,
2 authorities, and any other state or local public instrumentality or corporation which has the
3 right to bring and defend actions or to issue its bonds or other obligations as evidence of
4 indebtedness under any provision of law and also means any corporate or other entity
5 which leases a public improvement to such political subdivision; and the term also means
6 the governing body of such political subdivision and its members and officers in their
7 official capacity."

8 **SECTION 2.**

9 This Act shall become effective on July 1, 2003.

10 **SECTION 3.**

11 All laws and parts of laws in conflict with this Act are repealed.