

ATTACHMENT

A



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: 2019-4831

Substitute

Public Hearing: YES NO

Department: Board of Commissioner - District 6

SUBJECT:

Commission District(s): All

A resolution requesting the DeKalb Legislative Delegation to the General Assembly to amend the appointment process for the Board of Ethics, but otherwise make no substantive changes to the existing Ethics code.

Information Contact: Commissioner Gannon

Phone Number: 404 371 6353

PURPOSE:

To advise the Delegation regarding matters coming before the General Assembly that affect DeKalb County.

NEED/IMPACT:

The Board of Ethics cannot create a quorum and therefore cannot function effectively. The voters of DeKalb have demonstrated a desire for strong ethics legislation and have rejected significant changes to the existing ethics code.

FISCAL IMPACT:

None

RECOMMENDATION:

Adopt the Resolution and authorize the chief executive officer to execute all necessary documents...



DeKalb County
GEORGIA

MEMORANDUM

This communication is confidential and protected by the attorney-client privilege and attorney work product rule. It is intended only for the individual or entity to which it is addressed and should not be given to persons or entities not directly involved with the subject matter on behalf of the County. It expresses the professional judgment of the attorney(s) rendering the opinion regarding the legal issues expressly addressed herein. By rendering an opinion, the attorney(s) does not insure or guarantee any particular result or outcome of any transaction or lawsuit.

January 13, 2020

By PDF and Hand Delivery

To: Michael L. Thurmond, Chief Executive Officer
Members, Board of Commissioners

From: Viviane H. Ernestes, County Attorney

Subject: Resolution for Proposed Ethics Bill

Attached is a Resolution recommending that the DeKalb Legislative Delegation and the Georgia General Assembly adopt a proposed amendment to the DeKalb County Code of Ethics. As you know, the Georgia Supreme Court held that the appointment process in the current Code of Ethics was unconstitutional because it delegated some of the appointment power to private organizations. The proposed amendment changes the appointment process by allowing those private parties to make recommendations for appointment, but providing that various elected officials retain ultimate appointment authority.

The proposed amendment does not make any other substantive changes to the current Ethics Code. Because the proposed amendment does not alter the powers or duties of the DeKalb County Governing Authority, a referendum election is not required.¹

As always, please do not hesitate to contact me if you have any questions or concerns.

Encl.

cc: Zachary Williams, COO
La'Keitha Carlos, Chief of Staff to CEO
Antwyn Brown, Chief of Staff to BOC
Terry Phillips, Deputy County Attorney
Matt Welch, Deputy County Attorney
Bennett Bryan, Appellate Litigation Division Chief

¹ As you know, the 1978 constitutional amendment allowing the CEO form of government to exist in DeKalb County requires voter approval for any law that changes the powers or duties of the DeKalb County Governing Authority. See Ga. L. 1978, pp. 2370-72.

RESOLUTION

A RESOLUTION OF THE GOVERNING AUTHORITY OF DEKALB COUNTY, GEORGIA TO THE GENERAL ASSEMBLY PROPOSING AN AMENDMENT TO THE DEKALB COUNTY CODE OF ETHICS

WHEREAS, the DeKalb Legislative Delegation with input from citizens and legislative counsel drafted and approved a revised Code of Ethics for DeKalb County in 2015, which created a new Board of Ethics appointed by independent parties;

WHEREAS, 92 percent of the voters of DeKalb County approved the 2015 Ethics Code in a referendum election;

WHEREAS, in 2018 the Georgia Supreme Court ruled that the Board of Ethics appointment process in the 2015 Ethics Code was unconstitutional because it delegated some of the appointment power to private organizations;

WHEREAS, the DeKalb Legislative Delegation drafted and approved a revised Code of Ethics for DeKalb County in 2019 with significant changes;

WHEREAS, 65 percent of the voters of DeKalb County voted against the 2019 Ethics Code in a referendum election; and

WHEREAS, the citizens of DeKalb County have voiced their desire for strong ethics legislation with an independently appointed Board of Ethics similar to what they overwhelmingly approved by referendum in 2015;

NOW, THEREFORE BE IT RESOLVED, the Governing Authority of DeKalb County hereby requests that the DeKalb Legislative Delegation and Georgia General Assembly adopt the proposed amendment to the Code of Ethics attached to this Resolution, which corrects the flaw identified by the Georgia Supreme Court but otherwise makes no substantive changes to the 2015 Ethics Code legislation previously approved by 92% of DeKalb voters.

BE IT FURTHER RESOLVED, that the Governing Authority requests that the attached proposed amendment be approved to restore a functioning Board of Ethics and without referenda since voters previously approved it with 92% approval.

BE IT FURTHER RESOLVED that a copy of this Resolution be delivered to each member of the Georgia House of Representatives and Senate representing DeKalb County, and made available for distribution to the public and the press.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2020.

JEFF RADER
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2020.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

APPROVED AS TO FORM:

BARBARA SANDERS-NORWOOD, CCC
Clerk

VIVIANE H. ERNSTES
County Attorney

PROPOSED AMENDMENT TO THE DEKALB COUNTY CODE OF ETHICS

Sec. 22A. - Code of ethics

A) Purpose.

- 1) It is essential to the proper administration and operation of the DeKalb County government that its officials and employees be, and give the appearance of being, independent and impartial, that public office not be used for private gain, and that there be public confidence in the integrity of DeKalb County officials and employees. Because the attainment of one (1) or more of these ends is impaired whenever there exists in fact, or appears to exist, a conflict between the private interests and public responsibilities of officials and employees, the public interest requires that the general assembly protect against such conflicts of interest by establishing by law appropriate ethical standards with respect to the conduct of the officials and employees of DeKalb County in situations where a conflict may exist.
- 2) The General Assembly recognizes that an appropriate and effective code of ethics for appointed officials and employees of DeKalb County is also essential for the proper administration and operation of the DeKalb County government.

B) Definitions. As used in this section, the term:

- 1) *Agency* means any board, bureau, body, commission, committee, department, or office of DeKalb County to the governing authority has appointment powers.
- 2) *Business* means any corporation, partnership, organization, sole proprietorship, and any other entity operated for economic gain, whether professional, industrial, or commercial, and entities which for purposes of federal income taxation are treated as nonprofit organizations.
- 3) *Confidential information* means information which has been obtained in the course of holding public office, employment, acting as an independent contractor, or otherwise acting as an official or employee and which information is not available to members of the public under state law or other law or regulation and which the official, independent contractor, or employee is not authorized to disclose.
- 4) *Contract* means any claim or demand against or any lease, account, or agreement with any person, whether express or implied, executed or executory, verbal or in writing.
- 5) *Emergency situation* means any circumstance or condition giving rise to an immediate necessity for the execution of a contract by and between DeKalb County and an official or employee or between DeKalb County and a business in which an official or employee has an interest and where, to the satisfaction of the chief executive, it is shown that there is no one other than such persons with whom the contract could have been made and that the necessity was not brought about by such persons' own fault or neglect.
- 6) *Immediate family* means an official or employee and his or her spouse, parents, brothers, sisters, and natural or adopted children.
- 7) *Interest* means any direct or indirect pecuniary or material benefit held by or accruing to the official or employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with DeKalb County. Unless otherwise provided in this section, the term 'interest' does not include any remote interest. An official or employee shall be deemed to have an interest in transactions involving:
 - a. Any person in the official's or employee's immediate family;

- b. Any person, business, or entity that the official or employee knows or should know is seeking official action with DeKalb County, is seeking to do or does business with DeKalb County, has interests that may be substantially affected by performance or nonperformance of the official's or employee's official duties, or with whom a contractual relationship exists whereby the official or employee may receive any payment or other benefit;
 - c. Any business in which the official or employee is a director, officer, employee, shareholder, or consultant; or
 - d. Any person of whom the official or employee is a creditor, whether secured or unsecured.
- 8) *Official or employee* means any person elected or appointed to or employed or retained by DeKalb County or any agency, whether paid or unpaid and whether part time or full time. This definition includes retired employees or former county employees during the period of time in which they are later employed or retained by the county or any agency. This definition does not include superior and state court judges and their immediate staffs, the district attorney, the solicitor of the state court, the clerks of the superior and state courts, magistrates, judges of the recorders court, the judge of the probate court, and their respective staffs.
- 9) *Official act or action* means any legislative, administrative, appointive, or discretionary act ~~of the commission, the chief executive, or a commissioner~~ an official or employee.
- 10) *Paid* means the receipt of, or right to receive, a salary, commission, percentage, brokerage, or contingent fee.
- 11) *Participate* means to take part in official acts, actions, or proceedings personally as an official or employee through approval, disapproval, decision, recommendation, investigation, the rendering of advice, or the failure to act or perform a duty.
- 12) *Person* means any individual, business, labor organization, representative, fiduciary, trust, or association, whether paid or unpaid, and includes any official or employee of DeKalb County.
- 13) *Property* means any property, whether real or personal or tangible or intangible, and includes currency and commercial paper.
- 14) *Remote interest* means the interest of:
- a. A non-salaried director, officer, or employee of a nonprofit organization;
 - b. A holder of less than five (5) percent of the legal or beneficial ownership of the total shares of a business;
 - c. Any person in a representative capacity, such as a receiver, trustee, or administrator; or
 - d. Any person who, by determination of the board of ethics, is deemed to have such an interest.
- 15) *Transaction* means the conduct of any activity that results in or may result in an official act or action of an official or employee of DeKalb County.
- C) *Proscribed conduct*. No official or employee of DeKalb County shall:
- 1) By his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official acts or actions or that he or she is affected unduly by the rank or position of or kinship or association with any person;

- 2) A. Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for himself or herself or another person if:
 - i) It tends to influence him or her in the discharge of his or her official duties; or
 - ii) He or she recently has been, or is now, or in the near future may be, involved in any official act or action directly affecting the donor or lender.
 - B. Subparagraph a. of this paragraph shall not apply in the case of:
 - i) He or she recently has been, or is now, or in the near future may be, involved in any official act or action directly affecting the donor or lender.
 - ii) An award publicly presented in recognition of public service; or
 - iii) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of Georgia to engage in the making of such a loan;
 - 3) Disclose or otherwise use confidential information acquired by virtue of his or her position for his or her or another person's private gain;
 - 4) Appear on his or her own personal behalf, or represent, advise, or appear on the personal behalf, whether paid or unpaid, of any person before any court or before any legislative, administrative, or quasi-judicial board, agency, commission, or committee of this state or of any county or municipality concerning any contract or transaction which is or may be the subject of an official act or action of DeKalb County or otherwise use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or other persons;
 - 5) Engage in, accept employment with, or render services for any agency, private business, or professional activity when such employment or rendering of services is adverse to and incompatible with the proper discharge of his or her official duties;
 - 6) Acquire an interest in any contract or transaction at a time when he or she believes or has reason to believe that such an interest will be affected directly or indirectly by his or her official act or actions or by the official acts or actions of other officials or employees of DeKalb County; or
 - 7) Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to him or her by virtue of his or her being an official or employee of DeKalb County.
- D) *Disclosure of interests.* An official or employee who has an interest that he or she has reason to believe may be affected by his or her official acts or actions or by the official acts or actions of another official or employee of DeKalb County shall disclose the precise nature and value of such interest by sworn written statement to the board of ethics and ask for the board's opinion as to the propriety of such interest. Every official or employee who knowingly has any interest, direct or indirect, in any contract to which DeKalb County is or is about to become a party, or in any other business with DeKalb County, shall make full disclosure of such interest to the chief executive and the commission and to the ethics officer and the board of ethics. The information disclosed by such sworn statements, except for the valuation attributed to the disclosed interest, shall be made a matter of public record by the board of ethics.
- E) *Participation in contracts.*
- 1) An official or employee shall disqualify himself or herself from participating in any official act or action of DeKalb County directly affecting a business or activity in which he or she has any interest, whether or not a remote interest.

- 2) No official or employee shall cause DeKalb County ~~shall not~~ to enter into any contract involving services or property with an official or employee of the county or with a business in which an official or employee of the county has an interest. This subsection shall not apply in the case of:
 - a. The designation of a bank or trust company as a depository for county funds;
 - b. The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest for such loans;
 - c. Contracts for services entered into with a business which is the only available source for such goods or services; or
 - d. Contracts entered into under circumstances which constitute an emergency situation, provided that a record explaining the emergency is prepared by the chief executive and submitted to the board of ethics at its next regular meeting and thereafter kept on file.
 - 3) DeKalb County shall not enter into any contract with, or take any official act or action favorably affecting, any person, or business represented by such person, who has been within the preceding two-year period an official or employee of DeKalb County.
- F) *Reporting violations.* Any person who witnesses or becomes aware of a violation of this section may complain of the violation as follows:
- 1) A complaint may be communicated anonymously to the ethics officer. Such complaint shall be made in good faith and with veracity and sufficient specificity so as to provide the ethics officer with salient and investigable facts. The ethics officer may require the anonymous complaint to be made in a manner and form that is intended only to obtain relevant facts related to the alleged violation of this section and that is not designed to reveal the identity of the complainant.
 - 2) A sworn written complaint may be filed with the ethics officer of the board of ethics, as described in this paragraph. All written complaints to be considered by the board of ethics and the ethics officer shall contain the following, if applicable:
 - a. The name and address of the person or persons filing the complaint;
 - b. The sworn verification and signature of the complainant;
 - c. The name and address of the party or parties against whom the complaint is filed and, if such party is a candidate, the office being sought;
 - d. A clear and concise statement of acts upon which the complaint is based along with an allegation that such facts constitute one (1) or more violations of law under the jurisdiction of the board of ethics;
 - e. A general reference to the allegedly violated statutory provision(s) of the code of ethics within the jurisdiction of the board of ethics; and
 - f. Any further information which might support the allegations in the complaint including, but not limited to, the following:
 - i. The names and addresses of all other persons who have first-hand knowledge of the facts alleged in the complaint; and
 - ii. Any documentary evidence that supports the facts alleged in the complaint.
 - 3) Upon receipt of a complaint, whether by the ethics officer or by the board of ethics, the ethics officer or the secretary of the board of ethics shall send a written notice to the subject of the complaint by the next business day. Both this notice and any subsequent documents shall be subject to Article 4 of Chapter 18 of Title 50 of the O.C.G.A.

- 4) Upon receipt of a written, non-anonymous complaint which does not conform to the applicable requirements of paragraph (2) of this subsection, the ethics officer shall by letter acknowledge receipt of the complaint and advise the complainant of the defect in the complaint and that the complaint will not be considered by the board of ethics unless the defect is corrected.

G) *Enactment.*

- 1) This section shall be construed liberally to effectuate its purpose and policies and to supplement such existing laws as may relate to the conduct of officials or employees.
- 2) The propriety of any official act or action taken by or transaction involving any officials or employees immediately prior to the time this section shall take effect shall not be affected by the enactment of this section.
- 3) The provisions of this section are severable, and if any of its provisions shall be held unconstitutional or invalid by a court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining provisions.

H) *Board of ethics.*

- a. There is created the Board of Ethics of DeKalb County to be composed of seven (7) citizens of DeKalb County to be appointed as provided in paragraph (2) of this subsection.
 - b. Each member of the board of ethics shall have been a resident of DeKalb County for at least one (1) year immediately preceding the date of taking office and shall remain a resident of the county while serving as a member of the board of ethics.
 - c. No person shall serve as a member of the board of ethics if the person has, or has had within the immediately preceding two-year period, any interest in any contract, transaction, or official act or action of DeKalb County.
 - d. No member of the board of ethics shall be a member of an agency or an official or employee of DeKalb County or shall have served in such a capacity in the two-year period immediately preceding such person's appointment to the board of ethics.
 - e. No person shall serve as a member of the board of ethics if the person has been a candidate for, or was elected to, public office in the immediately preceding three-year period. Filing for an elective office shall constitute a resignation from the board of ethics on the date of filing.
 - f. Appointees to the board of ethics shall have professional knowledge or expertise in matters of ethics, finance, governance, or the law.
 - g. All proposed appointments to the board of ethics shall be subject to an education and employment background check as well as a criminal history check. Persons proposed to be appointed to the board of ethics shall execute all releases necessary for the appointing authority to accomplish such checks. If the nominee is determined to have committed a felony, the nomination shall be withdrawn.
- 1) The members of the board of ethics currently in office shall serve until the effective date of this legislation at which time their term of office shall terminate. A new board shall be appointed as provided in this paragraph and the members of the new board shall take office no later than 45 days after the effective date of this legislation.
 - a. The members of the new board of ethics shall be selected as follows:

- i. One (1) member shall be appointed by the Chief Judge of the Superior Court of DeKalb County
 - ii. One (1) member shall be appointed by the Chief Judge of the Probate Court of DeKalb County;
 - iii. One (1) member shall be appointed by a majority vote of the DeKalb County House Delegation to the General Assembly;
 - iv. One (1) member shall be appointed by a majority vote of the DeKalb County Senate Delegation to the General Assembly;
 - v. One (1) member shall be appointed by the Chief Judge of State Court of DeKalb County;
 - vi. One (1) member shall be appointed by the Chief Judge of the Magistrate Court of DeKalb County; and
 - vii. One (1) member shall be appointed by the DeKalb Tax Commissioner
 - b. Nominations and recommendations to serve on the Board of Ethics shall be made by the following independent community organizations: Leadership DeKalb, the DeKalb Bar Association, the DeKalb Lawyers Association, the DeKalb Chamber of Commerce, a consortium of the six (6) major universities and colleges located within DeKalb County (Agnes Scott College, Columbia Theological Seminary, Emory University, Georgia State University, Mercer University, and Oglethorpe University, which member shall not be an attorney). The appointing officials shall consider the nominations and recommendations, but their power of appointment shall not be limited by the recommendations.
 - c. Prior to the end of a scheduled term, or upon a vacancy, the ethics officer shall notify the independent community organizations and appointing officials of upcoming or existing vacancies. The independent community organizations shall submit their nominations and recommendations to the ethics officer, who shall forward them to the appointing official. The Clerk to the Board of the Commissioners and Chief Executive Officer shall perform the duties of the ethics officer set forth in this subparagraph if the ethics officer position is vacant.
 - d. The members shall each serve for terms of three (3) years; provided, however, that the initial term of the appointee of the Chief Judge of the State Court of DeKalb County shall be two (2) years; the initial term of the appointee of the Senate Delegation of DeKalb County shall be two (2) years; the initial term of the appointee of the Chief Judge of the Magistrate Court of DeKalb County shall be one (1) year; and the initial term of appointee of the Chief Judge of the Probate Court of DeKalb County shall be one (1) year.
 - e. Successors to all members of the board of ethics and future successors shall be appointed by the respective appointing authorities not less than thirty (30) days prior to the expiration of each such member's term of office, and such successors shall take office on January 1 following such appointment and shall serve terms of three (3) years and until their respective successors are appointed and qualified.
- 2) If a member of the board of ethics ceases to be a resident of DeKalb County, that member's position on the board of ethics, by operation of law, shall become vacant upon the establishment of the fact of such non-residency, if contested, by a court of competent jurisdiction. A vacancy in the board of ethics shall exist by reason of death, the disability or incapacity of a member for more than ninety (90) days, resignation, or loss of residency

as described in this paragraph. A member of the board of ethics may be removed from office during a term if the member becomes ineligible to hold civil office within the meaning of O.C.G.A. § 45-2-1 and that ineligibility is established by decision of a court of competent jurisdiction which declares the office vacant because of such ineligibility or for good cause by a majority vote of the board of ethics. The ethics officer shall notify the appointing authority of a vacancy upon its occurrence, and such vacancy shall be filled for the unexpired term by the respective appointing authority.

- 3) The members of the board of ethics shall serve without compensation and shall elect from their own membership a chairperson and otherwise provide for their own internal organization. The commission shall provide adequate office and meeting space and pay all administrative costs, including those specifically stipulated in this section, pertaining to the operation of the board of ethics. The board of ethics shall be authorized to employ its own staff and clerical personnel and contract for the services of a competent court reporter, an attorney, and a private investigator as it deems necessary. The members of the board of ethics shall have the authority to propose the budget of the board and shall recommend the budget to the commission, who shall fund it as a priority. In the event that the proposed budget is in excess of three hundred thousand dollars (\$300,000.00), the commission shall have the authority to authorize the additional funds requested in accordance with standard budgetary procedures and requirements. The board of ethics shall be completely independent and shall not be subject to control or supervision by the chief executive, the commission, or any other official or employee or agency of the county government.
 - 4) The board of ethics shall have the following duties:
 - a. To establish procedures, rules, and regulations governing its internal organization and the conduct of its affairs;
 - b. To render advisory opinions with respect to the interpretation and application of this section to all officials or employees who seek advice as to whether a particular course of conduct would constitute a violation of the standards imposed in this section or other applicable ethical standards. Such opinions shall be binding on the board of ethics in any subsequent complaint concerning the official or employee who sought the opinion and acted in good faith, unless material facts were omitted or misstated in the request for the advisory opinion;
 - c. To prescribe forms for the disclosures required in this section and to make available to the public the information disclosed as provided in this section;
 - d. To receive and hear complaints of violations of the standards required by this section over which it has personal and subject matter jurisdiction;
 - e. To make such investigations as it deems necessary to determine whether any official or employee has violated or is about to violate any provisions of this section; and
 - f. To hold such hearings and make such inquiries as it deems necessary for it to carry out properly its functions and powers.
- D) *Ethics officer.*
- 1) There is hereby created as a full-time salaried position an ethics officer for DeKalb County. The ethics officer must be an active member of the Georgia Bar Association in good standing with five (5) years' experience in the practice of law. The ethics officer shall be appointed by a majority of the members of the board of ethics, subject to confirmation by

a majority of the commission and approval by the chief executive, for a period not to exceed six (6) years. Removal of the ethics officer before the expiration of the designated term shall be for cause by a majority vote of the members of the board of ethics. The ethics officer need not be a resident of the county at the time of his or her appointment, but he or she shall reside in DeKalb County within six (6) months of such appointment and continue to reside therein throughout such appointment.

- 2) The ethics officer shall not be involved in partisan or nonpartisan political activities or the political affairs of DeKalb County.
 - 3) The duties of the ethics officer shall include, but not be limited to, the following:
 - a. Educating and training all county officials and employees to have an awareness and understanding of the mandate for and enforcement of ethical conduct and advising them of the provisions of the code of ethics of DeKalb County;
 - b. Maintaining the records of the board of ethics as required by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;
 - c. Meeting with the board of ethics;
 - d. Advising officials and employees regarding disclosure statements and reviewing the same to ensure full and complete financial reporting;
 - e. Urging compliance with the code of ethics by calling to the attention of the board of ethics any failure to comply or any issues, including the furnishing of false or misleading information, that the ethics officer believes should be investigated by the board of ethics so that the board of ethics may take such action as it deems appropriate;
 - f. Monitoring, evaluating, and acting upon information obtained from an "ethics hotline" which shall be a city telephone number for the receipt of information about ethical violations. Each complaint, as of the time it is reported, whether by telephone or otherwise, shall be deemed to be a separate pending investigation of a complaint against a public officer or employee as provided by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;
 - g. Notifying the subject of a report of any alleged violation of the ethics code, whether the report is anonymous, made by an identified individual, or is written. Such notice shall be given in writing, by facsimile, or hand delivered to the subject of the complaint at the same time and in the same form that any disclosure of information is required by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;
 - h. Notifying the board of ethics of any report of an alleged violation of the ethics code received by the ethics officer;
 - i. Reporting, as appropriate, suspected ethical violations to the board of ethics;
 - j. Reporting, as appropriate, suspected criminal violations to state or federal law enforcement agencies; and
 - k. Filing with the board of ethics, the chief executive, and the commission on the first Tuesday of each February a written report describing the activities of the ethics officer in carrying out the goals of his or her office and the code of ethics and reporting on the ethical health of DeKalb County.
- J) *Investigations and hearings.* The board of ethics shall conduct investigations into alleged violations of the code of ethics, hold hearings, and issue decisions as prescribed in this subsection:

- 1) The proceedings and records of the board of ethics shall be open unless otherwise permitted by state law.
- 2) Upon request of the board of ethics, the solicitor of DeKalb County or any attorney representing the office of the solicitor of DeKalb County, or in the event of a conflict any attorney who shall be selected by a majority vote of the board of ethics, shall advise the board of ethics.
- 3) A complaint may be filed by the ethics officer, any resident, or a group of residents of DeKalb County by submitting to the office of the ethics officer a written, verified, and sworn complaint under the penalty of perjury or false swearing. The complaint shall specifically identify all provisions of the DeKalb County code of ethics which the subject of the complaint is alleged to have violated, set forth facts as would be admissible in evidence in a court proceeding, and show affirmatively that the complainant or affiant (if in addition to or different from the complainant) is competent to testify to the matter set forth therein. All documents referenced in the complaint as well as supporting affidavits shall be attached to the complaint.
- 4) Upon receipt of the complaint, the ethics officer shall conduct a preliminary investigation to determine whether it meets the jurisdictional requirements as set forth in this section. If in the opinion of the ethics officer the complaint fails to meet these requirements, the ethics officer shall notify the person who filed the complaint and he or she shall have ten (10) days from the date of notice to correct and refile the complaint directly with the ethics officer. A complaint which fails to satisfy the jurisdictional requirements as established by this section and by the rules and procedures established by the board of ethics shall be dismissed by the board of ethics no later than thirty (30) days after the complaint is filed with the office of the ethics officer, unless extended by a majority vote of the board of ethics.
- 5) The ethics officer will report his or her findings and recommendation to the board of ethics and advise whether there is probable cause for belief that the code of ethics has been violated, warranting a formal hearing. If the board of ethics determines, after the preliminary investigation of a complaint by the ethics officer, that there does not exist probable cause for belief that this section has been violated, the board of ethics shall so notify the complainant and the subject of the investigation, and the complaint will be dismissed. If the board of ethics determines, after a preliminary investigation of the complaint by the ethics officer, that there does exist probable cause for belief that this section has been violated, the board of ethics shall give notice to the person involved to attend a hearing to determine whether there has been a violation of this section.
- 6) For use in proceedings under this section, the board of ethics shall have the power to issue subpoenas to compel any person to appear, give sworn testimony, or produce documentary or other evidence. Any person who fails to respond to such subpoenas may be subjected to the penalties set forth in subsection (k) of this section.
- 7) All hearings of the board of ethics pursuant to this section shall be as follows:
 - a. All testimony shall be under oath, which shall be administered by a member of the board of ethics. Any person who appears before the board of ethics shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state. Any person whose name is mentioned during a proceeding of the board of ethics and who may be adversely affected thereby may appear personally before the board of ethics on such person's own behalf or may

file a written sworn statement for incorporation into the record to be made part of all proceedings pursuant to this subsection.

- b. The decision of the board of ethics shall be governed by a preponderance of the evidence standard.
- c. At the conclusion of proceedings concerning an alleged violation, the board of ethics shall immediately begin deliberations on the evidence and proceed to determine by a majority vote of members present whether there has been a violation of this section. The findings of the board of ethics concerning a violation and the record of the proceedings shall be made public by the ethics officer as soon as practicable after the determination has been made.

K) *Violations; appeals.*

- 1) Any intentional violation of this section, furnishing of false or misleading information to the board of ethics or the ethics officer, failure to follow an opinion rendered by the board of ethics, or failure to comply with a subpoena issued by the board of ethics pursuant to this section shall subject the violator to any one (1) or more of the following:
 - a. Administrative sanction of not more than one thousand dollars (\$1,000.00) assessed by the board of ethics;
 - b. Public reprimand by the board of ethics; and
 - c. Prosecution by the DeKalb County Solicitor in municipal court and, upon conviction, a fine of up to one thousand dollars (\$1,000.00) per violation and up to six (6) months imprisonment, whether the official or employee is elected or appointed, paid or unpaid. Nothing in this section shall be interpreted to conflict with state law. An action for violation of this section or the furnishing of false or misleading information or the failure to comply with a subpoena issued by the board of ethics must be brought within two (2) years after the violation is discovered.
- 2) With regard to violations by persons other than officials or employees, in addition to the remedies in paragraph (1) of this subsection, the board of ethics may recommend to the chief executive and the commission any one or more of the following:
 - a. Suspension of a contractor; and
 - b. Disqualification or debarment from contracting or subcontracting with DeKalb County.
- 3) The decision of the board of ethics after a hearing shall be final; provided, however, that such proceeding shall be subject to review by writ of certiorari to the DeKalb County Superior Court. The designee of the board of ethics shall be authorized to acknowledge service of any such writ and shall, within the time provided by law, certify and cause to be filed with the clerk of the superior court a record of the proceedings before the board of ethics, the decision of the board of ethics, and the notice of the final actions of the board of ethics.

*****The effective date of this Act shall be the day the Act is signed by the Governor, but in no case later than July 1, 2020.*****

ATTACHMENT

B

RESOLUTION

A RESOLUTION OF THE GOVERNING AUTHORITY OF DEKALB COUNTY, GEORGIA TO THE GENERAL ASSEMBLY PROPOSING AN AMENDMENT TO THE DEKALB COUNTY CODE OF ETHICS

WHEREAS, the DeKalb Legislative Delegation with input from citizens and legislative counsel drafted and approved a revised Code of Ethics for DeKalb County in 2015, which created a new Board of Ethics appointed by independent parties;

WHEREAS, 92 percent of the voters of DeKalb County approved the 2015 Ethics Code in a referendum election;

WHEREAS, in 2018 the Georgia Supreme Court ruled that the Board of Ethics appointment process in the 2015 Ethics Code was unconstitutional because it delegated some of the appointment power to private organizations;

WHEREAS, the DeKalb Legislative Delegation drafted and approved a revised Code of Ethics for DeKalb County in 2019 with significant changes;

WHEREAS, 65 percent of the voters of DeKalb County voted against the 2019 Ethics Code in a referendum election; and

WHEREAS, the citizens of DeKalb County have voiced their desire for strong ethics legislation with an independently appointed Board of Ethics similar to what they overwhelmingly approved by referendum in 2015;

NOW, THEREFORE BE IT RESOLVED, the Governing Authority of DeKalb County hereby requests that the DeKalb Legislative Delegation and Georgia General Assembly adopt the proposed amendment to the Code of Ethics attached to this Resolution, which corrects the flaw identified by the Georgia Supreme Court but otherwise makes no substantive changes to the 2015 Ethics Code legislation previously approved by 92% of DeKalb voters.

BE IT FURTHER RESOLVED, that the Governing Authority requests that the attached proposed amendment be approved to restore a functioning Board of Ethics and without referenda since voters previously approved it with 92% approval.

BE IT FURTHER RESOLVED that a copy of this Resolution be delivered to each member of the Georgia House of Representatives and Senate representing DeKalb County, and made available for distribution to the public and the press.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2020.

STEPHEN R. BRADSHAW
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2020.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

APPROVED AS TO FORM:

BARBARA SANDERS-NORWOOD, CCC
Clerk

VIVIANE H. ERNSTES
County Attorney

PROPOSED AMENDMENT TO THE DEKALB COUNTY CODE OF ETHICS

Sec. 22A. - Code of ethics

A) *Purpose.*

- 1) It is essential to the proper administration and operation of the DeKalb County government that its officials and employees be, and give the appearance of being, independent and impartial, that public office not be used for private gain, and that there be public confidence in the integrity of DeKalb County officials and employees. Because the attainment of one (1) or more of these ends is impaired whenever there exists in fact, or appears to exist, a conflict between the private interests and public responsibilities of officials and employees, the public interest requires that the general assembly protect against such conflicts of interest by establishing by law appropriate ethical standards with respect to the conduct of the officials and employees of DeKalb County in situations where a conflict may exist.
- 2) The General Assembly recognizes that an appropriate and effective code of ethics for appointed officials and employees of DeKalb County is also essential for the proper administration and operation of the DeKalb County government.

B) *Definitions.* As used in this section, the term:

- 1) *Agency* means any board, bureau, body, commission, committee, department, or office of DeKalb County to the governing authority has appointment powers.
- 2) *Business* means any corporation, partnership, organization, sole proprietorship, and any other entity operated for economic gain, whether professional, industrial, or commercial, and entities which for purposes of federal income taxation are treated as nonprofit organizations.
- 3) *Confidential information* means information which has been obtained in the course of holding public office, employment, acting as an independent contractor, or otherwise acting as an official or employee and which information is not available to members of the public under state law or other law or regulation and which the official, independent contractor, or employee is not authorized to disclose.
- 4) *Contract* means any claim or demand against or any lease, account, or agreement with any person, whether express or implied, executed or executory, verbal or in writing.
- 5) *Emergency situation* means any circumstance or condition giving rise to an immediate necessity for the execution of a contract by and between DeKalb County and an official or employee or between DeKalb County and a business in which an official or employee has an interest and where, to the satisfaction of the chief executive, it is shown that there is no one other than such persons with whom the contract could have been made and that the necessity was not brought about by such persons' own fault or neglect.
- 6) *Immediate family* means an official or employee and his or her spouse, parents, brothers, sisters, and natural or adopted children.
- 7) *Interest* means any direct or indirect pecuniary or material benefit held by or accruing to the official or employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with DeKalb County. Unless otherwise provided in this section, the term 'interest' does not include any remote interest. An official or employee shall be deemed to have an interest in transactions involving:
 - a. Any person in the official's or employee's immediate family;

- b. Any person, business, or entity that the official or employee knows or should know is seeking official action with DeKalb County, is seeking to do or does business with DeKalb County, has interests that may be substantially affected by performance or nonperformance of the official's or employee's official duties, or with whom a contractual relationship exists whereby the official or employee may receive any payment or other benefit;
 - c. Any business in which the official or employee is a director, officer, employee, shareholder, or consultant; or
 - d. Any person of whom the official or employee is a creditor, whether secured or unsecured.
- 8) *Official or employee* means any person elected or appointed to or employed or retained by DeKalb County or any agency, whether paid or unpaid and whether part time or full time. This definition includes retired employees or former county employees during the period of time in which they are later employed or retained by the county or any agency. This definition does not include superior and state court judges and their immediate staffs, the district attorney, the solicitor of the state court, the clerks of the superior and state courts, magistrates, judges of the recorders court, the judge of the probate court, and their respective staffs.
- 9) *Official act or action* means any legislative, administrative, appointive, or discretionary act ~~of the commission, the chief executive, or a commissioner~~ an official or employee.
- 10) *Paid* means the receipt of, or right to receive, a salary, commission, percentage, brokerage, or contingent fee.
- 11) *Participate* means to take part in official acts, actions, or proceedings personally as an official or employee through approval, disapproval, decision, recommendation, investigation, the rendering of advice, or the failure to act or perform a duty.
- 12) *Person* means any individual, business, labor organization, representative, fiduciary, trust, or association, whether paid or unpaid, and includes any official or employee of DeKalb County.
- 13) *Property* means any property, whether real or personal or tangible or intangible, and includes currency and commercial paper.
- 14) *Remote interest* means the interest of:
- a. A non-salaried director, officer, or employee of a nonprofit organization;
 - b. A holder of less than five (5) percent of the legal or beneficial ownership of the total shares of a business;
 - c. Any person in a representative capacity, such as a receiver, trustee, or administrator; or
 - d. Any person who, by determination of the board of ethics, is deemed to have such an interest.
- 15) *Transaction* means the conduct of any activity that results in or may result in an official act or action of an official or employee of DeKalb County.
- C) *Proscribed conduct*. No official or employee of DeKalb County shall:
- 1) By his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official acts or actions or that he or she is affected unduly by the rank or position of or kinship or association with any person;

- 2) A. Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for himself or herself or another person if:
 - i) It tends to influence him or her in the discharge of his or her official duties; or
 - ii) He or she recently has been, or is now, or in the near future may be, involved in any official act or action directly affecting the donor or lender.
 - B. Subparagraph a. of this paragraph shall not apply in the case of:
 - i) An occasional nonpecuniary gift of value less than one hundred dollars (\$100.00);~~He or she recently has been, or is now, or in the near future may be, involved in any official act or action directly affecting the donor or lender.~~
 - ii) An award publicly presented in recognition of public service; or
 - iii) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of Georgia to engage in the making of such a loan;
 - 3) Disclose or otherwise use confidential information acquired by virtue of his or her position for his or her or another person's private gain;
 - 4) Appear on his or her own personal behalf, or represent, advise, or appear on the personal behalf, whether paid or unpaid, of any person before any court or before any legislative, administrative, or quasi-judicial board, agency, commission, or committee of this state or of any county or municipality concerning any contract or transaction which is or may be the subject of an official act or action of DeKalb County or otherwise use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or other persons;
 - 5) Engage in, accept employment with, or render services for any agency, private business, or professional activity when such employment or rendering of services is adverse to and incompatible with the proper discharge of his or her official duties;
 - 6) Acquire an interest in any contract or transaction at a time when he or she believes or has reason to believe that such an interest will be affected directly or indirectly by his or her official act or actions or by the official acts or actions of other officials or employees of DeKalb County; or
 - 7) Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to him or her by virtue of his or her being an official or employee of DeKalb County.
- D) *Disclosure of interests.* An official or employee who has an interest that he or she has reason to believe may be affected by his or her official acts or actions or by the official acts or actions of another official or employee of DeKalb County shall disclose the precise nature and value of such interest by sworn written statement to the board of ethics and ask for the board's opinion as to the propriety of such interest. Every official or employee who knowingly has any interest, direct or indirect, in any contract to which DeKalb County is or is about to become a party, or in any other business with DeKalb County, shall make full disclosure of such interest to the chief executive and the commission and to the ethics officer and the board of ethics. The information disclosed by such sworn statements, except for the valuation attributed to the disclosed interest, shall be made a matter of public record by the board of ethics.
- E) *Participation in contracts.*

- 1) An official or employee shall disqualify himself or herself from participating in any official act or action of DeKalb County directly affecting a business or activity in which he or she has any interest, whether or not a remote interest.
 - 2) No official or employee shall cause DeKalb County ~~shall not~~ to enter into any contract involving services or property with an official or employee of the county or with a business in which an official or employee of the county has an interest. This subsection shall not apply in the case of:
 - a. The designation of a bank or trust company as a depository for county funds;
 - b. The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest for such loans;
 - c. Contracts for services entered into with a business which is the only available source for such goods or services; or
 - d. Contracts entered into under circumstances which constitute an emergency situation, provided that a record explaining the emergency is prepared by the chief executive and submitted to the board of ethics at its next regular meeting and thereafter kept on file.
 - 3) DeKalb County shall not enter into any contract with, or take any official act or action favorably affecting, any person, or business represented by such person, who has been within the preceding two-year period an official or employee of DeKalb County.
- F) *Reporting violations.* Any person who witnesses or becomes aware of a violation of this section may complain of the violation as follows:
- 1) A complaint may be communicated anonymously to the ethics officer. Such complaint shall be made in good faith and with veracity and sufficient specificity so as to provide the ethics officer with salient and investigable facts. The ethics officer may require the anonymous complaint to be made in a manner and form that is intended only to obtain relevant facts related to the alleged violation of this section and that is not designed to reveal the identity of the complainant.
 - 2) A sworn written complaint may be filed with the ethics officer of the board of ethics, as described in this paragraph. All written complaints to be considered by the board of ethics and the ethics officer shall contain the following, if applicable:
 - a. The name and address of the person or persons filing the complaint;
 - b. The sworn verification and signature of the complainant;
 - c. The name and address of the party or parties against whom the complaint is filed and, if such party is a candidate, the office being sought;
 - d. A clear and concise statement of acts upon which the complaint is based along with an allegation that such facts constitute one (1) or more violations of law under the jurisdiction of the board of ethics;
 - e. A general reference to the allegedly violated statutory provision(s) of the code of ethics within the jurisdiction of the board of ethics; and
 - f. Any further information which might support the allegations in the complaint including, but not limited to, the following:
 - i. The names and addresses of all other persons who have first-hand knowledge of the facts alleged in the complaint; and
 - ii. Any documentary evidence that supports the facts alleged in the complaint.

- 3) Upon receipt of a complaint, whether by the ethics officer or by the board of ethics, the ethics officer or the secretary of the board of ethics shall send a written notice to the subject of the complaint by the next business day. Both this notice and any subsequent documents shall be subject to Article 4 of Chapter 18 of Title 50 of the O.C.G.A.
- 4) Upon receipt of a written, non-anonymous complaint which does not conform to the applicable requirements of paragraph (2) of this subsection, the ethics officer shall by letter acknowledge receipt of the complaint and advise the complainant of the defect in the complaint and that the complaint will not be considered by the board of ethics unless the defect is corrected.

G) *Enactment.*

- 1) This section shall be construed liberally to effectuate its purpose and policies and to supplement such existing laws as may relate to the conduct of officials or employees.
- 2) The propriety of any official act or action taken by or transaction involving any officials or employees immediately prior to the time this section shall take effect shall not be affected by the enactment of this section.
- 3) The provisions of this section are severable, and if any of its provisions shall be held unconstitutional or invalid by a court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining provisions.

H) *Board of ethics.*

- a. There is created the Board of Ethics of DeKalb County to be composed of seven (7) citizens of DeKalb County to be appointed as provided in paragraph (2) of this subsection.
 - b. Each member of the board of ethics shall have been a resident of DeKalb County for at least one (1) year immediately preceding the date of taking office and shall remain a resident of the county while serving as a member of the board of ethics.
 - c. No person shall serve as a member of the board of ethics if the person has, or has had within the immediately preceding two-year period, any interest in any contract, transaction, or official act or action of DeKalb County.
 - d. No member of the board of ethics shall be a member of an agency or an official or employee of DeKalb County or shall have served in such a capacity in the two-year period immediately preceding such person's appointment to the board of ethics.
 - e. No person shall serve as a member of the board of ethics if the person has been a candidate for, or was elected to, public office in the immediately preceding three-year period. Filing for an elective office shall constitute a resignation from the board of ethics on the date of filing.
 - f. Appointees to the board of ethics shall have professional knowledge or expertise in matters of ethics, finance, governance, or the law.
 - g. All proposed appointments to the board of ethics shall be subject to an education and employment background check as well as a criminal history check. Persons proposed to be appointed to the board of ethics shall execute all releases necessary for the appointing authority to accomplish such checks. If the nominee is determined to have committed a felony, the nomination shall be withdrawn.
- 1) The members of the board of ethics currently in office shall serve until the effective date of this legislation at which time their term of office shall terminate. A new board shall be

appointed as provided in this paragraph and the members of the new board shall take office no later than 45 days after the effective date of this legislation.

- a. The members of the new board of ethics shall be selected as follows:
 - i. One (1) member shall be appointed by the Chief Judge of the Superior Court of DeKalb County
 - ii. One (1) member shall be appointed by the Chief Judge of the Probate Court of DeKalb County;
 - iii. One (1) member shall be appointed by a majority vote of the DeKalb County House Delegation to the General Assembly;
 - iv. One (1) member shall be appointed by a majority vote of the DeKalb County Senate Delegation to the General Assembly;
 - v. One (1) member shall be appointed by the Chief Judge of State Court of DeKalb County;
 - vi. One (1) member shall be appointed by the Chief Judge of the Magistrate Court of DeKalb County; and
 - vii. One (1) member shall be appointed by the DeKalb Tax Commissioner
 - b. Nominations and recommendations to serve on the Board of Ethics shall be made by the following independent community organizations: Leadership DeKalb, the DeKalb Bar Association, the DeKalb Lawyers Association, the DeKalb Chamber of Commerce, a consortium of the six (6) major universities and colleges located within DeKalb County (Agnes Scott College, Columbia Theological Seminary, Emory University, Georgia State University, Mercer University, and Oglethorpe University, which member shall not be an attorney). The appointing officials shall consider the nominations and recommendations, but their power of appointment shall not be limited by the recommendations.
 - c. Prior to the end of a scheduled term, or upon a vacancy, the ethics officer shall notify the independent community organizations and appointing officials of upcoming or existing vacancies. The independent community organizations shall submit their nominations and recommendations to the ethics officer, who shall forward them to the appointing official. The Clerk to the Board of the Commissioners and Chief Executive Officer shall perform the duties of the ethics officer set forth in this subparagraph if the ethics officer position is vacant.
 - d. The members shall each serve for terms of three (3) years; provided, however, that the initial term of the appointee of the Chief Judge of the State Court of DeKalb County shall be two (2) years; the initial term of the appointee of the Senate Delegation of DeKalb County shall be two (2) years; the initial term of the appointee of the Chief Judge of the Magistrate Court of DeKalb County shall be one (1) year; and the initial term of appointee of the Chief Judge of the Probate Court of DeKalb County shall be one (1) year.
 - e. Successors to all members of the board of ethics and future successors shall be appointed by the respective appointing authorities not less than thirty (30) days prior to the expiration of each such member's term of office, and such successors shall take office on January 1 following such appointment and shall serve terms of three (3) years and until their respective successors are appointed and qualified.
- 2) If a member of the board of ethics ceases to be a resident of DeKalb County, that member's position on the board of ethics, by operation of law, shall become vacant upon the

establishment of the fact of such non-residency, if contested, by a court of competent jurisdiction. A vacancy in the board of ethics shall exist by reason of death, the disability or incapacity of a member for more than ninety (90) days, resignation, or loss of residency as described in this paragraph. A member of the board of ethics may be removed from office during a term if the member becomes ineligible to hold civil office within the meaning of O.C.G.A. § 45-2-1 and that ineligibility is established by decision of a court of competent jurisdiction which declares the office vacant because of such ineligibility or for good cause by a majority vote of the board of ethics. The ethics officer shall notify the appointing authority of a vacancy upon its occurrence, and such vacancy shall be filled for the unexpired term by the respective appointing authority.

- 3) The members of the board of ethics shall serve without compensation and shall elect from their own membership a chairperson and otherwise provide for their own internal organization. The commission shall provide adequate office and meeting space and pay all administrative costs, including those specifically stipulated in this section, pertaining to the operation of the board of ethics. The board of ethics shall be authorized to employ its own staff and clerical personnel and contract for the services of a competent court reporter, an attorney, and a private investigator as it deems necessary. The members of the board of ethics shall have the authority to propose the budget of the board and shall recommend the budget to the commission, who shall fund it as a priority. In the event that the proposed budget is in excess of three hundred thousand dollars (\$300,000.00), the commission shall have the authority to authorize the additional funds requested in accordance with standard budgetary procedures and requirements. The board of ethics shall be completely independent and shall not be subject to control or supervision by the chief executive, the commission, or any other official or employee or agency of the county government.
- 4) The board of ethics shall have the following duties:
 - a. To establish procedures, rules, and regulations governing its internal organization and the conduct of its affairs;
 - b. To render advisory opinions with respect to the interpretation and application of this section to all officials or employees who seek advice as to whether a particular course of conduct would constitute a violation of the standards imposed in this section or other applicable ethical standards. Such opinions shall be binding on the board of ethics in any subsequent complaint concerning the official or employee who sought the opinion and acted in good faith, unless material facts were omitted or misstated in the request for the advisory opinion;
 - c. To prescribe forms for the disclosures required in this section and to make available to the public the information disclosed as provided in this section;
 - d. To receive and hear complaints of violations of the standards required by this section over which it has personal and subject matter jurisdiction;
 - e. To make such investigations as it deems necessary to determine whether any official or employee has violated or is about to violate any provisions of this section; and
 - f. To hold such hearings and make such inquiries as it deems necessary for it to carry out properly its functions and powers.

1) *Ethics officer.*

- 1) There is hereby created as a full-time salaried position an ethics officer for DeKalb County. The ethics officer must be an active member of the Georgia Bar Association in good standing with five (5) years' experience in the practice of law. The ethics officer shall be appointed by a majority of the members of the board of ethics, subject to confirmation by a majority of the commission and approval by the chief executive, for a period not to exceed six (6) years. Removal of the ethics officer before the expiration of the designated term shall be for cause by a majority vote of the members of the board of ethics. The ethics officer need not be a resident of the county at the time of his or her appointment, but he or she shall reside in DeKalb County within six (6) months of such appointment and continue to reside therein throughout such appointment.
- 2) The ethics officer shall not be involved in partisan or nonpartisan political activities or the political affairs of DeKalb County.
- 3) The duties of the ethics officer shall include, but not be limited to, the following:
 - a. Educating and training all county officials and employees to have an awareness and understanding of the mandate for and enforcement of ethical conduct and advising them of the provisions of the code of ethics of DeKalb County;
 - b. Maintaining the records of the board of ethics as required by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;
 - c. Meeting with the board of ethics;
 - d. Advising officials and employees regarding disclosure statements and reviewing the same to ensure full and complete financial reporting;
 - e. Urging compliance with the code of ethics by calling to the attention of the board of ethics any failure to comply or any issues, including the furnishing of false or misleading information, that the ethics officer believes should be investigated by the board of ethics so that the board of ethics may take such action as it deems appropriate;
 - f. Monitoring, evaluating, and acting upon information obtained from an "ethics hotline" which shall be a city telephone number for the receipt of information about ethical violations. Each complaint, as of the time it is reported, whether by telephone or otherwise, shall be deemed to be a separate pending investigation of a complaint against a public officer or employee as provided by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;
 - g. Notifying the subject of a report of any alleged violation of the ethics code, whether the report is anonymous, made by an identified individual, or is written. Such notice shall be given in writing, by facsimile, or hand delivered to the subject of the complaint at the same time and in the same form that any disclosure of information is required by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;
 - h. Notifying the board of ethics of any report of an alleged violation of the ethics code received by the ethics officer;
 - i. Reporting, as appropriate, suspected ethical violations to the board of ethics;
 - j. Reporting, as appropriate, suspected criminal violations to state or federal law enforcement agencies; and
 - k. Filing with the board of ethics, the chief executive, and the commission on the first Tuesday of each February a written report describing the activities of the ethics officer in carrying out the goals of his or her office and the code of ethics and reporting on the ethical health of DeKalb County.

- J) *Investigations and hearings.* The board of ethics shall conduct investigations into alleged violations of the code of ethics, hold hearings, and issue decisions as prescribed in this subsection:
- 1) The proceedings and records of the board of ethics shall be open unless otherwise permitted by state law.
 - 2) Upon request of the board of ethics, the solicitor of DeKalb County or any attorney representing the office of the solicitor of DeKalb County, or in the event of a conflict any attorney who shall be selected by a majority vote of the board of ethics, shall advise the board of ethics.
 - 3) A complaint may be filed by the ethics officer, any resident, or a group of residents of DeKalb County by submitting to the office of the ethics officer a written, verified, and sworn complaint under the penalty of perjury or false swearing. The complaint shall specifically identify all provisions of the DeKalb County code of ethics which the subject of the complaint is alleged to have violated, set forth facts as would be admissible in evidence in a court proceeding, and show affirmatively that the complainant or affiant (if in addition to or different from the complainant) is competent to testify to the matter set forth therein. All documents referenced in the complaint as well as supporting affidavits shall be attached to the complaint.
 - 4) Upon receipt of the complaint, the ethics officer shall conduct a preliminary investigation to determine whether it meets the jurisdictional requirements as set forth in this section. If in the opinion of the ethics officer the complaint fails to meet these requirements, the ethics officer shall notify the person who filed the complaint and he or she shall have ten (10) days from the date of notice to correct and refile the complaint directly with the ethics officer. A complaint which fails to satisfy the jurisdictional requirements as established by this section and by the rules and procedures established by the board of ethics shall be dismissed by the board of ethics no later than thirty (30) days after the complaint is filed with the office of the ethics officer, unless extended by a majority vote of the board of ethics.
 - 5) The ethics officer will report his or her findings and recommendation to the board of ethics and advise whether there is probable cause for belief that the code of ethics has been violated, warranting a formal hearing. If the board of ethics determines, after the preliminary investigation of a complaint by the ethics officer, that there does not exist probable cause for belief that this section has been violated, the board of ethics shall so notify the complainant and the subject of the investigation, and the complaint will be dismissed. If the board of ethics determines, after a preliminary investigation of the complaint by the ethics officer, that there does exist probable cause for belief that this section has been violated, the board of ethics shall give notice to the person involved to attend a hearing to determine whether there has been a violation of this section.
 - 6) For use in proceedings under this section, the board of ethics shall have the power to issue subpoenas to compel any person to appear, give sworn testimony, or produce documentary or other evidence. Any person who fails to respond to such subpoenas may be subjected to the penalties set forth in subsection (k) of this section.
 - 7) All hearings of the board of ethics pursuant to this section shall be as follows:
 - a. All testimony shall be under oath, which shall be administered by a member of the board of ethics. Any person who appears before the board of ethics shall have all

of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state. Any person whose name is mentioned during a proceeding of the board of ethics and who may be adversely affected thereby may appear personally before the board of ethics on such person's own behalf or may file a written sworn statement for incorporation into the record to be made part of all proceedings pursuant to this subsection.

- b. The decision of the board of ethics shall be governed by a preponderance of the evidence standard.
- c. At the conclusion of proceedings concerning an alleged violation, the board of ethics shall immediately begin deliberations on the evidence and proceed to determine by a majority vote of members present whether there has been a violation of this section. The findings of the board of ethics concerning a violation and the record of the proceedings shall be made public by the ethics officer as soon as practicable after the determination has been made.

K) *Violations; appeals.*

- 1) Any intentional violation of this section, furnishing of false or misleading information to the board of ethics or the ethics officer, failure to follow an opinion rendered by the board of ethics, or failure to comply with a subpoena issued by the board of ethics pursuant to this section shall subject the violator to any one (1) or more of the following:
 - a. Administrative sanction of not more than one thousand dollars (\$1,000.00) assessed by the board of ethics;
 - b. Public reprimand by the board of ethics; and
 - c. Prosecution by the DeKalb County Solicitor in municipal court and, upon conviction, a fine of up to one thousand dollars (\$1,000.00) per violation and up to six (6) months imprisonment, whether the official or employee is elected or appointed, paid or unpaid. Nothing in this section shall be interpreted to conflict with state law. An action for violation of this section or the furnishing of false or misleading information or the failure to comply with a subpoena issued by the board of ethics must be brought within two (2) years after the violation is discovered.
- 2) With regard to violations by persons other than officials or employees, in addition to the remedies in paragraph (1) of this subsection, the board of ethics may recommend to the chief executive and the commission any one or more of the following:
 - a. Suspension of a contractor; and
 - b. Disqualification or debarment from contracting or subcontracting with DeKalb County.
- 3) The decision of the board of ethics after a hearing shall be final; provided, however, that such proceeding shall be subject to review by writ of certiorari to the DeKalb County Superior Court. The designee of the board of ethics shall be authorized to acknowledge service of any such writ and shall, within the time provided by law, certify and cause to be filed with the clerk of the superior court a record of the proceedings before the board of ethics, the decision of the board of ethics, and the notice of the final actions of the board of ethics.

The effective date of this Act shall be the day the Act is signed by the Governor, but in no case later than July 1, 2020.

ATTACHMENT

C

RESOLUTION

A RESOLUTION OF THE GOVERNING AUTHORITY OF DEKALB COUNTY, GEORGIA TO THE GENERAL ASSEMBLY PROPOSING AN AMENDMENT TO THE DEKALB COUNTY CODE OF ETHICS

WHEREAS, the DeKalb Legislative Delegation with input from citizens and legislative counsel drafted and approved a revised Code of Ethics for DeKalb County in 2015, which created a new Board of Ethics appointed by independent parties;

WHEREAS, 92 percent of the voters of DeKalb County approved the 2015 Ethics Code in a referendum election;

WHEREAS, in 2018 the Georgia Supreme Court ruled that the Board of Ethics appointment process in the 2015 Ethics Code was unconstitutional because it delegated some of the appointment power to private organizations;

WHEREAS, the DeKalb Legislative Delegation drafted and approved a revised Code of Ethics for DeKalb County in 2019 with significant changes;

WHEREAS, 65 percent of the voters of DeKalb County voted against the 2019 Ethics Code in a referendum election; and

WHEREAS, the citizens of DeKalb County have voiced their desire for strong ethics legislation with an independently appointed Board of Ethics similar to what they overwhelmingly approved by referendum in 2015;

NOW, THEREFORE BE IT RESOLVED, the Governing Authority of DeKalb County hereby requests that the DeKalb Legislative Delegation and Georgia General Assembly adopt the proposed amendment to the Code of Ethics attached to this Resolution, which corrects the flaw identified by the Georgia Supreme Court but otherwise makes no substantive changes to the 2015 Ethics Code legislation previously approved by 92% of DeKalb voters.

BE IT FURTHER RESOLVED, that the Governing Authority requests that the attached proposed amendment be approved to restore a functioning Board of Ethics and without referenda since voters previously approved it with 92% approval.

BE IT FURTHER RESOLVED that a copy of this Resolution be delivered to each member of the Georgia House of Representatives and Senate representing DeKalb County, and made available for distribution to the public and the press.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2020.

STEPHEN R. BRADSHAW
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2020.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

APPROVED AS TO FORM:

BARBARA SANDERS-NORWOOD, CCC
Clerk

VIVIANE H. ERNSTES
County Attorney

PROPOSED AMENDMENT TO THE DEKALB COUNTY CODE OF ETHICS

Sec. 22A. - Code of ethics

A) *Purpose.*

- 1) It is essential to the proper administration and operation of the DeKalb County government that its officials and employees be, and give the appearance of being, independent and impartial, that public office not be used for private gain, and that there be public confidence in the integrity of DeKalb County officials and employees. Because the attainment of one (1) or more of these ends is impaired whenever there exists in fact, or appears to exist, a conflict between the private interests and public responsibilities of officials and employees, the public interest requires that the general assembly protect against such conflicts of interest by establishing by law appropriate ethical standards with respect to the conduct of the officials and employees of DeKalb County in situations where a conflict may exist.
- 2) The General Assembly recognizes that an appropriate and effective code of ethics for appointed officials and employees of DeKalb County is also essential for the proper administration and operation of the DeKalb County government.

B) *Definitions.* As used in this section, the term:

- 1) *Agency* means any board, bureau, body, commission, committee, department, or office of DeKalb County to the governing authority has appointment powers.
- 2) *Business* means any corporation, partnership, organization, sole proprietorship, and any other entity operated for economic gain, whether professional, industrial, or commercial, and entities which for purposes of federal income taxation are treated as nonprofit organizations.
- 3) *Confidential information* means information which has been obtained in the course of holding public office, employment, acting as an independent contractor, or otherwise acting as an official or employee and which information is not available to members of the public under state law or other law or regulation and which the official, independent contractor, or employee is not authorized to disclose.
- 4) *Contract* means any claim or demand against or any lease, account, or agreement with any person, whether express or implied, executed or executory, verbal or in writing.
- 5) *Emergency situation* means any circumstance or condition giving rise to an immediate necessity for the execution of a contract by and between DeKalb County and an official or employee or between DeKalb County and a business in which an official or employee has an interest and where, to the satisfaction of the chief executive, it is shown that there is no one other than such persons with whom the contract could have been made and that the necessity was not brought about by such persons' own fault or neglect.
- 6) *Immediate family* means an official or employee and his or her spouse, parents, brothers, sisters, and natural or adopted children.
- 7) *Interest* means any direct or indirect pecuniary or material benefit held by or accruing to the official or employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with DeKalb County. Unless otherwise provided in this section, the term 'interest' does not include any remote interest. An official or employee shall be deemed to have an interest in transactions involving:
 - a. Any person in the official's or employee's immediate family;

- b. Any person, business, or entity that the official or employee knows or should know is seeking official action with DeKalb County, is seeking to do or does business with DeKalb County, has interests that may be substantially affected by performance or nonperformance of the official's or employee's official duties, or with whom a contractual relationship exists whereby the official or employee may receive any payment or other benefit;
 - c. Any business in which the official or employee is a director, officer, employee, shareholder, or consultant; or
 - d. Any person of whom the official or employee is a creditor, whether secured or unsecured.
- 8) *Official or employee* means any person elected or appointed to or employed or retained by DeKalb County or any agency, whether paid or unpaid and whether part time or full time. This definition includes retired employees or former county employees during the period of time in which they are later employed or retained by the county or any agency. This definition does not include superior and state court judges and their immediate staffs, the district attorney, the solicitor of the state court, the clerks of the superior and state courts, magistrates, judges of the recorders court, the judge of the probate court, and their respective staffs.
- 9) *Official act or action* means any legislative, administrative, appointive, or discretionary act ~~of the commission, the chief executive, or a commissioner~~ an official or employee.
- 10) *Paid* means the receipt of, or right to receive, a salary, commission, percentage, brokerage, or contingent fee.
- 11) *Participate* means to take part in official acts, actions, or proceedings personally as an official or employee through approval, disapproval, decision, recommendation, investigation, the rendering of advice, or the failure to act or perform a duty.
- 12) *Person* means any individual, business, labor organization, representative, fiduciary, trust, or association, whether paid or unpaid, and includes any official or employee of DeKalb County.
- 13) *Property* means any property, whether real or personal or tangible or intangible, and includes currency and commercial paper.
- 14) *Remote interest* means the interest of:
- a. A non-salaried director, officer, or employee of a nonprofit organization;
 - b. A holder of less than five (5) percent of the legal or beneficial ownership of the total shares of a business;
 - c. Any person in a representative capacity, such as a receiver, trustee, or administrator; or
 - d. Any person who, by determination of the board of ethics, is deemed to have such an interest.
- 15) *Transaction* means the conduct of any activity that results in or may result in an official act or action of an official or employee of DeKalb County.
- C) *Proscribed conduct*. No official or employee of DeKalb County shall:
- 1) By his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official acts or actions or that he or she is affected unduly by the rank or position of or kinship or association with any person;

- 2) A. Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for himself or herself or another person if:
 - i) It tends to influence him or her in the discharge of his or her official duties; or
 - ii) He or she recently has been, or is now, or in the near future may be, involved in any official act or action directly affecting the donor or lender.
 - B. Subparagraph a. of this paragraph shall not apply in the case of:
 - i) An occasional nonpecuniary gift of value less than one hundred dollars (\$100.00);
 - ii) An award publicly presented in recognition of public service; or
 - iii) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of Georgia to engage in the making of such a loan;
 - 3) Disclose or otherwise use confidential information acquired by virtue of his or her position for his or her or another person's private gain;
 - 4) Appear on his or her own personal behalf, or represent, advise, or appear on the personal behalf, whether paid or unpaid, of any person before any court or before any legislative, administrative, or quasi-judicial board, agency, commission, or committee of this state or of any county or municipality concerning any contract or transaction which is or may be the subject of an official act or action of DeKalb County or otherwise use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or other persons;
 - 5) Engage in, accept employment with, or render services for any agency, private business, or professional activity when such employment or rendering of services is adverse to and incompatible with the proper discharge of his or her official duties;
 - 6) Acquire an interest in any contract or transaction at a time when he or she believes or has reason to believe that such an interest will be affected directly or indirectly by his or her official act or actions or by the official acts or actions of other officials or employees of DeKalb County; or
 - 7) Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to him or her by virtue of his or her being an official or employee of DeKalb County.
- D) *Disclosure of interests.* An official or employee who has an interest that he or she has reason to believe may be affected by his or her official acts or actions or by the official acts or actions of another official or employee of DeKalb County shall disclose the precise nature and value of such interest by sworn written statement to the board of ethics and ask for the board's opinion as to the propriety of such interest. Every official or employee who knowingly has any interest, direct or indirect, in any contract to which DeKalb County is or is about to become a party, or in any other business with DeKalb County, shall make full disclosure of such interest to the chief executive and the commission and to the ethics officer and the board of ethics. The information disclosed by such sworn statements, except for the valuation attributed to the disclosed interest, shall be made a matter of public record by the board of ethics.
- E) *Participation in contracts.*
- 1) An official or employee shall disqualify himself or herself from participating in any official act or action of DeKalb County directly affecting a business or activity in which he or she has any interest, whether or not a remote interest.

- 2) No official or employee shall cause DeKalb County ~~shall not~~ to enter into any contract involving services or property with an official or employee of the county or with a business in which an official or employee of the county has an interest. This subsection shall not apply in the case of:
 - a. The designation of a bank or trust company as a depository for county funds;
 - b. The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest for such loans;
 - c. Contracts for services entered into with a business which is the only available source for such goods or services; or
 - d. Contracts entered into under circumstances which constitute an emergency situation, provided that a record explaining the emergency is prepared by the chief executive and submitted to the board of ethics at its next regular meeting and thereafter kept on file.
 - 3) DeKalb County shall not enter into any contract with, or take any official act or action favorably affecting, any person, or business represented by such person, who has been within the preceding two-year period an official or employee of DeKalb County.
- F) *Reporting violations.* Any person who witnesses or becomes aware of a violation of this section may complain of the violation as follows:
- 1) A complaint may be communicated anonymously to the ethics officer. Such complaint shall be made in good faith and with veracity and sufficient specificity so as to provide the ethics officer with salient and investigable facts. The ethics officer may require the anonymous complaint to be made in a manner and form that is intended only to obtain relevant facts related to the alleged violation of this section and that is not designed to reveal the identity of the complainant.
 - 2) A sworn written complaint may be filed with the ethics officer of the board of ethics, as described in this paragraph. All written complaints to be considered by the board of ethics and the ethics officer shall contain the following, if applicable:
 - a. The name and address of the person or persons filing the complaint;
 - b. The sworn verification and signature of the complainant;
 - c. The name and address of the party or parties against whom the complaint is filed and, if such party is a candidate, the office being sought;
 - d. A clear and concise statement of acts upon which the complaint is based along with an allegation that such facts constitute one (1) or more violations of law under the jurisdiction of the board of ethics;
 - e. A general reference to the allegedly violated statutory provision(s) of the code of ethics within the jurisdiction of the board of ethics; and
 - f. Any further information which might support the allegations in the complaint including, but not limited to, the following:
 - i. The names and addresses of all other persons who have first-hand knowledge of the facts alleged in the complaint; and
 - ii. Any documentary evidence that supports the facts alleged in the complaint.
 - 3) Upon receipt of a complaint, whether by the ethics officer or by the board of ethics, the ethics officer or the secretary of the board of ethics shall send a written notice to the subject of the complaint by the next business day. Both this notice and any subsequent documents shall be subject to Article 4 of Chapter 18 of Title 50 of the O.C.G.A.

- 4) Upon receipt of a written, non-anonymous complaint which does not conform to the applicable requirements of paragraph (2) of this subsection, the ethics officer shall by letter acknowledge receipt of the complaint and advise the complainant of the defect in the complaint and that the complaint will not be considered by the board of ethics unless the defect is corrected.

G) *Enactment.*

- 1) This section shall be construed liberally to effectuate its purpose and policies and to supplement such existing laws as may relate to the conduct of officials or employees.
- 2) The propriety of any official act or action taken by or transaction involving any officials or employees immediately prior to the time this section shall take effect shall not be affected by the enactment of this section.
- 3) The provisions of this section are severable, and if any of its provisions shall be held unconstitutional or invalid by a court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining provisions.

H) *Board of ethics.*

- a. There is created the Board of Ethics of DeKalb County to be composed of seven (7) citizens of DeKalb County to be appointed as provided in paragraph (2) of this subsection.
 - b. Each member of the board of ethics shall have been a resident of DeKalb County for at least one (1) year immediately preceding the date of taking office and shall remain a resident of the county while serving as a member of the board of ethics.
 - c. No person shall serve as a member of the board of ethics if the person has, or has had within the immediately preceding two-year period, any interest in any contract, transaction, or official act or action of DeKalb County.
 - d. No member of the board of ethics shall be a member of an agency or an official or employee of DeKalb County or shall have served in such a capacity in the two-year period immediately preceding such person's appointment to the board of ethics.
 - e. No person shall serve as a member of the board of ethics if the person has been a candidate for, or was elected to, public office in the immediately preceding three-year period. Filing for an elective office shall constitute a resignation from the board of ethics on the date of filing.
 - f. Appointees to the board of ethics shall have professional knowledge or expertise in matters of ethics, finance, governance, or the law.
 - g. All proposed appointments to the board of ethics shall be subject to an education and employment background check as well as a criminal history check. Persons proposed to be appointed to the board of ethics shall execute all releases necessary for the appointing authority to accomplish such checks. If the nominee is determined to have committed a felony, the nomination shall be withdrawn.
- 1) The members of the board of ethics currently in office shall serve until the effective date of this legislation at which time their term of office shall terminate. A new board shall be appointed as provided in this paragraph and the members of the new board shall take office no later than 45 days after the effective date of this legislation.
 - a. The members of the new board of ethics shall be selected as follows:

- i. One (1) member shall be appointed by the Chief Judge of the Superior Court of DeKalb County
 - ii. One (1) member shall be appointed by the Chief Judge of the Probate Court of DeKalb County;
 - iii. One (1) member shall be appointed by a majority vote of the DeKalb County House Delegation to the General Assembly;
 - iv. One (1) member shall be appointed by a majority vote of the DeKalb County Senate Delegation to the General Assembly;
 - v. One (1) member shall be appointed by the Chief Judge of State Court of DeKalb County;
 - vi. One (1) member shall be appointed by the Chief Judge of the Magistrate Court of DeKalb County; and
 - vii. One (1) member shall be appointed by the DeKalb Tax Commissioner
 - b. Nominations and recommendations to serve on the Board of Ethics shall be made by the following independent community organizations: Leadership DeKalb, the DeKalb Bar Association, the DeKalb Lawyers Association, the DeKalb Chamber of Commerce, a consortium of the six (6) major universities and colleges located within DeKalb County (Agnes Scott College, Columbia Theological Seminary, Emory University, Georgia State University, Mercer University, and Oglethorpe University, which member shall not be an attorney). The appointing officials shall consider the nominations and recommendations, but their power of appointment shall not be limited by the recommendations.
 - c. Prior to the end of a scheduled term, or upon a vacancy, the ethics officer shall notify the independent community organizations and appointing officials of upcoming or existing vacancies. The independent community organizations shall submit their nominations and recommendations to the ethics officer, who shall forward them to the appointing official. The Clerk to the Board of the Commissioners and Chief Executive Officer shall perform the duties of the ethics officer set forth in this subparagraph if the ethics officer position is vacant.
 - d. The members shall each serve for terms of three (3) years; provided, however, that the initial term of the appointee of the Chief Judge of the State Court of DeKalb County shall be two (2) years; the initial term of the appointee of the Senate Delegation of DeKalb County shall be two (2) years; the initial term of the appointee of the Chief Judge of the Magistrate Court of DeKalb County shall be one (1) year; and the initial term of appointee of the Chief Judge of the Probate Court of DeKalb County shall be one (1) year.
 - e. Successors to all members of the board of ethics and future successors shall be appointed by the respective appointing authorities not less than thirty (30) days prior to the expiration of each such member's term of office, and such successors shall take office on January 1 following such appointment and shall serve terms of three (3) years and until their respective successors are appointed and qualified.
- 2) If a member of the board of ethics ceases to be a resident of DeKalb County, that member's position on the board of ethics, by operation of law, shall become vacant upon the establishment of the fact of such non-residency, if contested, by a court of competent jurisdiction. A vacancy in the board of ethics shall exist by reason of death, the disability or incapacity of a member for more than ninety (90) days, resignation, or loss of residency

as described in this paragraph. A member of the board of ethics may be removed from office during a term if the member becomes ineligible to hold civil office within the meaning of O.C.G.A. § 45-2-1 and that ineligibility is established by decision of a court of competent jurisdiction which declares the office vacant because of such ineligibility or for good cause by a majority vote of the board of ethics. The ethics officer shall notify the appointing authority of a vacancy upon its occurrence, and such vacancy shall be filled for the unexpired term by the respective appointing authority.

- 3) The members of the board of ethics shall serve without compensation and shall elect from their own membership a chairperson and otherwise provide for their own internal organization. The commission shall provide adequate office and meeting space and pay all administrative costs, including those specifically stipulated in this section, pertaining to the operation of the board of ethics. The board of ethics shall be authorized to employ its own staff and clerical personnel and contract for the services of a competent court reporter, an attorney, and a private investigator as it deems necessary. The members of the board of ethics shall have the authority to propose the budget of the board and shall recommend the budget to the commission, who shall fund it as a priority. In the event that the proposed budget is in excess of three hundred thousand dollars (\$300,000.00), the commission shall have the authority to authorize the additional funds requested in accordance with standard budgetary procedures and requirements. The board of ethics shall be completely independent and shall not be subject to control or supervision by the chief executive, the commission, or any other official or employee or agency of the county government.
- 4) The board of ethics shall have the following duties:
 - a. To establish procedures, rules, and regulations governing its internal organization and the conduct of its affairs;
 - b. To render advisory opinions with respect to the interpretation and application of this section to all officials or employees who seek advice as to whether a particular course of conduct would constitute a violation of the standards imposed in this section or other applicable ethical standards. Such opinions shall be binding on the board of ethics in any subsequent complaint concerning the official or employee who sought the opinion and acted in good faith, unless material facts were omitted or misstated in the request for the advisory opinion;
 - c. To prescribe forms for the disclosures required in this section and to make available to the public the information disclosed as provided in this section;
 - d. To receive and hear complaints of violations of the standards required by this section over which it has personal and subject matter jurisdiction;
 - e. To make such investigations as it deems necessary to determine whether any official or employee has violated or is about to violate any provisions of this section; and
 - f. To hold such hearings and make such inquiries as it deems necessary for it to carry out properly its functions and powers.

I) *Ethics officer.*

- 1) There is hereby created as a full-time salaried position an ethics officer for DeKalb County. The ethics officer must be an active member of the Georgia Bar Association in good standing with five (5) years' experience in the practice of law. The ethics officer shall be appointed by a majority of the members of the board of ethics, subject to confirmation by

a majority of the commission and approval by the chief executive, for a period not to exceed six (6) years. Removal of the ethics officer before the expiration of the designated term shall be for cause by a majority vote of the members of the board of ethics. The ethics officer need not be a resident of the county at the time of his or her appointment, but he or she shall reside in DeKalb County within six (6) months of such appointment and continue to reside therein throughout such appointment.

- 2) The ethics officer shall not be involved in partisan or nonpartisan political activities or the political affairs of DeKalb County.
 - 3) The duties of the ethics officer shall include, but not be limited to, the following:
 - a. Educating and training all county officials and employees to have an awareness and understanding of the mandate for and enforcement of ethical conduct and advising them of the provisions of the code of ethics of DeKalb County;
 - b. Maintaining the records of the board of ethics as required by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;
 - c. Meeting with the board of ethics;
 - d. Advising officials and employees regarding disclosure statements and reviewing the same to ensure full and complete financial reporting;
 - e. Urging compliance with the code of ethics by calling to the attention of the board of ethics any failure to comply or any issues, including the furnishing of false or misleading information, that the ethics officer believes should be investigated by the board of ethics so that the board of ethics may take such action as it deems appropriate;
 - f. Monitoring, evaluating, and acting upon information obtained from an "ethics hotline" which shall be a city telephone number for the receipt of information about ethical violations. Each complaint, as of the time it is reported, whether by telephone or otherwise, shall be deemed to be a separate pending investigation of a complaint against a public officer or employee as provided by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;
 - g. Notifying the subject of a report of any alleged violation of the ethics code, whether the report is anonymous, made by an identified individual, or is written. Such notice shall be given in writing, by facsimile, or hand delivered to the subject of the complaint at the same time and in the same form that any disclosure of information is required by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;
 - h. Notifying the board of ethics of any report of an alleged violation of the ethics code received by the ethics officer;
 - i. Reporting, as appropriate, suspected ethical violations to the board of ethics;
 - j. Reporting, as appropriate, suspected criminal violations to state or federal law enforcement agencies; and
 - k. Filing with the board of ethics, the chief executive, and the commission on the first Tuesday of each February a written report describing the activities of the ethics officer in carrying out the goals of his or her office and the code of ethics and reporting on the ethical health of DeKalb County.
- J) *Investigations and hearings.* The board of ethics shall conduct investigations into alleged violations of the code of ethics, hold hearings, and issue decisions as prescribed in this subsection:

- 1) The proceedings and records of the board of ethics shall be open unless otherwise permitted by state law.
- 2) Upon request of the board of ethics, the solicitor of DeKalb County or any attorney representing the office of the solicitor of DeKalb County, or in the event of a conflict any attorney who shall be selected by a majority vote of the board of ethics, shall advise the board of ethics.
- 3) A complaint may be filed by the ethics officer, any resident, or a group of residents of DeKalb County by submitting to the office of the ethics officer a written, verified, and sworn complaint under the penalty of perjury or false swearing. The complaint shall specifically identify all provisions of the DeKalb County code of ethics which the subject of the complaint is alleged to have violated, set forth facts as would be admissible in evidence in a court proceeding, and show affirmatively that the complainant or affiant (if in addition to or different from the complainant) is competent to testify to the matter set forth therein. All documents referenced in the complaint as well as supporting affidavits shall be attached to the complaint.
- 4) Upon receipt of the complaint, the ethics officer shall conduct a preliminary investigation to determine whether it meets the jurisdictional requirements as set forth in this section. If in the opinion of the ethics officer the complaint fails to meet these requirements, the ethics officer shall notify the person who filed the complaint and he or she shall have ten (10) days from the date of notice to correct and refile the complaint directly with the ethics officer. A complaint which fails to satisfy the jurisdictional requirements as established by this section and by the rules and procedures established by the board of ethics shall be dismissed by the board of ethics no later than thirty (30) days after the complaint is filed with the office of the ethics officer, unless extended by a majority vote of the board of ethics.
- 5) The ethics officer will report his or her findings and recommendation to the board of ethics and advise whether there is probable cause for belief that the code of ethics has been violated, warranting a formal hearing. If the board of ethics determines, after the preliminary investigation of a complaint by the ethics officer, that there does not exist probable cause for belief that this section has been violated, the board of ethics shall so notify the complainant and the subject of the investigation, and the complaint will be dismissed. If the board of ethics determines, after a preliminary investigation of the complaint by the ethics officer, that there does exist probable cause for belief that this section has been violated, the board of ethics shall give notice to the person involved to attend a hearing to determine whether there has been a violation of this section.
- 6) For use in proceedings under this section, the board of ethics shall have the power to issue subpoenas to compel any person to appear, give sworn testimony, or produce documentary or other evidence. Any person who fails to respond to such subpoenas may be subjected to the penalties set forth in subsection (k) of this section.
- 7) All hearings of the board of ethics pursuant to this section shall be as follows:
 - a. All testimony shall be under oath, which shall be administered by a member of the board of ethics. Any person who appears before the board of ethics shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state. Any person whose name is mentioned during a proceeding of the board of ethics and who may be adversely affected thereby may appear personally before the board of ethics on such person's own behalf or may

file a written sworn statement for incorporation into the record to be made part of all proceedings pursuant to this subsection.

- b. The decision of the board of ethics shall be governed by a preponderance of the evidence standard.
- c. At the conclusion of proceedings concerning an alleged violation, the board of ethics shall immediately begin deliberations on the evidence and proceed to determine by a majority vote of members present whether there has been a violation of this section. The findings of the board of ethics concerning a violation and the record of the proceedings shall be made public by the ethics officer as soon as practicable after the determination has been made.

K) *Violations; appeals.*

- 1) Any intentional violation of this section, furnishing of false or misleading information to the board of ethics or the ethics officer, failure to follow an opinion rendered by the board of ethics, or failure to comply with a subpoena issued by the board of ethics pursuant to this section shall subject the violator to any one (1) or more of the following:
 - a. Administrative sanction of not more than one thousand dollars (\$1,000.00) assessed by the board of ethics;
 - b. Public reprimand by the board of ethics; and
 - c. Prosecution by the DeKalb County Solicitor in municipal court and, upon conviction, a fine of up to one thousand dollars (\$1,000.00) per violation and up to six (6) months imprisonment, whether the official or employee is elected or appointed, paid or unpaid. Nothing in this section shall be interpreted to conflict with state law. An action for violation of this section or the furnishing of false or misleading information or the failure to comply with a subpoena issued by the board of ethics must be brought within two (2) years after the violation is discovered.
- 2) With regard to violations by persons other than officials or employees, in addition to the remedies in paragraph (1) of this subsection, the board of ethics may recommend to the chief executive and the commission any one or more of the following:
 - a. Suspension of a contractor; and
 - b. Disqualification or debarment from contracting or subcontracting with DeKalb County.
- 3) The decision of the board of ethics after a hearing shall be final; provided, however, that such proceeding shall be subject to review by writ of certiorari to the DeKalb County Superior Court. The designee of the board of ethics shall be authorized to acknowledge service of any such writ and shall, within the time provided by law, certify and cause to be filed with the clerk of the superior court a record of the proceedings before the board of ethics, the decision of the board of ethics, and the notice of the final actions of the board of ethics.

The effective date of this Act shall be the day the Act is signed by the Governor, but in no case later than July 1, 2020.