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State Government HB 456

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STATE GOVERNMENT

Organization of the Executive Branch Generally: Amend Chapter 4 of Title 50 of the Official Code of Georgia Annotated, Relating to the Organization of the Executive Branch Generally, so as to Establish the “Georgia Government Accountability Act”; Provide for a Short Title; Provide for Legislative Intent; Create the Legislative Sunset Advisory Committee; Authorize the Committee to Review and Evaluate State Agencies’ Productivity, Efficiency, and Responsiveness; Provide for the Automatic Abolition of Certain State Agencies Contingent Upon Adoption of a Resolution by the General Assembly Declaring that the State Laws Applicable to Such Agency Have Been Repealed, Revised, or Reassigned; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 50-4-1 to -7 (amended); 50-4-20 to -24 (new)
BILL NUMBER:	HB 456
ACT NUMBER:	N/A
GEORGIA LAWS:	N/A
SUMMARY:	The bill would have created a joint committee, the Legislative Sunset Advisory Committee (LSAC), which would have been responsible for reviewing the efficiency and productivity of state agencies. The bill set forth procedures and criteria for agency reporting and LSAC review. Agencies would have been required to cooperate with the LSAC upon request, to submit any records, and to submit reports for review. The LSAC could have made recommendations to the General Assembly for the abolition, continuation, or reorganization of the agencies it reviewed. If the LSAC

recommended that an agency be abolished, the abolishment would have become automatic one year after the recommendation, if the General Assembly found by joint resolution that the laws for which the agency is responsible had been repealed, revised, or reassigned, and the agency's debts were transferred. Agencies established by constitutional provision would not have been subject to automatic abolishment. Further, the LSAC could have recommended elimination, privatization, consolidation, transfer, or reorganization of an agency's programs when it determined that those programs were redundant. The bill would have also provided for the automatic abolishment of boards, commissions, advisory councils, or similar bodies that had not held an open public meeting for more than a year. The bill would have only applied to state entities funded through a state appropriations act.

EFFECTIVE DATE: N/A

History

Sunsetting legislation is not a new phenomenon.¹ A sunset law generally refers to provisions that “set up formal review processes for state regulatory agencies, licensing bodies, and other boards and commissions and use[] the threat of termination to give the review process teeth.”² In 1976, Colorado became the first state to pass such

1. Chris Mooney, *A Short History of Sunsets*, LEGAL AFF., Jan.–Feb. 2004, available at http://www.legalaffairs.org/issues/January-February-2004/story_mooney_janfeb04.msp. For example, the infamous Sedition Act of 1798 was set to expire when then President Adams left office. *Id.*

2. *Id.*

a law, but by the early 1980s, thirty-four other states had passed similar legislation.³

One example of sunset legislation in effect today is Texas's Sunset Advisory Commission (Commission).⁴ The Texas legislature created the Commission in 1977 when it passed the Texas Sunset Act.⁵ The Commission has twelve members consisting of five senators, five representatives, one public member appointed by the Lieutenant Governor, and one public member appointed by the Speaker of the House.⁶ State agencies undergo review by the Commission once every twelve years and are subject to automatic abolishment unless the Texas legislature enacts legislation to continue that agency's functions.⁷ The act requires that an agency submit a report to the Commission.⁸ The Commission then uses this report to determine whether the agency's services are duplicative or its operation and activities could be improved.⁹ By 2009, the Commission had eliminated forty-seven agencies and consolidated eleven.¹⁰

In 2006, the Florida legislature passed the Florida Government Accountability Act.¹¹ The act provided for the creation of the Joint

3. *Id.*

4. TEX. GOV'T CODE ANN. §§ 325.003–.024 (West 2011).

5. SUNSET ADVISORY COMMISSION, <http://www.sunset.state.tx.us/> (last visited May 16, 2012); *see* GOV'T §§ 325.001–.024.

6. GOV'T § 325.003(a).

7. SUNSET ADVISORY COMMISSION, *supra* note 5. The process works by scheduling a date for an agency's abolishment unless the Commission decides to continue its functions. *What is Sunset?*, SUNSET ADVISORY COMMISSION, <http://www.sunset.state.tx.us/guide.htm> (last visited May 18, 2012). The Commission reports its recommendations to the Texas legislature, which then must pass legislation to continue that agency's functions. *Id.*; SUNSET ADVISORY COMMISSION, *supra* note 5.

8. GOV'T § 325.007(a).

9. *Id.*; SUNSET ADVISORY COMMISSION, *supra* note 5.

10. Kyle Wingfield, *Georgia's 'Sunset' Solution*, ATLANTA J.-CONST., Aug. 16, 2009, at A20.

11. *Sunset Reviews: The Florida Legislature*, JOINT SUNSET COMMITTEE, <http://www.floridasunsetreviews.gov/index.cfm> (last visited May 17, 2012). *See generally* S.B. 2460, 2006 Legis. Reg. Sess. (Fla. 2006). Its caption reads:

An act relating to government accountability; creating part II of ch. 11, F.S., the Florida Government Accountability Act; providing definitions; creating the Legislative Sunset Advisory Committee; providing for appointment, qualifications, and terms of committee members; providing for vacancies; providing for organization and procedure; authorizing reimbursement for certain expenses; providing for employment of staff; providing a schedule for abolishing state agencies and advisory committees; prescribing required content for agency reports to the committee; providing for review of agencies and their advisory committees by the Office of Program Policy Analysis and Government Accountability; prescribing duties of the committee in reviewing reports, consulting with other legislative entities, holding public hearings, and making a report and recommendations to the legislative leadership with respect to agencies scheduled for

Sunset Committee, which determined if “a public need exist[ed] for the continuation of a state agency, its advisory committees, or its programs.”¹² Much like Texas’s Sunset Advisory Commission, Florida’s Joint Sunset Committee made recommendations to the legislature to abolish, continue, or reorganize the agency under review.¹³ Under the act, agencies were abolished the year following their review unless continued by the legislature.¹⁴ Florida’s legislature did not fund the Joint Sunset Committee in its 2010–2011 appropriations act, and the Committee consequently ceased its operations on June 30, 2010.¹⁵

There have been several attempts to create the Georgia Government Accountability Act (GGAA) prior to the 2011–2012 Regular Session. On January 4, 2007, Representative Charlice Byrd (R-20th) prefiled House Bill (HB) 31, which would have established the GGAA and created the Legislative Sunset Advisory Committee (LSAC); however, the bill did not progress any further through the Georgia House of Representatives (House).¹⁶ In 2007, Representative Byrd also co-sponsored HB 495, which was another attempt to create the GGAA, but HB 495 only made it to its second reading in the

abolition; providing for monitoring committee recommendations; providing review criteria; specifying recommendation options; authorizing exemption from certain review for certain agencies; providing for continuation of state agencies and their advisory committees, by law, under certain circumstances; providing procedures after termination; providing for issuance of subpoenas; authorizing reimbursement for travel and per diem for witnesses; providing for assistance of and access to state agencies; providing applicability with respect to certain rights, penalties, liabilities, and proceedings; amending s. 216.023, F.S.; requiring that performance measures and standards and outsourcing cost-benefit and business case analyses identify impacts on agency activities; creating a working group to develop instructions for agencies regarding the computation of activity and unit cost information required to be included in legislative budget requests; providing an effective date.

Id.

12. *Sunset Reviews: The Florida Legislature*, *supra* note 11.

13. *Id.*

14. *Id.*

15. See FLA. STAT. §§ 11.901–11.920 (repealed 2011); *Sunset Reviews: The Florida Legislature*, *supra* note 11 (noting at the top of the main page that “[t]he Joint Legislative Sunset Committee was not funded in the FY 2010-11 General Appropriations Act, and the Committee ceased operations on June 30, 2010”).

16. State of Georgia Final Composite Status Sheet, HB 31, 2007–2008 Regular Session, May 21, 2008. HB 31 differs substantially from HB 456; for example, HB 31 provided a specific schedule for when certain listed agencies would be reviewed. Compare HB 31, as introduced, § 1, p. 2–6, 2007 Ga. Gen. Assem., with HB 456, as passed, § 1, p. 2, ln. 56–57, 2012 Ga. Gen. Assem.

House.¹⁷ During the 2009–2010 Regular Session, Representatives Byrd, Barry Loudermilk (R-14th), Clay Cox (R-102nd), Tom Graves (R-12th), Calvin Hill (R-21st), and Timothy Bearden (R-68th) introduced HB 236.¹⁸ On January 16, 2010, HB 236 was withdrawn from the Judiciary Committee and recommitted to the Appropriations Committee.¹⁹ On March 26, 2010, it was defeated in the House by a vote of 77 to 81.²⁰ In the 2011–2012 Regular Session, Senator Judson Hill (R-32nd) prefiled Senate Bill (SB) 2 on November 16, 2010, but the Senate took no further action on it thereafter.²¹

HB 456 was originally companion legislation to SB 223.²² SB 223 was introduced in the 2011 legislative session.²³ Lieutenant Governor Casey Cagle (R) assigned SB 223 to the Senate Government Oversight Committee, which favorably reported a substitute.²⁴ This Senate Committee substitute passed the Senate on March 16, 2011.²⁵ It was then referred to the House Committee on Budget and Fiscal Affairs Oversight, which favorably reported a House Committee substitute on March 30, 2011.²⁶ This House Committee substitute added language to amend Title 28 of the Official Code of Georgia Annotated that would have merged the budget offices of the House and the Senate.²⁷ Inclusion of these provisions radically altered the

17. State of Georgia Final Composite Status Sheet, HB 495, 2007–2008 Regular Session, May 21, 2008.

18. State of Georgia Final Composite Status Sheet, HB 236, Apr. 29, 2010.

19. *Id.*

20. Georgia House of Representatives Voting Record, HB 236 (Mar. 26, 2010).

21. SB 2, as introduced, 2011 Ga. Gen. Assem.

22. See Video Recording of House Budget and Fiscal Affairs Oversight Committee Meeting, Feb. 16, 2012 at 10 sec. (remarks by Rep. Chuck Martin (R-47th)), http://media.legis.ga.gov/hav/11_12/2012/committees/bud/bud021612EDITED.wmv [hereinafter House Committee Video]. Senators William Ligon, Jr. (R-3rd), Chip Rogers (R-21st), Judson Hill (R-32nd), Frank Ginn (R-47th), John Albers (R-56th), and David Shafer (R-48th) sponsored SB 223 in the Senate, and Representative Chuck Martin (R-47th) sponsored it in the House. State of Georgia Final Composite Status Sheet, SB 223, May 10, 2012.

23. State of Georgia Final Composite Status Sheet, SB 223, May 10, 2012.

24. *Id.*; see SB 223 (LC 34 3027S), 2011 Ga. Gen. Assem.

25. State of Georgia Final Composite Status Sheet, SB 223, May 10, 2012.

26. *Id.*; see SB 223 (LC 34 3094S), 2011 Ga. Gen. Assem.

27. SB 223 (LC 34 3094S), 2011 Ga. Gen. Assem. In 2003, the General Assembly created the Senate Budget Office (SBO). *Budget & Evaluation Office*, GA. STATE SENATE, <http://www.senate.ga.gov/sbeo/en-US/Home.aspx> (last visited May 17, 2012). Past budget offices had been headquartered in and directed by the House of Representatives. Telephone Interview with Sen. Judson Hill (R-32nd) (Apr. 9, 2012) [hereinafter Hill Interview]. The SBO was created because Senators were concerned that they simply had to accept the House's calculations and were unable to conduct their own independent analyses. See *id.*

bill, adding twelve pages to a bill that was originally six pages.²⁸ The substitute passed the House by a vote of 120 to 56.²⁹ Within two days, the Senate objected to the merger of the House and Senate Budget Offices;³⁰ Senator William Ligon, Jr. (R-3rd), a sponsor of the bill, offered a Senate floor amendment that eliminated the portions of the bill merging the budget offices.³¹ This Senate floor amendment passed,³² and the Senate agreed to the House Committee substitute as amended by a vote of 42 to 9.³³ The House disagreed with the Senate amendment to the House Committee substitute, which necessitated a Conference Committee.³⁴ The Conference Committee produced a Conference Committee Report (Report), which is the foundation of HB 456.³⁵

28. Compare SB 223 (LC 34 3027S), § 1, p. 1–6, ln 12–176, 2011 Ga. Gen. Assem., with SB 223 (LC 34 3094S), §§ 2-1 to 3-20, p. 6–18, ln 20–599, 2011 Ga. Gen. Assem. Besides radically altering the length of the Senate version, the House Committee substitute compounded the purposes of the original bill. See SB 223 (LC 34 3094S), p. 1, ln. 8–18, 2011 Ga. Gen. Assem. The amendment added the following purposes to the bill:

[A]mend Title 28 of the Official Code of Georgia Annotated, relating to the General Assembly, so as to authorize the creation of the Joint Legislative Budget Office as a successor to the Senate Budget Office and the House Budget Office; to make conforming amendments in numerous Code sections referring to legislative budget offices and, in particular, to amend Title 8 of the Official Code of Georgia Annotated, relating to buildings; Title 15 of the Official Code of Georgia Annotated, relating to courts; Title 20 of the Official Code of Georgia Annotated, relating to education; Title 35 of the Official Code of Georgia Annotated, relating to law enforcement; Title 45 of the Official Code of Georgia Annotated, relating to public officers; and Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to provide for and reflect the foregoing; to provide for related matters; to repeal conflicting laws; and for other purposes.

Id.

29. Georgia House of Representatives Voting Record, SB 223 (Apr. 12, 2011).

30. State of Georgia Final Composite Status Sheet, SB 223, May 10, 2012. Some legislators suggested that the merger of the two legislative budget offices would be in effect a return to the pre-2003 system. Hill Interview, *supra* note 27. Some speculated that this House Committee substitute was an effort to kill the bill. *Id.* While offering his amendment on the floor of the Senate, Senator Ligon said that the House effort to merge the offices was “completely unacceptable.” Video Recording of Senate Proceedings, Apr. 14, 2011 at 18 min., 44 sec. (remarks by Sen. William Ligon, Jr. (R-3rd)), http://mediam1.gpb.org/ga/leg/2011/ga-leg-senate_041411_PM1.wmv [hereinafter Senate Amendment Video].

31. SB 223 (AM 36 0288), 2011 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, SB 223, May 10, 2012. This amendment completely deleted the twelve pages of alterations included in the House Committee substitute. Compare SB 223 (AM 36 0288), § 1, p. 1, ln. 6, 2011 Ga. Gen. Assem., with SB 223 (LC 34 3094S), §§ 2-1 to 3-20, p. 6–18, ln. 20–599, 2011 Ga. Gen. Assem.

32. State of Georgia Final Composite Status Sheet, SB 223, May 10, 2012.

33. Georgia Senate Voting Record, SB 223 (Apr. 14, 2011).

34. State of Georgia Final Composite Status Sheet, SB 223, May 10, 2012.

35. See House Committee Video, *supra* note 22. Due to an oversight, the Report did not include a

*Bill Tracking of HB 456**Consideration and Passage by the House*

Representatives Charlice Byrd (R-20th), Calvin Hill (R-21st), Paulette Braddock (R-19th), Sean Jerguson (R-22nd), Donna Sheldon (R-105th), and Mark Hamilton (R-23rd) sponsored HB 456 in the House.³⁶ The House read the bill for the first time on March 4, 2011.³⁷ Speaker of the House David Ralston (R-7th) assigned the bill to the House Committee on Budget and Fiscal Affairs Oversight.³⁸ The House read the bill for the second time on March 7, 2011.³⁹ Further enactment of HB 456, however, was not pursued during the 2011 legislative session because supporters of the GGAA were pushing forward with SB 223.⁴⁰

At the beginning of the 2012 session, SB 223 had gone through Conference Committee to address the discord over the merger of the House and Senate Budget Offices.⁴¹ The Conference Committee produced the Report that eliminated the merger language from SB 223.⁴² But due to an oversight, the Report did not include a provision making the GGAA effective immediately upon signature by the

provision making the GGAA effective immediately upon signature by the Governor or override of his veto. *See* SB 223 (12 LC 34 3254S), 2012 Ga. Gen. Assem.; *see also* House Committee Video, *supra* note 22. No amendments may be offered to Conference Committee reports; they are presented to the legislative body on a “take-it-or-leave-it” basis. *Committees*, GA. ST. SENATE, <http://www.senate.ga.gov/committees/en-US/Home.aspx> (last visited May 17, 2012). Therefore, any changes—such as inserting an “effective upon signature” provision—would have to go back before the Conference Committee. Thus, the more economical route was to use HB 456 as a new vehicle for the GGAA with language identical to that already agreed to after extensive debate and compromise. *See* House Committee Video, *supra* note 22.

36. State of Georgia Final Composite Status Sheet, HB 456, May 10, 2012.

37. *Id.*

38. Video Recording of House Proceedings, Mar. 4, 2011 at 25 min., 21 sec. (remarks by Speaker of the House David Ralston (R-7th)), http://mediam1.gpb.org/ga/leg/2011/ga-leg-house_030411_AM.wmv [hereinafter House Referral Video].

39. State of Georgia Final Composite Status Sheet, HB 456, May 10, 2012.

40. *Id.* Between the time of its assignment to the Budget and Fiscal Affairs Oversight Committee in March of 2011 and its hearing date of February 16, 2012, HB 456 moved no further in the legislative process. *Id.*

41. State of Georgia Final Composite Status Sheet, SB 223, May 10, 2012.

42. *Compare* SB 223 (12 LC 34 3254S), 2012 Ga. Gen. Assem., *with* SB 223 (LC 34 3094S), §§ 2-1 to 3-20, p. 6-18, in 20-599, 2011 Ga. Gen. Assem. The Senate approved this Conference Committee substitute by a vote of 37 to 12 on Jan. 30, 2012. Georgia Senate Voting Record, SB 223 (Jan. 30, 2012).

Governor or override of his veto.⁴³ As a result, SB 223's supporters chose to use HB 456 as a new vehicle for passage of the GGAA.⁴⁴ HB 456 was amended to match the Report, and a provision was added that made the GGAA effective immediately upon the Governor's signature or override of its veto.⁴⁵ Representative Chuck Martin (R-47th), who presented the bill before the Budget and Fiscal Affairs Oversight Committee, said that the "effective upon signature" language was added to grant the LSAC more time for agency review in 2012.⁴⁶

The House Committee modified HB 456 to match the Report by adding the Governor's floor leaders from the House and the Senate to the LSAC.⁴⁷ The Governor's floor leaders were included to ensure that the review process would be a cooperative effort with the Governor.⁴⁸ The co-Chairpersons of the LSAC could appoint ex officio members.⁴⁹ The House Committee substitute version placed a limitation on the LSAC's information-seeking power—the information sought must be subject to public disclosure.⁵⁰ The substituted language also removed the eight-year time limit on reviewing all state agencies, and instead gave the LSAC discretion to set the review schedule.⁵¹ In addition, it added an exception for state entities not funded by an appropriations act⁵²—the GGAA would not apply to "self-funded" entities.⁵³ The Budget and Fiscal Affairs Oversight Committee favorably reported the House Committee substitute on February 16, 2012.⁵⁴ The House read HB 456 for a third

43. See SB 223 (12 LC 34 3254S), 2012 Ga. Gen. Assem.; see also House Committee Video, *supra* note 22.

44. HB 456 (HCS), § 2, p. 6, ln. 194–95, 2012 Ga. Gen. Assem.; see also House Committee Video, *supra* note 22.

45. HB 456 (HCS), § 2, p. 6, ln. 194–95, 2012 Ga. Gen. Assem.; see also House Committee Video, *supra* note 22.

46. House Committee Video, *supra* note 22. The bill's sponsors and supporters were concerned that if the bill became effective on July 1st, rather than immediately upon signature by the Governor, the LSAC would lose about a third of its yearly agency review time. *Id.*

47. HB 456 (HCS), § 1, p. 2, ln. 27–29, 2012 Ga. Gen. Assem.

48. House Committee Video, *supra* note 22.

49. HB 456 (HCS), § 1, p. 2, ln. 35–36, 2012 Ga. Gen. Assem.

50. *Id.* § 1, p. 2, ln. 48–49.

51. *Id.* § 1, p. 2, ln. 55–56.

52. *Id.* § 1, p. 3, ln. 59–60.

53. Telephone Interview with Rep. Charlice Byrd (R-20th) (Mar. 27, 2012) [hereinafter Byrd Interview].

54. House Committee Video, *supra* note 22, at 5 min., 15 sec. (remarks by Rep. Bruce Williamson)

time on February 28, 2012,⁵⁵ and it passed the same day by a vote of 108 to 50.⁵⁶

Consideration and Passage by the Senate

Senator Judson Hill (R-32nd) sponsored HB 456 in the Senate.⁵⁷ On February 29, 2012, the bill was read for the first time and Lieutenant Governor Casey Cagle (R) referred it to the Senate Appropriations Committee.⁵⁸ The Senate Appropriations Committee offered a Senate Committee substitute that provided that at least one of the appointees to the LSAC from both the House and the Senate had to be a member of the minority party.⁵⁹ Adding the two guaranteed minority members was designed to address concerns that the LSAC's review process would be entirely partisan.⁶⁰ The Appropriations Committee favorably reported a Senate Committee substitute including the minority positions on March 20, 2012, and the Senate read the bill for a second time on March 21, 2012.⁶¹ The Senate read the bill for a third time on March 27, 2012, and the bill passed the Senate by a vote of 38 to 6 the same day.⁶² The House agreed to the changes by the Senate Appropriations Committee by a vote of 144 to 18.⁶³

(R-111th)); *see* State of Georgia Final Composite Status Sheet, HB 456, May 10, 2012.

55. State of Georgia Final Composite Status Sheet, HB 456, May 10, 2012.

56. Georgia House of Representatives Voting Record, HB 456 (Feb. 28, 2012).

57. State of Georgia Final Composite Status Sheet, HB 456, May 10, 2012.

58. Video Recording of Senate Proceedings, Feb. 29, 2012 at 2 min., 29 sec. (remarks by Lieutenant Governor Casey Cagle), <http://www.gpb.org/lawmakers/2012/day-28> [hereinafter Senate Referral Video].

59. HB 456 (SCS), § 1, p. 2, ln. 31–32, 2012 Ga. Gen. Assem.; *see* Hill Interview, *supra* note 27.

60. *See* Hill Interview, *supra* note 27 (“[W]hen we have a committee appointed, we always include majority and minority members in it . . .”); *see also* Byrd Interview, *supra* note 53 (“When Democrats opposed [HB 456], they did it because they felt the minorities were not going to be a part of the [LSAC].”).

61. State of Georgia Final Composite Status Sheet, HB 456, May 10, 2012.

62. Georgia Senate Voting Record, HB 456 (Mar. 27, 2012).

63. Georgia House of Representatives Voting Record, HB 456 (Mar. 29, 2012).

Veto by the Governor

The House sent the bill to Governor Nathan Deal on April 5, 2012.⁶⁴ The Governor vetoed HB 456 on May 7, 2012.⁶⁵ In his veto statement, the Governor cited the costs of implementing the bill, the failure to include funding to implement its measures, and the current review measures already available to the legislature.⁶⁶ The Governor also contended that the recently passed Zero-Base Budgeting Act's⁶⁷ "review process is the most cost-effective and efficient way to accomplish the goal of reviewing agency expenditures, evaluating performance and ensuring that we are focused on delivering essential services."⁶⁸

The Bill

The bill would have amended Chapter 4 of Title 50 of the Official Code of Georgia Annotated by designating existing Code sections 50-4-1 through 50-4-7 as Article 1 and creating new Code sections 50-4-20 through 50-4-24 as Article 2.⁶⁹ The bill's primary effect would have been creating the LSAC, an evaluation mechanism in the General Assembly with the power to subject state agencies to review and make recommendations that the agency or the agency's functions be continued, reorganized, or abolished.⁷⁰

Section 1, the most substantive portion of the bill, included the language of proposed Code sections 50-4-20 through 50-4-24.⁷¹

64. State of Georgia Final Composite Status Sheet, HB 456, May 10, 2012.

65. *Id.*

66. *Deal Issues Veto Statements*, GOVERNOR NATHAN DEAL: OFF. OF THE GOVERNOR (May 4, 2012), http://gov.georgia.gov/00/press/detail/0,2668,165937316_184600248_184703295,00.html; see also Aaron Gould Sheinin & Kristina Torres, *Governor Vetoes 'Sunset' Bill, Angering Tea Party Activists*, ATLANTA J.-CONST. (May 4, 2012, 11:22 PM), <http://www.ajc.com/news/georgia-politics-elections/governor-vetoes-sunset-bill-1431859.html>. Although the bill's sponsors expressed doubt that the Governor's veto would be overridden, they vowed to continue pursuing the GGAA. *Id.*

67. See SB 33, 2012 Ga. Gen. Assem.

68. *Deal Issues Veto Statements*, *supra* note 66. Senator Hill contends that the adoption of zero-base budgeting does not undercut the necessity for the LSAC. See Hill Interview, *supra* note 27. Zero-base budgeting, he argues, does nothing more than disclose how much is being spent while the LSAC would analyze whether the "programs and agencies align with the core essential functions of our state government." *Id.*

69. HB 456, 2012 Ga. Gen. Assem.

70. *Id.* p. 1, ln. 1-9.

71. See *id.* § 1, p. 1-6, ln. 15-194.

These proposed Code sections would have created the LSAC, described its organization and function, delineated the scope of its authority, and set forth procedures for reporting and review.⁷²

Proposed Code section 50-4-20 would have set forth the intent of the legislature to “establish a method by which the efficiency of state government shall be reviewed and the productivity of each agency evaluated.”⁷³ The bill’s purpose was to “ensure that the valuable resources of the state are best utilized and that state agencies are held accountable for their service to the public and their responsiveness to the needs of the citizens of this state.”⁷⁴

Proposed Code section 50-4-21 would have created the LSAC.⁷⁵ The LSAC would have consisted of seven members of the House and seven members of the Senate.⁷⁶ The members would have been appointed by the heads of each chamber of the General Assembly—the Speaker of the House and the President of the Senate—with certain requirements on who must be appointed.⁷⁷ A Governor’s floor leader from both the House and the Senate would have had guaranteed membership on the LSAC.⁷⁸ The bill would have required that at least one appointee by the President and one appointee by the Speaker be from the minority party.⁷⁹ Members of the LSAC would have served “two-year terms concurrent with their terms as members of the General Assembly.”⁸⁰ The President and the Speaker also would have had the authority to appoint the co-Chairpersons from the LSAC’s membership.⁸¹ These co-Chairpersons would have been authorized to appoint no more than two ex officio members of the LSAC.⁸² The General Assembly would have been authorized—with the Governor’s cooperation—to employ staff for the LSAC.⁸³ These

72. *See id.* § 1, p. 1–6, ln. 12–194.

73. *Id.* § 1, p. 1, ln. 18–19.

74. *Id.* § 1, p. 1, ln. 20–22.

75. HB 456, § 1, p. 2, ln. 23–51, 2012 Ga. Gen. Assem.

76. *Id.* § 1, p. 2, ln. 25–26.

77. *Id.* § 1, p. 2, ln. 24–32.

78. *Id.* § 1, p. 2, ln. 27–29.

79. *Id.* § 1, p. 2, ln. 30–32.

80. *Id.* § 1, p. 2, ln. 32–33.

81. HB 456, § 1, p. 2, ln. 33–36, 2012 Ga. Gen. Assem.

82. *Id.* § 1, p. 2, ln. 37–38.

83. *Id.* § 1, p. 2, ln. 43–45.

staff members would have worked for the co-Chairpersons on matters related to LSAC activities.⁸⁴

The LSAC would have had discovery or subpoena-like powers.⁸⁵ The co-Chairpersons would have had the power to “request” the cooperation “of any state agency or office.”⁸⁶ The agency’s cooperation would have been mandatory.⁸⁷ The LSAC or any of its staff also would have had the authority to investigate the records of any state agency, provided that those records were subject to public disclosure.⁸⁸ The agency would have been required to make the information available to the LSAC within three business days.⁸⁹

Proposed Code section 50-4-22(a) would have required the LSAC to review all state agencies and would have given the LSAC broad discretion to set the schedule for the review process.⁹⁰ However, state entities whose funds were not granted from an appropriations act would have been immune to the LSAC’s authority; the LSAC did not have the authority to add such entities to the review schedule, to compel them to produce their records, or to subject them to the review process in any other way.⁹¹

Code section 50-4-22(b) would have set up a process for automatic abolishment of state agencies.⁹² If the LSAC determined that an agency should be abolished, that abolishment would have been automatic one year after that determination.⁹³ But before any abolishment could occur, the General Assembly would have had to adopt a joint resolution finding that the agency’s debts or other obligations had been transferred and the agency’s responsibilities had been repealed, revised, or reassigned.⁹⁴ If the General Assembly did not “take action to continue an agency before the date of its

84. *Id.*

85. *See id.* § 1, p. 2, ln. 46-51. Florida’s sunset statute granted similar authority to its version of the LSAC. *See* FLA. STAT. § 11.918 (repealed 2011). Texas grants its Sunset Advisory Commission subpoena powers as well. *See* TEX. GOV’T CODE ANN. § 325.018 (West 2011).

86. HB 456, § 1, p. 2, ln. 46-47, 2012 Ga. Gen. Assem.

87. *Id.* § 1, p. 2, ln. 47-48 (“When so requested, a state agency or office shall assist the committee.”).

88. *Id.* § 1, p. 2, ln. 48-50.

89. *Id.* § 1, p. 2, ln. 50-51.

90. *Id.* § 1, p. 2, ln. 53-60.

91. *Id.* § 1, p. 3, ln. 61-62.

92. HB 456, § 1, p. 3, ln. 63-73, 2012 Ga. Gen. Assem.

93. *Id.* § 1, p. 3, ln. 63-65.

94. *Id.* § 1, p. 3, ln. 65-73.

abolishment,” the bill still would have required state agencies to submit budget requests consistent with the LSAC’s recommendations.⁹⁵

The automatic abolishment procedure would not have been all-encompassing. Agencies established by a provision of the Georgia Constitution would have been immune from the automatic abolishment process.⁹⁶ However, the LSAC would still have had the authority to review the agency and could have included in its report what constitutional provisions the General Assembly should amend to reorganize or abolish the constitutional agency.⁹⁷

The bill would have provided no such safeguard for lesser government entities, such as councils or boards. Code section 50-4-22(e) would have provided for the automatic abolishment of “board[s], commission[s], advisory council[s], or similar bod[ies]” that did not hold an open meeting for more than twelve months.⁹⁸ If such a body did not hold an open meeting for more than twelve months, no further agency review would have been necessary.⁹⁹ Then, the LSAC would have been required to present and give notice of legislation to repeal existing laws relating to the abolished agency.¹⁰⁰

Code section 50-4-23(a) would have set out the reporting criteria for an agency placed on the review schedule by the LSAC.¹⁰¹ The agency would have had to provide the LSAC with a report no later than six months before the agency was scheduled to be reviewed.¹⁰² Code section 50-4-23(b)(1) through (18) would have set forth the content requirements for the agency’s report.¹⁰³ The agency’s chief executive would have needed to validate the report before its submission to the LSAC.¹⁰⁴

95. *Id.* § 1, p. 3, ln. 74–77.

96. *Id.* § 1, p. 3, ln. 78–79.

97. *Id.* § 1, p. 3, ln. 79–82.

98. HB 456, § 1, p. 3, ln. 83–86, 2012 Ga. Gen. Assem.

99. *Id.* § 1, p. 3, ln. 85–86.

100. *Id.* § 1, p. 3, ln. 86–89.

101. *Id.* § 1, p. 4–5, ln. 93–144.

102. *Id.* § 1, p. 4, ln. 94–97.

103. *Id.* § 1, p. 4–5, ln. 98–142. The reporting requirements listed in this subsection included “an accounting of state resources appropriated to and spent by the agency” and “copies of any program audits, performance audits, and any other reports provided by the state auditor.” *Id.* § 1, p. 4–5, ln. 102, 136–37.

104. HB 456, § 1, p. 5, ln. 143–44, 2012 Ga. Gen. Assem.

According to Code section 50-4-24(a), the LSAC would have had to comply with several statutory requirements during the review process.¹⁰⁵ The LSAC would have had to complete its review no later than six months after receipt of the agency's report.¹⁰⁶ The LSAC's review was a four-step process: (1) reviewing the report submitted by the agency; (2) consulting third-party experts; (3) holding public hearings; and (4) issuing a report to the General Assembly and the Governor.¹⁰⁷ The LSAC's report would have had to include findings and recommendations regarding the agency review and determine whether a public need existed for continuation of the agency or its functions.¹⁰⁸ Code section 50-4-24(b) would have included the criteria for determining public need for an agency or its functions.¹⁰⁹ The bill would have required the LSAC to draft any legislation necessary to carry out its recommendations.¹¹⁰

Section 2 of the bill would have made the bill effective immediately upon signature by the Governor "or upon its becoming law without such approval."¹¹¹

Analysis

The Future of the GGAA

Bills similar to HB 456, which would have created the GGAA, are likely to be introduced in future legislative sessions.¹¹² The version of the bill that Governor Nathan Deal vetoed passed the Senate by a vote of 38 to 6 and passed the House by a vote of 144 to 18.¹¹³ Representative Chuck Martin (R-47th), the Chairman of the Budget

105. *Id.* § 1, p. 5–6, ln. 146–94.

106. *Id.* § 1, p. 5, ln. 146.

107. *Id.* § 1, p. 5, ln. 146–58.

108. *Id.* § 1, p. 5, ln. 156–58.

109. *Id.* § 1, p. 5–6, ln. 159–87. Such criteria included "the efficiency with which the agency operates" and "the extent to which the agency has satisfied requirements of state law, safeguarded public health, safety, and welfare, and utilized state resources." *Id.* § 1, p. 5–6, ln. 161, 178–79.

110. HB 456, § 1, p. 6, ln. 193–94, 2012 Ga. Gen. Assem.

111. *Id.* § 2, p. 6, ln. 196–97.

112. See Buzz Brockway, *More on the Veto of the Sunset Bill*, PEACH PUNDIT (May 7, 2012, 14:00 PM), <http://www.peachpundit.com/2012/05/07/more-on-the-veto-of-the-sunset-bill/> (posting, with permission, Representative Chuck Martin's (R-47th) comments about HB 456's veto).

113. Georgia House of Representatives Voting Record, HB 456 (Mar. 29, 2012); Georgia Senate Voting Record, HB 456 (Mar. 27, 2012).

and Fiscal Affairs Oversight Committee, “expect[s] [that] the Georgia General Assembly will continue to keep [the GGAA] front and center in 2013 and until it becomes law in Georgia.”¹¹⁴

Governor Deal’s veto of HB 456 could be overridden next session if the General Assembly wishes. The Georgia Constitution provides that “bills . . . vetoed after the General Assembly has adjourned sine die may be considered at the next session of the General Assembly for the purpose of overriding the veto in the manner herein provided.”¹¹⁵ First, because the bill originated in the House, two-thirds of the House members would need to vote to override the veto of HB 456.¹¹⁶ Next, two-thirds of the Senate’s members would need to vote to override the Governor’s veto of the bill.¹¹⁷ If the House and Senate members cast their votes to override the veto in the same way they did for the bill’s passage, the votes would surpass the thresholds needed to override the Governor’s veto because more than 88% of House members and 86% of Senate members voted for HB 456 during the regular session.¹¹⁸

Debate over the Necessity for Sunset Legislation

Opponents and proponents of the bill disagree about whether the GGAA is necessary. Opponents of the bill, such as Governor Deal, cite the passage of SB 33, the Zero-Base Budgeting Act,¹¹⁹ as eliminating the need for the GGAA.¹²⁰ Governor Deal explained his veto of HB 456:

I have signed SB 33, a bill requiring that all state programs and agencies be reviewed over the next eight to [ten] years using Zero Based Budgeting [(ZBB)]. The ZBB review process is the

114. Brockway, *supra* note 112.

115. GA. CONST. art. III, § 5, para. 13(d). The General Assembly adjourned sine die on March 29, 2012. GA. GEN. ASSEMBLY, <http://www.legis.ga.gov/en-US/default.aspx> (last visited July 28, 2012). Governor Deal vetoed HB 456 on May 7, 2012. State of Georgia Final Composite Status Sheet, HB 456, May 10, 2012. Therefore, HB 456 may be considered next session for override of the veto.

116. GA. CONST. art. III, § 5, para. 13(d).

117. *Id.*

118. See Georgia House of Representatives Voting Record, HB 456 (Mar. 29, 2012); Georgia Senate Voting Record, HB 456 (Mar. 27, 2012).

119. O.C.G.A. § 45-12-75.1 (Supp. 2012).

120. *Deal Issues Veto Statements*, *supra* note 66.

most cost-effective and efficient way to accomplish the goal of reviewing agency expenditures, evaluating performance and ensuring that we are focused on delivering essential services. . . . The intent and desired outcomes of HB 456 are and will be achieved through SB 33 and ZBB review. No additional overhead is needed because legislative authority, committees, and staff to review state agencies and operations *are already established in law* and the General Assembly did not include funding to implement this legislation.¹²¹

Proponents of the bill cite the purported success of Texas's Sunset Advisory Commission and advocate that even if the LSAC costs \$7,000,000, that expense would be justified for two reasons.¹²² First, the cost of the LSAC's implementation would only amount to 0.0378% of state revenues.¹²³ Second, the LSAC could potentially generate cost savings.¹²⁴ For example, Texas's Sunset Advisory Commission reported a ratio of 29 to 1 in cost savings from 1982 to 2011.¹²⁵

The Redundancy Argument

Opponents of HB 456 argue that the bill is unnecessary because the General Assembly already has the means to achieve the bill's purposes.¹²⁶ As noted by the Governor, the General Assembly already has limited authority to compel information from state agencies.¹²⁷ The Directors of the Senate and House Budget Offices are "authorized to request information and material from all state departments, boards, bureaus, commissions, committees, authorities, and agencies in connection with his or her duties; and all such departments, boards, bureaus, commissions, committees, authorities, and agencies are directed to furnish such information and material as

121. *Id.* (emphasis added).

122. *See* Brockway, *supra* note 112.

123. *See id.*

124. *See* Chuck Martin, Comment to *More on the Veto of the Sunset Bill*, PEACH PUNDIT (May 7, 2012, 7:08 PM), <http://www.peachpundit.com/2012/05/07/more-on-the-veto-of-the-sunset-bill/>.

125. *Id.*

126. *See Deal Issues Veto Statements*, *supra* note 66.

127. *See* O.C.G.A. § 28-5-6(b)-(c) (2011).

the director shall request.”¹²⁸ Under current law, the Directors must submit requests to obtain information,¹²⁹ whereas if the GGAA had become law, agencies scheduled for review would have been automatically required to furnish a voluminous report.¹³⁰

Georgia’s LSAC would not abolish agencies as effectively as Texas’s Sunset Advisory Commission. Before an agency could be “automatically abolished” in Georgia, the General Assembly would need to find “by adoption of a joint resolution” that several criteria were met:

[T]hat the state laws that the agency is responsible for implementing or enforcing have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made for the transfer from the abolished agency to a successor agency of all duties, real property, debts, and obligations, including those relating to bonds, loans, promissory notes, lease-purchase agreements, installment sales contracts, financing agreements, or any other form of indebtedness such that security therefor and the rights of bondholders or holders of other indebtedness are not impaired.¹³¹

The agency would be required to make its “legislative budget request consistent with the recommendations of the review of the [LSAC] or any law transferring the agency’s functions to other entities” if the General Assembly did not act with regards to its abolishment.”¹³² Conversely, in Texas, “[a]n advisory committee . . . is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law.”¹³³ Further, the Texas legislature must pass legislation to continue an agency scheduled for abolishment, and then only for a period of less than twelve years.¹³⁴ Therefore, Texas law provides a better procedure for

128. O.C.G.A. § 28-5-6(b) (2011); *Id.* § 28-5-6-(c).

129. *See id.*

130. *See* HB 456, § 1, p. 4–5, ln. 94–144, 2012 Ga. Gen. Assem.

131. HB 456, § 1, p. 3, ln. 66–73, 2012 Ga. Gen. Assem.

132. *Id.* § 1, p. 3, ln. 74–77.

133. TEX. GOV’T CODE ANN. § 325.013 (West 2011).

134. GOV’T § 325.015(a).

the abolishment of agencies than Georgia law because Texas law does not require any action by the legislature to abolish an agency.¹³⁵

The Zero-Base Budgeting Alternative

Contrary to opponents' assertions, zero-base budgeting may be an inadequate substitute for the LSAC.¹³⁶ Pursuant to the Zero-Base Budgeting Act, "[t]he House Budget Office and Senate Budget Office in consultation with The Governor's Office of Planning and Budget shall require each agency to use zero-base budgeting at least once every ten years and shall not require any agency or program to use zero-base budgeting more often than once every eight years."¹³⁷ Zero-base budgeting is "[a] method of budgeting in which all expenses must be justified for each new period."¹³⁸ The budget begins with "a 'zero base' and every function within an organization is analyzed for its needs and costs. Budgets are then built around what is needed for the upcoming period, regardless of whether the budget is higher or lower than the previous one."¹³⁹ Therefore, the Zero-Base Budgeting Act will merely require an agency to justify its expenditures. In contrast, the GGAA requires an agency to justify its own existence.¹⁴⁰ This distinction makes the GGAA the better choice if larger cuts in the scope and cost of government are desired.

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135. *See id.*

136. *See Deal Issues Veto Statements, supra* note 66.

137. O.C.G.A. § 45-12-75.1(b) (2012).

138. *Zero-Based Budgeting-ZBB*, INVESTOPEDIA, <http://www.investopedia.com/terms/z/zbb.asp#axzz1ySFJ9aSA> (last visited June 21, 2012).

139. *Id.*

140. HB 456, § 1, p. 6, ln. 188-90, 2012 Ga. Gen. Assem. ("In its report on an agency, the committee shall make recommendations on the abolition, continuation, or reorganization of such agency and on the need for the continuation of the functions of the agency.").