
GOVERNOR BRIAN P. KEMP
2020 SESSION OF THE GEORGIA GENERAL ASSEMBLY
VETO MESSAGES & SIGNING STATEMENTS

Veto 1

House Bill 935 would create the Recorder's Court of Gwinnett County. At the request of the bill's sponsor, **I VETO HOUSE BILL 935.**

Veto 2

House Bill 991 creates the Healthcare Transparency and Accountability Oversight Committee which would “have the authority to review the performance and conduct of all state healthcare plan contractors and their subcontractors.” The Committee would be comprised of nine members: one physician, one pharmacist, and one consumer member who is a member of the State Health Benefit Plan. The other six members would be members of the General Assembly, with two appointments by the Governor, Lieutenant Governor, and Speaker respectively. The Committee would be vested with the authority to request and review records relating to state healthcare plan contractors and their subcontractors, submit written questions and compel responses from the Department of Community Health and other entities, prepare recommendations on contracting, prepare recommendations on legislative initiatives, retain third-party consultants, and request an audit of any contractor or subcontractor with the Department of Audits and Accounts. The bill would further require contractors and subcontractors to make their records available to the Committee within thirty days of the request and provide an annual report to the Committee for reports and statements relative to their performance of the state contract.

The Georgia Constitution provides that “[t]he legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided.” GA. CONST. art. I, § 2, ¶ III. Further, Code Section 16-10-9 makes it unlawful for members of the General Assembly to hold office “... in the executive branch of the state government or any agency thereof...” O.C.G.A. § 16-10-9(a)(1). A violation of such law is punishable as a misdemeanor. O.C.G.A. § 16-10-9(b).

As the Georgia Supreme Court has warned, the doctrine of the separation of powers “is the means by which ‘democracy undertakes to preserve the liberties of the people from

excessive concentrations of authority.” *Galer v. Bd. of Regents of the Univ. Sys.*, 239 Ga. 268, 270 (1977) (quoting *United Public Workers v. Mitchell*, 330 U.S. 75 at 91 (1947)). Despite the bill enumerating that “[n]othing in this Code section shall be construed to enable the oversight committee to act on its own to, or otherwise prevent the department or any other state agency from, entering into, renewing, or terminating a contract with a contractor for a state healthcare plan,” 2020 Ga. H.B. 991 at 75-78, this statement is largely pretextual. Two-thirds of the proposed committee’s members would be members of the General Assembly. Further, the powers prescribed to the proposed committee largely supplant the planning, policymaking, and oversight powers exercised by the Board of Public Health. *See* O.C.G.A. § 31-2-4. Since such boards are considered creatures of the executive branch of state government, it is possible that service by members of the General Assembly on the Healthcare Transparency and Accountability Oversight Committee could violate the separation of powers. *See* *Murphy et al. v. Georgia*, 233 Ga. 681 (1975); *Dep’t of Transp. v. Atlanta*, 260 Ga. 699 (1990); *Albany Surgical, P.C. v. Dep’t of Cmty. Health*, 257 Ga. App. 636 (2002) (discussing the Department of Community Health as an executive branch agency of state government); *see also* O.C.G.A. § 50-4-1, *et seq.*

Therefore, to ensure that members appointed to the Healthcare Transparency and Accountability Oversight Committee do not violate the separation of powers as delineated by the Constitution and laws of this state, **I VETO HOUSE BILL 991.**

Veto 3

Senate Bill 306 would enact the Audiology and Speech-Language Pathology Interstate Compact (hereinafter, the “Compact”) in Georgia and in doing so, would enter Georgia into the Compact. This legislation would also grant the State Board of Examiners for Speech-Language Pathology and Audiology the power to conduct fingerprint-based national background checks and add a new requirement for speech-language pathologist or audiologist licensure that applicants must receive satisfactory results from a fingerprint record check conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation. In 1986, the Georgia General Assembly established the Georgia Occupational Regulation Review Council (hereinafter, “GORRC”) to weigh the necessity of new and ongoing occupational regulation by the State. Under Georgia law, GORRC must consider the following factors if the State is considering new occupational regulation: (i) whether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens of this state and whether the potential for harm is recognizable and not remote; (ii) whether the practice of the occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability; (iii) whether the citizens of this state are or may be effectively protected by other means; (iv) whether the overall cost effectiveness and economic impact would be positive for citizens of this state; and (v) whether there are means other than state regulation to protect the interests of the state. GORRC was created

to protect the citizens of Georgia by reviewing state regulation and determining whether government regulation positively impacts our citizens. This legislation did not receive statutorily mandated review and approval through GORRC. *See* O.C.G.A. § 43-1A-1, *et seq.* The Compact will also only come into effect on the date when the Compact statute is enacted into law in the tenth member state. If Georgia were to enact this legislation now, it would be the sixth member state, and no other states have legislation pending to join the Compact this year. Further, this legislation received no fiscal analysis to determine the costs associated with the additional licensure requirement or Georgia's entrance into and participation in the Compact.

For the foregoing reasons, I VETO SENATE BILL 306.

Veto 4

Senate Bill 504 would create a nonbinding advisory referendum for the purpose of ascertaining whether the electors of Glynn County desire the Glynn County Board of Commissioners to abolish the Glynn County Police Department. Senate Bill 509, which I signed, creates a similar, binding ballot referendum to be held on the same date for the same jurisdiction. If approved, the binding referendum in Senate Bill 509 would automatically abolish the Glynn County Police Department and transfer the functions and assets of the department to the Sheriff of Glynn County. Because the presence of two similar ballot questions could lead to voter confusion, **I VETO SENATE BILL 504.**

Statement on House Bill 105:

In the aftermath of Hurricane Michael from 2018, Georgians continue to suffer from the storm's widespread devastation, which caused generational damage to the agriculture industry and catastrophic harm for farm families. Although the inflicted damage remains substantial, federal relief has begun to arrive, offering a desperately needed reprieve and new opportunities to rebuild for those in need.

Acting on the pleas of our constituents, the Georgia General Assembly recently passed House Bill 105 to create a tax exemption for income received as payments from a federal disaster relief or assistance grant program administered by this state or the U.S. Department of Agriculture for agricultural losses due to the hurricane. This legislation was a top priority for House leadership and, as a result, became a vehicle for additional, tax-related subject matter, including an excise tax for for-hire ground transport service providers and a narrowed scope of appropriation authority for specific tax proceeds in the State of Georgia.

Following *sine die* of the legislative session, legitimate questions arose as to whether this legislation ultimately passed both chambers of the General Assembly. The Georgia Constitution requires that a bill receive a majority of votes in each chamber to receive

final passage. *See* GA. CONST. art. 3, § 5, ¶ V. When House Bill 105 was amended, it appears an incorrect legislative counsel number (*i.e.*, tracking number) was assigned to the draft. Whereas this error is not necessarily a fatal flaw, this bill is far too important to our state to leave room for a legal challenge on its legitimacy.

Although I will sign House Bill 105 today, I do so with serious concern that if the bill is ever challenged, the measure may not withstand judicial scrutiny, resulting in the unraveling of the tax structures it created. Our farmers, especially, cannot afford further economic hardship.

In the coming weeks, I will issue a proclamation calling for a special session of the General Assembly to pass the Hurricane Michael tax exemption and other relevant portions of House Bill 105 again to ensure our farm families are protected. Such special session may also be timely to address other budgetary and oversight issues.

For the foregoing reasons, I SIGN HOUSE BILL 105.