

House Bill 670

By: Representatives Clark of the 98th, Cooke of the 18th, Allison of the 8th, Ramsey of the 72nd, Collins of the 27th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 50 of the Official Code of Georgia Annotated, relating to state government,
2 so as to create the Constitutional Guardian Advisory Council; to provide legislative findings;
3 to provide for definitions; to provide for composition, officers, and meetings of the council;
4 to provide for duties and powers; to provide for criteria for evaluation of a federal law; to
5 provide for coordination with other states; to provide for related matters; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
10 by adding a new chapter to read as follows:

11 "CHAPTER 38

12 50-38-1.

13 (a) The General Assembly finds the following fundamental, constitutional duties of the
14 states, as evidenced by the framers of the Constitution:

15 (1) Be the 'sure guardians of the people's liberty' (James Madison);

16 (2) Prevent the federal government 'from overpassing their constitutional limits'
17 (Alexander Hamilton);

18 (3) 'Erect barriers at the constitutional line as cannot be surmounted either by themselves
19 or by the General Government' (Thomas Jefferson); and

20 (4) 'Jealously and closely watch the [federal] government, and be able to resist . . . every
21 assumption of power, [better] than any other power on earth can do' (James Madison).

22 (b) The General Assembly further finds that, in the words of framer John Dickinson, 'it
23 will be their own FAULTS, if the several states suffer the federal sovereignty to interfere
24 in the things of their respective jurisdictions.'

25 50-38-2.

26 As used in this chapter, the term:

27 (1) 'Council' means the Constitutional Guardian Advisory Council created pursuant to
 28 Code Section 50-38-3.

29 (2) 'Federal governmental entity' means:

30 (A) The President of the United States;

31 (B) The United States Congress;

32 (C) A United States agency; or

33 (D) An employee or official appointed by the President of the United States.

34 (3) 'Federal law' means:

35 (A) An executive order of the President of the United States;

36 (B) A statute passed by the United States Congress;

37 (C) A regulation adopted by a United States agency; or

38 (D) A policy statement, guidance, or action by:

39 (i) A United States agency; or

40 (ii) An employee or official appointed by the President of the United States.

41 (4) 'United States agency' means a department, agency, authority, commission, council,
 42 board, office, bureau, or other administrative unit of the executive branch of the United
 43 States government.

44 50-38-3.

45 (a) There is created the Constitutional Guardian Advisory Council which shall consist of
 46 12 members as follows:

47 (1) The Governor;

48 (2) The Lieutenant Governor;

49 (3) The President Pro Tempore of the Senate;

50 (4) The Speaker of the House of Representatives;

51 (5) The minority leader of the Senate;

52 (6) The minority leader of the House of Representatives;

53 (7) The Attorney General;

54 (8) The commissioner of natural resources;

55 (9) The Commissioner of Agriculture;

56 (10) The commissioner of economic development;

57 (11) The Commissioner of Insurance; and

58 (12) The commissioner of community health.

59 Members of the council may designate a person to serve in his or her place.

60 (b) The Governor or his or her designee shall serve as chairperson of the council. The
 61 Attorney General or his or her designee shall serve as vice chairperson of the council. The
 62 vice chairperson shall conduct council meetings in the absence of the chairperson. When
 63 a vacancy occurs in the membership of the council, such member shall be replaced in the
 64 same manner in which the original appointment was made.

65 (c) The council shall meet at least monthly or more frequently as needed; provided,
 66 however, that the council need not meet monthly if the chairperson, after polling the
 67 members, determines that a majority of the members do not wish to meet. The chairperson
 68 may call a meeting of the council. Prior to calling a meeting, however, the chairperson
 69 shall solicit items for the agenda from other members of the council. A majority of
 70 members of the council shall constitute a quorum.

71 (d) All departments and agencies of the state, shall, upon request of the council or the
 72 Governor, provide requested services, information, and technical support, notwithstanding
 73 any other law to the contrary.

74 (e) Members of the council shall receive no compensation for their services, except that:

75 (1) Executive branch members may be reimbursed for actual expenses incurred in the
 76 performance of their duties by the agency or department in which they serve as an official
 77 or employee; and

78 (2) Legislative members shall receive the same per diem expense amounts and
 79 transportation or mileage costs at the legal rate as are granted to members of interim
 80 legislative committees.

81 50-38-4.

82 (a) The Constitutional Guardian Advisory Council shall advise the Governor and the
 83 General Assembly on the following types of issues:

84 (1) The constitutionality of federal laws;

85 (2) When making recommendations to challenge the federal laws and regulations
 86 described in subparagraphs (A) through (E) of paragraph (3) of this subsection, the
 87 rationale for and effectiveness of those federal laws or regulations; and

88 (3) The advisability, feasibility, estimated cost, and likelihood of success of challenging:

89 (A) Federal court rulings that:

90 (i) Hinder the management of the state's prison system and place undue financial
 91 hardship on the state's taxpayers;

92 (ii) Impact a power or a right reserved to the people or the state by the Ninth or Tenth
 93 Amendment to the United States Constitution; or

94 (iii) Expand or grant a power to the United States government beyond the limited,
 95 enumerated powers granted by the United States Constitution;

96 (B) Federal laws or regulations that reduce or negate water rights, or the rights of
 97 owners of private property, or the rights and interest of state and local governments,
 98 including sovereignty interests and the power to provide for the health, safety, and
 99 welfare of and promote the prosperity of their inhabitants;

100 (C) Conflicting federal regulations or policies in land management on federal land;

101 (D) Federal intervention that would damage the state's mining, timber, and agricultural
 102 industries;

103 (E) The authority of the Environmental Protection Agency and Congress to mandate
 104 local air quality standards and penalties; and

105 (F) Other issues that are relevant to this subsection.

106 (b) The council may request the Attorney General or his or her designee to provide
 107 recommendations and analyses on potential legal actions that would enhance the state's
 108 sovereignty or authority on issues affecting Georgia and the well-being of its citizens.

109 (c) The council may recommend to the Governor that he or she direct the Attorney General
 110 to initiate and prosecute any action that the council recommends.

111 (d) Subject to appropriations, the council may employ attorneys to assist in its duties.

112 (e) The council shall submit a report to each legislator on December 1 of each year by
 113 electronic mail that summarizes the council's activities.

114 50-38-5.

115 (a) In accordance with Code Section 50-38-6, the council shall evaluate a federal law
 116 submitted to the council by a councilmember.

117 (b) The council may request information regarding a federal law under evaluation from a
 118 United States Senator or Representative elected from this state.

119 (c) If the council finds that a federal law is not authorized by the United States
 120 Constitution or violates the principle of federalism as described in subsection (b) of Code
 121 Section 50-38-6, the council may:

122 (1) Request from a United States Senator or Representative elected from the state:

123 (A) Information about the federal law; or

124 (B) Assistance in communicating with a federal governmental entity regarding the
 125 federal law;

126 (2)(A) Give written notice of the evaluation required by subsection (a) of this Code
 127 section to the federal governmental entity responsible for adopting or administering the
 128 federal law; and

129 (B) Request a response to the evaluation from the federal governmental entity by a
 130 specific date; and

131 (3) Request a meeting, conducted in person or by electronic means, with the federal
 132 governmental entity and a councilmember, a representative from another state, or a
 133 United States Senator or Representative elected from this state to discuss the evaluation
 134 of federal law and any possible remedy.

135 (d) The council may recommend to the Governor that the Governor call a special session
 136 of the General Assembly to give the legislature an opportunity to respond to the council's
 137 evaluation of a federal law.

138 (e) The council may coordinate the evaluation of and response to federal law with another
 139 state as provided in Code Section 50-38-7.

140 50-38-6.

141 (a) The council shall evaluate whether a federal law submitted pursuant to subsection (a)
 142 of Code Section 50-38-5 is authorized by the:

143 (1) United States Constitution, Article I, Section 2, to provide for the decennial census;

144 (2) United States Constitution, Article I, Section 4, to override state laws regulating the
 145 times, places, and manner of congressional elections, other than the place of senatorial
 146 elections;

147 (3) United States Constitution, Article I, Section 7, to veto bills, orders, and resolutions
 148 by Congress;

149 (4) United States Constitution, Article I, Section 8, to:

150 (A) Lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for
 151 the common defense and general welfare of the United States, but all duties, imposts,
 152 and excises shall be uniform throughout the United States;

153 (B) Borrow money on the credit of the United States;

154 (C) Regulate commerce with foreign nations, among the several states, and with the
 155 Indian tribes;

156 (D) Establish a uniform rule of naturalization and uniform laws on the subject of
 157 bankruptcies throughout the United States;

158 (E) Coin money, regulate the value of coin money and of foreign coin, and fix the
 159 standard of weights and measures;

160 (F) Provide for the punishment of counterfeiting the securities and current coin of the
 161 United States;

162 (G) Establish post offices and post roads;

163 (H) Promote the progress of science and useful arts, by securing for limited times to
 164 authors and inventors the exclusive right to their respective writings and discoveries;

165 (I) Constitute tribunals inferior to the United States Supreme Court;

- 166 (J) Define and punish piracies and felonies committed on the high seas and offenses
 167 against the law of nations;
- 168 (K) Declare war, grant letters of marque and reprisal, and make rules concerning
 169 captures on land and water;
- 170 (L) Raise and support armies, but no appropriation of money to that use shall be for a
 171 longer term than two years;
- 172 (M) Provide and maintain a navy;
- 173 (N) Make rules for the government and regulation of the land and naval forces;
- 174 (O) Provide for calling forth the militia to execute the laws of the union, suppress
 175 insurrections, and repel invasions;
- 176 (P) Provide for organizing, arming, and disciplining the militia and for governing the
 177 part of the militia that may be employed in the service of the United States, reserving
 178 to the states respectively the appointment of the officers and the authority of training
 179 the militia according to the discipline prescribed by Congress;
- 180 (Q) Exercise exclusive legislation in all cases whatsoever, over such district, which
 181 may not exceed 10 miles square, as may, by cession of particular states and the
 182 acceptance of Congress, become the seat of the government of the United States, and
 183 to exercise like authority over all places purchased by the consent of the legislature of
 184 the state in which the place shall be, for the erection of forts, magazines, arsenals, dock
 185 yards, and other needful buildings; or
- 186 (R) Make all laws which shall be necessary and proper for carrying into execution the
 187 powers listed in this section, and all other powers vested by the United States
 188 Constitution in the government of the United States, or in any department or officer of
 189 the United States;
- 190 (5) United States Constitution, Article I, Section 9, to authorize a federal officer to
 191 receive benefits from a foreign nation;
- 192 (6) United States Constitution, Article I, Section 10, to approve certain state actions;
- 193 (7) United States Constitution, Article II, Section 1, to set the time for choosing electors;
- 194 (8) United States Constitution, Article II, Section 2, to:
- 195 (A) Serve as Commander in Chief of the armed forces;
- 196 (B) Require the written opinions of executive officers;
- 197 (C) Grant reprieves and pardons;
- 198 (D) Make vacancy appointments;
- 199 (E) Make treaties, subject to the advice and consent of the United States Senate;
- 200 (F) Appoint foreign affairs officers subject to the advice and consent of the United
 201 States Senate;

- 202 (G) Appoint domestic affairs officers subject either to the advice and consent of the
 203 United States Senate or pursuant to law;
- 204 (H) Appoint judges subject to the advice and consent of the United States Senate; or
 205 (I) Authorize the President to fill designated inferior offices without senatorial consent;
- 206 (9) United States Constitution, Article II, Section 3, to:
- 207 (A) Receive representatives of foreign powers;
 208 (B) Execute the laws;
 209 (C) Commission United States officers;
 210 (D) Give Congress information on the state of the union;
 211 (E) Make recommendations to Congress;
 212 (F) Convene Congress on extraordinary occasions; or
 213 (G) Adjourn Congress if it cannot agree on a time;
- 214 (10) United States Constitution, Article III, to:
- 215 (A) Create exceptions to the United States Supreme Court's appellate jurisdiction;
 216 (B) Fix the jurisdiction of federal courts inferior to the Supreme Court; or
 217 (C) Declare the punishment for treason;
- 218 (11) United States Constitution, Article IV, Section 1, to establish the rules by which the
 219 records and judgments of states are proved in other states;
- 220 (12) United States Constitution, Article IV, Section 3, to:
- 221 (A) Manage federal property;
 222 (B) Dispose of federal property;
 223 (C) Govern the federal territories; or
 224 (D) Consent to admission of new states or the combination of existing states;
- 225 (13) United States Constitution, Article IV, Section 4, to defend states from invasion,
 226 insurrection, and non-republican forms of government;
- 227 (14) United States Constitution, Article V, to propose constitutional amendments;
 228 (15) United States Constitution, Article VI, to prescribe the oath for federal officers;
 229 (16) United States Constitution, Amendment XIII, to abolish slavery;
 230 (17) United States Constitution, Amendment XIV, to guard people from certain state
 231 abuses;
- 232 (18) United States Constitution, Amendment XVI, to impose taxes on income from any
 233 source without having to apportion the total dollar amount of tax collected from each
 234 state according to each state's population in relation to the total national population;
- 235 (19) United States Constitution, Amendment XX, to revise the manner of presidential
 236 succession if there is no President-elect;
- 237 (20) United States Constitution, Amendment XV, XIX, XXIII, or XXIV, to extend and
 238 protect the right to vote; or

239 (21) United States Constitution, Amendment XXVII, to grant a pay raise to a sitting
 240 Congress.

241 (b) The council shall evaluate whether a federal law submitted pursuant to subsection (a)
 242 of Code Section 50-38-5 violates the principle of federalism by:

243 (1) Affecting the distribution of power and responsibility among the state and national
 244 governments;

245 (2) Limiting the policymaking discretion of the state;

246 (3) Impacting a power or a right reserved to the people or the state by the Ninth or Tenth
 247 Amendment to the United States Constitution; and

248 (4) Impacting the sovereignty rights and interest of this state or a political subdivision
 249 thereof to provide for the health, safety, and welfare of and promote the prosperity of this
 250 state's or political subdivision's inhabitants.

251 (c) In the evaluation of a federal law, the council:

252 (1) Shall rely on:

253 (A) The text of the United States Constitution, as amended;

254 (B) The meaning of the text of the United States Constitution, as amended, at the time
 255 of its drafting and ratification; and

256 (C) A primary source document that is:

257 (i) Directly relevant to the drafting, adoption, ratification, or initial implementation
 258 of the United States Constitution, as amended; or

259 (ii) Created by a person directly involved in the drafting, adoption, ratification, or
 260 initial implementation of the United States Constitution, as amended;

261 (2) May rely on other relevant sources, including federal court decisions; and

262 (3) Is not bound by a holding by a federal court.

263 50-38-7.

264 (a) The council may correspond with the presiding officer of the legislative branch of
 265 another state or an entity of another state that has powers and duties that are similar to the
 266 council to discuss and coordinate the evaluation of and response to federal law as provided
 267 in Code Section 50-38-5.

268 (b) The council shall send a copy of this Act and the pages of the House and Senate
 269 Journal that pertain to this Act to:

270 (1) The governor of each state;

271 (2) The presiding officer, the majority leader, and the minority leader of each house, if
 272 applicable, of each state legislature;

273 (3) Each United States Senator or Representative elected from this state;

274 (4) The Chief Justice of the United States Supreme Court;

275 (5) The President of the United States; and
276 (6) The presiding officer, the majority leader, and the minority leader of each house of
277 the United States Congress."

278 **SECTION 2.**

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