

The House Committee on Judiciary offers the following substitute to SB 374:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 12 of Title 45 of the Official Code of Georgia Annotated,
2 relating to the Office of Planning and Budget, so as to revise provisions for the collection and
3 remittance of certain fees paid to state departments, agencies, and budget units; to revise
4 reporting requirements; to establish the Georgia Data Analytic Center as an agent of all
5 executive state agencies; to provide for penalties; to provide for definitions; to provide for
6 related matters; to provide for effective dates; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 4 of Chapter 12 of Title 45 of the Official Code of Georgia Annotated, relating to the
11 Office of Planning and Budget, is amended by revising Code Section 45-12-92, relating to
12 revenue collections to be paid to state treasury on monthly basis, effect of failure of budget
13 unit to comply with Code section, user fee defined, and reporting, as follows:

14 "45-12-92.

15 (a)(1) All departments, agencies, and budget units charged with the duty of collecting
16 taxes, fees, assessments, or other moneys, the collection of which is imposed by law,

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17 including any rule or regulation, if required, shall pay all ~~revenues~~ moneys collected by
18 them into the state treasury on a monthly basis on or before the fifteenth day of each
19 month for the immediately preceding month's collections, according to such rules and
20 regulations as may be prescribed by the Office of Planning and Budget.

21 (2) No allotment of funds shall be made to any budget unit which has failed to comply
22 fully with this Code section or Code Section 45-12-92.1.

23 (b)(1) As used in this subsection, the term 'user fee' shall mean voluntary or mandatory
24 payments made in exchange for a government good or service provided specifically to
25 the fee payer. ~~A revenue source meets this definition if, provided that~~ the authorization
26 for the fee explicitly or implicitly ties the fee to the activities of a specific program, such
27 as a licensing fee charged by a regulatory program. Fines, penalties, late fees, or similar
28 punitive charges are not included in this definition.

29 (2) All departments, agencies, and budget units charged with the duty of collecting user
30 fees, the collection of which is authorized by law or regulation, shall compile a separate
31 annual report to be submitted by August 1 of each year to the Office of Planning and
32 Budget, the House Budget and Research Office, and the Senate Budget and Evaluation
33 Office showing:

34 (A) The statute or regulation authorizing a user fee;

35 (B) The user fee amount;

36 (C) The goods or services associated with the user fee and the estimated cost of such
37 goods or services;

38 (D) The total amount collected from the user fee in the current fiscal year; ~~and~~

39 (E) Whether the user fee has been retained by the department, agency, or budget unit
40 or remitted to the state treasury;

41 (F) The last year the user fee was updated;

42 (G) A detailed review of whether each existing user fee sufficiently covers the total
 43 direct and indirect costs of all associated services or products to which the user fee
 44 corresponds; and

45 (H) A detailed review of the services and products offered by the department, agency,
 46 or budget unit, and whether an opportunity for a new user fee exists.

47 (3) ~~The report provided for in paragraph (2) of this subsection shall also contain any~~
 48 ~~proposal that the budget unit may have to:~~

49 ~~(A) Create a new fee, or change, reauthorize, or terminate an existing fee, which shall~~
 50 ~~include a description of the associated service or product provided or the regulatory~~
 51 ~~function performed; and~~

52 ~~(B) Adjust an existing fee rate or amount.~~

53 Each potentially new or adjusted fee rate user fee and each user fee that may not
 54 sufficiently cover the costs of all associated services or products to which the user fee
 55 corresponds shall be accompanied by information justifying the proposed rate adjustment
 56 which ~~may~~ shall include:

57 ~~(i)(A)~~ (i)(A) The relationship between the revenue to be raised by the fee or change in the fee
 58 and the cost or change in the cost of the service, product, or regulatory function
 59 supported by the fee, with costs construed as actual costs incurred;

60 ~~(ii)(B)~~ (ii)(B) The inflationary pressures that have arisen since the fee was last set;

61 ~~(iii)(C)~~ (iii)(C) The effect on budgetary adequacy if the fee is not increased;

62 ~~(iv)(D)~~ (iv)(D) The existence of comparable fees in other jurisdictions;

63 ~~(v)(E)~~ (v)(E) Policies that might affect the acceptance or the viability of the fee amount; and

64 ~~(vi) Any proposal to designate, or redesignate, the fund into which revenue from a fee~~
 65 ~~is to be deposited; and~~

66 ~~(vii)(F)~~ (vii)(F) Other relevant considerations.

67 (4) The Office of Planning and Budget shall compile and publish on the Open Georgia
 68 website, open.georgia.gov, a report showing for each department, agency, or other budget
 69 unit the data collected pursuant to this subsection."

70 **SECTION 2.**

71 Said article is further amended by revising Code Section 45-12-92.1, relating to fees which
 72 are not revenue measures and utilization of proceeds, as follows:

73 "45-12-92.1.

74 (a) ~~The General Assembly finds and determines that certain fees imposed or authorized~~
 75 ~~by law are not 'revenue measures' within the meaning of Article VII, Section III, Paragraph~~
 76 ~~H of the Constitution but only incidentally create revenue pursuant to the facilitation of~~
 77 ~~another primary purpose~~ Reserved.

78 (b) When any other provision of law imposes or authorizes the imposition of a fee and
 79 recites that such fee is subject to this Code section:

80 (1) The agency or other entity imposing and collecting the fee shall ~~not~~ pay the proceeds
 81 of the fee into the general fund of the state treasury ~~but shall rather retain and expend the~~
 82 ~~proceeds for purposes of defraying the costs of administering the program or activity with~~
 83 ~~which the fee is associated; and~~

84 (2) If the amount of the fee is fixed by the agency or other entity pursuant to the law
 85 authorizing the fee, the fee shall be fixed in a reasonable amount such that the proceeds
 86 of the fee do not exceed the total direct and indirect costs of administering the program
 87 or activity with which the fee is associated."

88 **SECTION 3.**

89 Said article is further amended by adding two new paragraphs to Code Section 45-12-150,
 90 relating to definitions relative to the Georgia Data Analytic Center, to read as follows:

91 "(2.1)(A) 'Executive state agency' means any agency, authority, board, bureau,
92 commission, department, division, office, or other unit of the executive branch of state
93 government whether established by or pursuant to the Constitution of the State of
94 Georgia, the Official Code of Georgia, any administrative rule or regulation, or any
95 executive order.

96 (B) Such term shall not include:

97 (i) The legislative or judicial branches of state government;

98 (ii) Any political subdivision;

99 (iii) The Georgia State Financing and Investment Commission; or

100 (iv) The Board of Regents of the University System of Georgia."

101 "(3.1)(A) 'Government information' means any information created, received,
102 maintained, or stored by, or otherwise in the control of, an executive state agency,
103 regardless of the form or the media on which the information is recorded.

104 (B) Such term shall not include:

105 (i) Investigative records of law enforcement agencies;

106 (ii) Confidential investigative records related to an ongoing investigation and any
107 related information classified as confidential; or

108 (iii) Confidential advisory opinions requested or given by the office of the inspector
109 general."

110 **SECTION 4.**

111 Said article is further amended by revising Code Section 45-12-153, relating to access to
112 data, as follows:

113 "45-12-153.

114 (a) Any state agency or department that creates, receives, or maintains publicly supported
115 program, fiscal, or health data shall, only after execution of an enforceable data use, data
116 sharing, or other similar agreement that is acceptable to the state agency or department,

117 transmit or allow access to such data as is necessary and appropriate to further the purposes
118 of this part and shall cooperate with GDAC Project requests for receipt of or access to such
119 data. Notwithstanding the foregoing, any state agency or department shall not be required
120 to transmit data which it creates, receives, or maintains to the GDAC Project or to allow
121 access to such data if the Attorney General's review or the applicable state agency's or
122 department's review determines that such transmission or access would violate state or
123 federal law. The Attorney General's review shall include consideration of an analysis from
124 the state agency or department whose data are being requested, and shall include the
125 reason, if any, that the requested data cannot be transmitted or allowed for access to the
126 Georgia Data Analytic Center as an agent of the state agency or department as provided in
127 subsection (c) of this Code section.

128 (b) This Code section shall not prohibit the office or any agency or department from
129 creating, receiving, maintaining, or transmitting data in data systems that are separate and
130 distinct from the GDAC Project.

131 (c) The Georgia Data Analytic Center is considered to be an agent of all executive state
132 agencies sharing government information and is an authorized receiver of government
133 information under the statutory or administrative law that governs such government
134 information.

135 (d) Interagency and intra-agency data sharing under this part does not constitute a
136 disclosure or release under any statutory or administrative law that governs the government
137 information. In no event shall government information accessed, received, or obtained by
138 the Georgia Data Analytic Center, which is protected by any form of confidentiality or
139 privilege, cause such information to be subject to disclosure, including, but not limited to,
140 disclosure pursuant to Code Sections 50-18-70 and 50-18-72.

141 (e)(1) Any person who knowingly requests, obtains, or attempts to obtain individually
142 identifiable information under false pretenses, or who knowingly communicates or
143 attempts to communicate individually identifiable information to any agency or person

144 except in accordance with this part, shall for each such offense, upon conviction thereof,
145 be fined not more than \$5,000.00, or imprisoned for not more than two years, or both.

146 (2) Any person who communicates or attempts to communicate individually identifiable
147 information negligently in a manner not in accordance with this part shall for each such
148 offense, upon conviction thereof, be fined not more than \$100.00, or imprisoned not more
149 than ten days, or both.

150 (3) Any person who knowingly discloses or attempts to disclose the techniques or
151 methods employed to ensure the security and privacy of information or data contained
152 in individually identifiable information systems except in accordance with this part shall
153 for each such offense, upon conviction thereof, be fined not more than \$5,000.00, or
154 imprisoned not more than two years, or both.

155 (4) Any person who discloses or attempts to disclose the techniques or methods
156 employed to ensure the security and privacy of information or data contained in
157 individually identifiable information systems in a manner not permitted by this part shall
158 for each such offense, upon conviction thereof, be fined not more than \$100.00, or
159 imprisoned not more than ten days, or both."

160 **SECTION 5.**

161 This Act shall become effective upon its approval by the Governor or upon its becoming law
162 without such approval; provided, however, that Sections 1 and 2 of this Act shall become
163 effective on July 1, 2022.

164 **SECTION 6.**

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