

2009- 2010 Senate Special Judiciary Committee Members

Senator John Wiles, 37th, Chairman
18 Capitol Square
324 CLOB
Atlanta, GA 30334
404-657-0406

Senator David Adelman, 42nd, Vice Chairman
State Capitol
Room 121
Atlanta, GA 30334
404-463-1376

Senator Judson Hill, 32nd, Secretary
18 Capitol Square
CLOB 325
Atlanta, GA 30334
404-656-0150

Senator Buddy Carter, 1st
18 Capitol Square
CLOB 302
Atlanta, GA 30334

Senator Bill Cowsert, 46th
109 State Capitol
Atlanta, GA 30334
404-651-7738

Senator Seth Harp, 29th
121 State Capitol
Atlanta, GA 30334
404-463-3931

Senator Ronald Ramsey, Sr., 43rd
18 Capitol Square
CLOB Room 320
Atlanta, GA 30334
404-463-2598

Senator Donzella James, 35th
18 Capitol Square
313 CLOB
Atlanta, GA 30334
404-656-0340

Senator Curt Thompson, 5th, Ex-Officio
18 Capitol Square
CLOB 323
Atlanta, GA 30334
404-463-1318

Senator Dan Weber, 40th
18 Capitol Square
CLOB 301
Atlanta, GA 30334
404-463-2260

Senator Chip Pearson, 51st, Ex-Officio
18 Capitol Square
321 CLOB
Atlanta, GA 30334
404-656-9221

The **Senate Special Judiciary Committee** met in Room 310 Coverdell Legislative Office Building (CLOB) on January 25th, 2010 at 1:00 p.m.

The following members were present:

Wiles, 37th, Chairman
Carter, 1st
Harp, 29th
James, 35th

The Committee did not get a quorum.

Chairman Wiles stated he would like to take time to introduce new members to the committee. This was an organizational meeting.

New members introduced were: Senator Buddy Carter of the 1st, and Senator Donzella James of the 35th. Members and staff were introduced and welcomed. Staff members: Kathleen Cominski, Administrative Assistant; Shawn Marie, Legislative Counsel; Taryn Kirbo, Senate Research; Gerald Haung, attorney for the Senate Special Judiciary Committee; and Rob Thompson, intern.

The rules of the chairman are as such:

You must request, in writing, a hearing on any legislation that is assigned to the committee.

All other rules of the committee are in folders.

With there being no further business, Chairman Wiles adjourned the meeting at 1:30 p.m.

Respectfully submitted,

/s/ Kathleen Cominski, Recording Secretary

/s/ Senator John Wiles, 37th, Chairman

The **Senate Special Judiciary Committee** met on February 8, 2010 in 310 Coverdell Legislative Office Building (CLOB) at 1:00 p.m.

Members present:

Wiles, 37th, Chairman
Hill, 32nd, Secretary
Carter, 1st
Cowsert, 46th
Harp, 29th
James, 35th
Ramsey, 43rd
Weber, 40th
Pearson, 51st, Ex-Officio
Thompson, 5th, Ex-Officio

Chairman Wiles called the meeting to order at 1:25 p.m.

SB 138 (Wiles, 37th) Transparency in Lawsuits Protection Act

This bill creates a new Code Section 9-2-8, which makes it clear that a private right to action does not automatically arise when a legislative enactment occurs, unless expressly provided for therein.

Cary Silverman from Shook, Hardy & Bacon, Washington D.C., explained the bill in its entirety. Mr. Silverman is a representative of ALEC, Civil Justice Task Force.

Mr. Silverman stated the intent of this legislation is to provide clarification and define when there is a right to action. When a statute is silent on whether it may be enforced through a private right of action, courts may arrive at their own conclusion as to whether a new right to sue has been created and the appropriate remedy, removing this public policy choice from the General Assembly.

Mr. Silverman also stated that SB 138 would fulfill the U.S. Supreme Court's strong suggestion that when a legislative body "intends private litigants to have a cause of action to support their statutory rights, the far better course is for it to specify as much when it creates those rights." This bill is also consistent with the U.S. Supreme Courts' instruction that statutory intent is determinative; without it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.

SB 138 does not, in any way, impact common law. The legislation addresses only the creation of private rights of action asserted directly based on new students enacted by the legislation. Its enactment will not prevent courts from looking to statutes, or any other relevant evidence, when determining whether a defendant breached a duty to a plaintiff in ordinary negligence claims or in consideration of whether a product is defective.

Senator Carter stated that he was not an attorney but wanted to know if the old rule applies until we pass this law and then move forward.

Mr. Silverman replied this is not changing from the past, but just clarifying for the right to move forward.

Senator Weber asked if there were any cases in Georgia where the court got it wrong. Mr. Silverman stated there are no Supreme Court cases in Georgia.

Senator Harp asked what the problem is that prompts the need to introduce legislation. Mr. Silverman stated this was to clarify and leave no question.

Mark Howard, Georgia Trial Lawyers Association, spoke against the bill stating we do not have a problem in Georgia and the language is too broad.

Chairman Wiles asked Mr. Howard does he have language that would fix the problem he has with this legislation being too broad. Change suggested:

Line 13 after the word “enacted” delete “on or”
In Section 2 added a subsection (b)

Brian Looby, Medical Association of Georgia, supports the legislation.

Mark Middleton, State Bar of Georgia, opposed the bill.

Senator Judson Hill made a motion “Do pass by substitute”, seconded by Senator Pearson. **SB 138 Do Pass by Substitute** by a vote of 5 yeas: Hill 32nd, Carter 1st, Cowsert 46th, Weber 40th, and Pearson 51st and 4 Nay votes: Harp 29th, Ramsey 43rd, Thompson 5th, and James 35th.

With there being no further business, the meeting adjourned at 2:30p.m.

Respectfully submitted,

/s/ Kathleen Cominski, Recording Secretary

/s/ Senator Judson Hill, 32nd, Secretary

The **Senate Special Judiciary Committee** met on February 15, 2010 in Room 310 of the Coverdell Legislative Office Building at 1:00 p.m.

The following members were present:

Wiles, 37th, Chairman
Hill, 32nd, Secretary
Carter, 1st
Cowsert, 46th
Harp, 29th
James, 35th
Ramsey, 43rd
Pearson, 51st, Ex-Officio

Chairman Wiles called the meeting to order at 1:10 p.m.

HB 244 (Rep. Pruett, 144th) Georgia Environmental Facilities Authority; change name to Georgia Environmental Finance Authority

Representative Pruett presented HB 244 stating this bill amends the Code so that all mentions of the Georgia Environmental Facilities Authority are changed to the Georgia Environmental Finance Authority. Representative Pruett asked the committee to consider an amendment which was supported by the Lt. Governor and the Governor that would allow GEFA to sell any assets that they deemed in excess of what they needed to function to give back to the state general fund.

No questions were asked. Senator Judson Hill made the motion Do Pass, seconded by Senator Carter. The vote was unanimous. **HB 244 Do pass by substitute.**

SB 308 (Seabaugh, 28th) Firearms; carrying and possession; change provisions; definitions

Hearing only - Working from proposed substitute (LC 29 4168S)

Senator Seabaugh gave a section by section review of this legislation.

Section I

Code Section 16-11-126, relating to carrying a concealed weapon, is rewritten. This bill creates a new definitions code section, Code Section at 16-11-125.1.

Defines who and where a person can carry a weapon. Allows for reciprocity with other states, outlines hunters and fishermen where and when they are legally able to carry a hand gun and defines penalties.

The concern within the audience and Senator James was that criminals will be able to carry guns anywhere and we will see more crime. Senator Seabaugh stated this only pertains to those who are properly and legally permitted to carry a gun.

In Code Section 16-11-127, the public gatherings statute was rewritten and changed to “unauthorized location:” A person is guilty of carrying a weapon in an unauthorized location, a misdemeanor, if he/she carries a weapon in a: government building; courthouse; jail or prison; elementary or secondary schools; any classroom, research facility, administrative, and faculty offices; dormitory or residential housing on a public college campus, except for family housing; place of worship, athletic facility during any event for which the Board of Regents has prohibited carrying a weapon; state mental facilities, and bars, unless permitted by owner or within 150 feet of any polling place.

This bill eliminates the restriction Code Section 16-11-127 that currently permits carrying a weapon within 1000 feet of a public or private college or university campus.

Code Section 16-11- 129, relating to carrying a pistol without a license, is reserved in this entirety.

Code Section 16-11-132, relating to possession of a pistol or revolver by someone under 18. All references to “pistol or revolver” are changed to “handgun” as previously defined.

Code Section 16-11-136 states that failure of a licensee to have his/her license at the time of arrest will be prima facie evidence of not having a license.

Part II: Secretary of State- Part II will become effective on January 1, 2012

This section completely revises Code Section 16-11-129, relating to carrying a firearm. Current law places probate court judges in charge of issuing firearms licenses. New language mandates the Secretary of State to issue 5 year firearms licenses to any applicant who is not ineligible under the law.

Part III: Corrects Cross References. Part III will become effective upon approval

Speaking against SB 308:

Alice Johnson – Georgia for Gun Safety. Ms. Johnson explained to the committee she has been representing Georgia Gun Safety since 1993 and spoke against carrying a handgun in churches, businesses, and college events. People need to have a safety training course before a permit is issued. She also is concerned with the Secretary of State’s office centralizing records for gun permits. Law enforcement agencies should be the agency who oversees hand gun permits and background checks. She stated Florida is the only state that verification of background is not done by law enforcement; her concern is criminals will be able to get a permit without having a law enforcement agency doing the background checks. The only two states that do not require training from public safety before receiving a gun permit are Georgia and Mississippi.

Speaking in support of SB 308:

John Monroe - Georgia Carry. Mr. Monroe supports the bill but addresses the committee on areas of improvement:

Line 93 – TSA does not require

Line 94-97 – Handgun replaced with weapon

Line 104-105 – No need for hunter to carry openly

Line 112-114 – Making a crime to carry – meaning you can't carry any gun without license. McDonald vs. City of Chicago “concealed carry or open carry” the courts ruled infringed on our second amendment rights.

Line 178 – 181 - extend parking lot to include businesses and churches

Jonathan Wilkins - Baptist Tabernacle. Mr. Wilkins supports the legislation as now through economic times the churches are helping more people in need including battered women and children and fears the abuser will retaliate on the church. Every religious holiday the church has to be extremely cautious of radical individuals causing harm.

Chris Brasher, Superior Court Judge – supports the legislation.

Tom Daniel, Board of Regents, supports the bill and supports the language change for the universities.

Bill Miller, World Congress Center- supports the bill and thanked the committee for addressing their concerns of private vendors.

Robert Steely, Coweta County Solicitor- supports the bill.

Edward Wint, Covenant Life Worship Center, supports carrying a weapon in a church.

Melvin Hardin, self – supports.

Mark McCullough, self – supports.

Tom Martin, self – supports.

The Chairman asked the committee and audience to get with the author of the bill to work out any differences. One more hearing will be scheduled before the committee takes up the bill for a vote.

With there being no further business, the meeting adjourned at 2:50 p.m.

Respectfully submitted,

/s/ Kathleen Cominski, Recording Secretary

/s/ Senator Judson Hill, 32nd, Secretary

The **Senate Special Judiciary Committee** met on March 8, 2010 at 4:00 p.m. in Room 125 of the Capitol. Members present were:

Wiles, 37th, Chairman
Hill, 32nd, Secretary
Carter, 1st
Cowsert, 46th
Harp, 29th
James, 35th
Ramsey, 43rd
Pearson, 51st, Ex-Officio
Thompson, 5th, Ex-Officio

Chairman Wiles called the meeting to order at 4:04 p.m.

SB 400 (Crosby, 13th) Juvenile Proceedings; clarify provisions to juveniles receiving credit for time served

Senator Crosby states this bill removes the qualifier “subsequent to the date of the order”; so that any time spent by a juvenile in secure detention prior to being sent to the YDC will count towards his/her sentence. Current law also states that every person convicted of a crime will receive credit for time served in confinement awaiting trial and /or sentencing, except in juvenile court. This bill removes that exception, so that defendants in juvenile courts will also receive the benefit of this statute.

Commissioner Murray supports this legislation stating that juveniles should have the right to time served as do adults. Last year the Department of Juvenile Justice closed 435 beds due to budget cuts. This will allow beds to turn over faster thus saving on the cost of housing juveniles.

The Commissioner asked that the committee consider changing the deadline for compliance from July 1, 2011 to July 1, 2012. The Committee agreed upon the change.

Senator Ramsey, 43rd made the motion Do pass by substitute, seconded by Senator James, 35th. The vote was unanimous. **SB 400 Do pass by substitute.**

SB 308 (Seabaugh, 28th) Firearms; carrying and possession; change provisions; definitions

Senator Seabaugh stated to the committee that changes have been made that were suggested at the last two hearings.

PART I: Part I will become effective upon approval.

Code Section 16-11-126, relating to carrying a concealed weapon, is rewritten. Any person who is not legally prohibited from possessing a handgun¹ or long gun² may carry a weapon³ inside his/her home, motor vehicle or place of business without a carry license. He/she may also carry a long gun on his/her person without a carry license; if the long gun is loaded, it must be carried in an open and exposed manner. He/she may transport any handgun or long gun without a carry license if it is enclosed in a case, unloaded and separate from its ammunition.

The statute also allows a person licensed to carry in another state to also carry a handgun in this state, *if* that state recognizes the Georgia carry license. Licensees from other states must comply with Georgia's laws when carrying here.

Persons with a valid hunting or fishing license, or anyone not legally required to have such licenses, who are legally hunting, fishing or sport shooting with the landowner's permission may have or carry a handgun without a carry license. However, loaded handguns must be carried in an open and exposed manner. Any person with a carry license may carry a weapon in all parks, historic sites, recreational areas, wildlife management areas, and on public transportation, except where prohibited by federal law.

No one without a valid carry license may carry a weapon unless in an open and fully exposed manner, except if excused above. The offense of carrying a weapon without a license is a misdemeanor the first time and a felony for subsequent offenses.

The public gatherings law at 16-11-127 is changed to "unauthorized location." A person is guilty of misdemeanor carrying a weapon in an unauthorized location if he/she carries a weapon in a:

1. Government building
2. courthouse
3. jail or prison
4. place of worship
5. state mental facility
6. bar, unless permitted by the owner
7. on the premises of a nuclear power facility or
8. within 150 feet of any polling place

PART II: Secretary of State. **Part II will become effective on January 1, 2012.**

This part completely revises Code Section 16-11-129, relating to licenses to carry a firearm. Current law places probate court judges in charge of issuing firearms licenses. New language mandates the Secretary of State to issue 5 year firearms licenses to any

¹ 16-11-125.1: 'Handgun' means a firearm of any description, loaded or unloaded, from which a bullet or other missile can be discharged and where the length of the barrel does not exceed 12 inches.

² 16-11-125.1: 'Long gun' means a weapon designed to be fired from the shoulder or made to use shotgun shells.

³ 16-11-125.1: 'Weapon' means a knife or handgun.

applicant who is not ineligible under the law. Persons ineligible to receive a firearms license are any person: under 21 years old; prohibited from possessing a firearm under 18 U.S.C. § 922(g) and (n); convicted of an offense related to the unlawful manufacture or distribution of a controlled substance or dangerous drug; who has had his/her carry license revoked; who has been convicted of pointing a gun at another person, carrying a weapon without a carry license, or carrying a weapon in an unauthorized location, and who has not been free from conviction for at least 5 years; convicted of a misdemeanor involving the use or possession of a controlled substance who has not been free from conviction for at least 5 years; or who has been hospitalized as an inpatient at any mental hospital or alcohol or drug treatment center within 5 years of the license application.

A current weapons carry licensee may apply for an enhanced license by completing a handgun or hunter safety course, or by presenting a military certificate of release or discharge from active military duty.

First time applicants for a firearms license are assumed to have consented to a criminal background check conducted by the Secretary of State, and applicants must provide the Secretary of State with all information necessary to perform the background check, including fingerprints. The Secretary of State will use the FBI's National Instant Criminal Background Check system in accordance with the federal Brady Handgun Violence Prevention Act. A person may apply for a renewed license up to 90 days before and 30 days after the expiration date of the current license. When a non-U.S. citizen applies for a firearms license, the Secretary of State will also utilize the records of the U.S. Immigration and Customs Enforcement agency.

The Secretary of State must issue a firearms license within 5 days of completion of the background check if there is no reason for ineligibility. Licenses are valid for 5 years. If a situation occurs that renders a current licensee ineligible to retain the license, the Secretary of State may begin revocation proceedings. Clerks of court must report to the Secretary of State the names and identifying information of any person convicted of a crime that could result in becoming ineligible for a carry license. The Secretary of State must then determine if the convicted person has a carry license and begin revocation proceedings. Weapons carry licenses will incorporate security features in order to prevent imitation and replication, including a color photograph, the state seal, and holographic laminate.

PART III: Board of Regents of the University System of Georgia. Effective upon approval.

Code Section 20-3-31 is amended to provide the Board of Regents with the power to make rules regarding carrying a weapon on property owned or leased by the Board.

PART IV: Corrects cross references. Part III will become effective upon approval.

Those speaking in favor of SB 308 Substitute:

Tom Daniel, Board of Regents
Keith Hatcher, Georgia Realtor's Association
Bob Miller, Georgia citizen
Zeb Blanchard, Georgia Citizen

Senator Hill, 32nd made the motion do pass by substitute, seconded by Thompson, 5th.
The vote was 6 yeas: Carter 1st, Cowsert 46th, Harp 29th, Ramsey 43rd, Thompson 5th,
and Pearson 51st. One nay vote: James 35th.

SB 308 Do Pass by Substitute.

With there being no further business, the meeting adjourned at 5:00 p.m.

Respectfully submitted,

/s/ Kathleen Cominski, Recording Secretary

/s/ Senator Judson Hill 32nd, Secretary

The **Senate Special Judiciary Committee** met on March 18, 2010 at 9:00 a.m. in room 307 of the Coverdell Legislative Office Building.

The following members were present:

Wiles, 37th, Chairman
Cowsert, 47th
Harp, 29th
James, 35th
Weber, 40th

The meeting was called to order at 9:10 a.m.

SB 362 (Weber, 40th) Property; liens of mechanics/materialmen; waiver and release upon payment

Senator Weber explained SB 362 amends Part 3 of Article 8, Chapter 14 of Title 44 in the Official Code of Georgia, relating to liens on mechanics and materialmen. In current Georgia law, there is a presumption of payment upon the filing of a “waiver and release upon final payment” unless the party files an affidavit of nonpayment within 60 days of the filing of the waiver. This legislation will eliminate this presumption and strike out a requirement of a 60 day limit to file an affidavit of nonpayment.

Mike Culborton, Georgia Credit Union Affiliates, had some concerns with the language on page 5, line 159 stating the claim of lien sent to the contractor. However this does not protect the consumer from subcontractors. There is not a mechanism in place for the consumer to research liens against subcontractors.

Senator Weber pointed out that page 5, line 162 allows the owner to challenge a lien that was not properly released. He suggested adding the word “also” on line 162 page five between the words “shall” and “be”.

Lee Lemke, Specialty Contractors, spoke in favor of the legislation said it helps members.

Ron Fennell, Georgia Capital Association, spoke in favor of the legislation.

Vernon Thomas, American Subcontractors Association, spoke in favor of the bill.

Mark Woodall, Georgia Home Builders, spoke in favor of the bill.

The committee voted unanimously to add the word “also” on line 162 of page 5 between the words “be” and “sent”.

Senator Harp, 29th made a motion Do pass by substitute, seconded by Senator James. The vote was unanimous. **SB 362 Do pass by substitute.**

SR 1285 (Cowsert, 46th) General Assembly; provide for contracts that limit competitive activities

Senator Cowsert explained to the committee that this resolution amends the Georgia Constitution, Article III, Section VI, Paragraph V, regarding contracts that limit competitive activities between or among employers and employees, distributors and manufacturers, etc. This resolution will amend Georgia law to allow Courts to adjust or strike out clauses within the contracts that are deemed illegal. This would bring Georgia law in compliance with 48 other states rather than continue the current practice of deeming the entire contract void due to issues with one clause.

Josh Belinfante, Georgia Chamber of Commerce, spoke in favor of the bill.

Senator Harp, 29th made the motion Do Pass, seconded by Weber, 40th. The vote was unanimous. **SR 1285 Do Pass.**

HB 858 (Rep. Golick, 34th) County Law Libraries; law library funds for judges and courts; payment of certain funds into county general fund; provisions

Chairman Wiles presented the bill for Representative Golick stating current law requires all counties with 700,000 residents to use some funds from their general treasuries for the maintenance of a county law library; this bill will raise the county population minimum to 950,000. The law prohibits separate county law library funds.

Jet Toney, Gwinnett County Board of Commissioners, opposed the legislation stating this was the law of unintended consequences. Mr. Toney stated that a portion of the fees collected go to the city libraries and another portion of the fees collected goes in the General Fund. Mr. Toney explained to the committee that Gwinnett's population is above 700,000 but fewer than 950,000 which would reduce the county's ability to fund needs for the citizens.

Chairman Wiles stated that population bills are complex and cannot apply to just one county, but must apply to two or more counties. Wiles also stated that the committee and legislative counsel would work on this bill so Gwinnett County does not lose any funding for their libraries.

With there being no further business, the meeting adjourned at 10:15 a.m.

Respectfully submitted

/s/ Kathleen Cominski, Recording Secretary

/s/ Senator Wiles, 37th, Chairman

OFFICE OF LIEUTENANT GOVERNOR

240 State Capitol
Atlanta, Georgia 30334

Casey Cagle
Lieutenant Governor

March 22, 2010

The Honorable Bob Ewing
Secretary of the Senate
353 State Capitol
Atlanta, GA 30334

Dear Bob:

Pursuant to Senate Rule 2-3.2, please let this letter serve as official notice that Senator Tommie Williams, 19th, is hereby appointed to the Senate Committee on Special Judiciary as an Ex-Officio Member.

This appointment is effective immediately and expires at the end of the day.

Please contact my office if you have any questions or concerns.

Sincerely,

/s/ Casey Cagle
Lieutenant Governor

OFFICE OF LIEUTENANT GOVERNOR

240 State Capitol
Atlanta, Georgia 30334

Casey Cagle
Lieutenant Governor

March 22, 2010

The Honorable Bob Ewing
Secretary of the Senate
353 State Capitol
Atlanta, GA 30334

Dear Bob:

Pursuant to Senate Rule 2-3.2, please let this letter serve as official notice that Senator Chip Rogers, 21st, is hereby appointed to the Senate Committee on Special Judiciary as an Ex-Officio Member.

This appointment is effective immediately and expires at the end of the day.

Please contact my office if you have any questions or concerns.

Sincerely,

/s/ Casey Cagle
Lieutenant Governor

The **Senate Special Judiciary Committee** met on March 22, 2010 at 10:00 a.m. in the Senate Mezzanine. Members in attendance:

Wiles, 37th, Chairman
Carter, 1st
Cowsert, 46th
James, 35th
Pearson, 51st, Ex-Officio
Rogers, 21st, Ex-Officio
Williams, 19th, Ex-Officio

Please note: Senators Rogers and Williams were appointed to the Senate Special Judiciary Committee as Ex-officio members on March 21, 2010, per the Lt. Governor's Office.

The Chairman called the meeting to order at 10:05 a.m.

SB 529 (Pearson 51st) Crimes and Offenses; specify certain acts that constitute criminal abortion

Senator Pearson explained to the committee that this bill defines the offense of criminal abortion as when a person performs an abortion:

1. With the intent to prevent an unborn child from being born based on race, color or gender of the unborn child or of either parent;
2. With the knowledge that the pregnant woman is seeking the abortion based upon the race, color or gender of the unborn child or the race or color of either parent;
3. With the knowledge that the pregnant woman is seeking the abortion as a result of coercion; or
4. In violation of any of these statutes: 15-11-112, 16-12-141(b) or (c) or 31-9A-3 or 31-9A-5.

Any woman who receives an abortion in violation of the above may recover in a civil action from the person who performed the illegal abortion. She cannot be held criminally or civilly liable as a result of such an abortion or for solicitation or for conspiracy to violate the law.

Those speaking in favor of SB 529 were Dan Becker, Georgia Right to Live, and Mary Boyert, Archdiocese of Atlanta.

Those speaking against SB 529 were Ms. Yanoriels, Feminist Woman's Health Center; Elizabeth Appley, Georgia, Women for Change; Robin Shipp, Planned Parenthood; and Ann Abramowitz, Emory University.

Johnathan Crumbly, Attorney, told the committee this bill is the common sense approach; it protects women from abortion against their will.

In closing, Senator Pearson stated the race and gender cannot be the only factor for having an abortion.

A new definition for “unborn child” was added to this bill and paragraphs were renumbered.

Senator Carter made the motion Do Pass by substitute, seconded by Cowsert, 46th. The vote was 5 yeas, 1 nay. Yeas votes were Carter, Cowsert, Pearson, Williams and Rogers. The nay vote was James, 35th. **SB 529 Do pass by substitute.**

With there being no further business, the meeting adjourned at 11:00 a.m.

Respectfully submitted,

/s/ Kathleen Cominski, Recording Secretary

/s/ Senator John Wiles, 37th, Chairman

The Senate Special Judiciary Committee met on March 30, 2010 at 2:00 p.m. in 310 Coverdell Legislative Office Building, (CLOB).

The following members were present:

Wiles, 37th, Chairman
Hill, 32nd, Secretary
Carter, 1st
Cowsert, 46th
James, 35th
Ramsey, 43rd
Weber, 40th

The Chairman called the meeting to order at 2:15 p.m.

HB 858 (Rep. Golick, 34th) Increases County Population for County Law Library Funding

Representative Golick told the committee he and Jet Toney, Gwinnett County, have worked out their differences and have agreed to the recommended changes:

Amending Code Section 36-15-11, relating to payment of certain funds into the county general fund rather than the county law library fund by revising subsection (b). On page 1, line 23 of the committee substitute (LC 14 0335S) to HB 858, after the word “county.” Add the following language, “Additionally, the probate judge, chief magistrate, or presiding juvenile court judge or any chief judge of any county court may make a similar request;”

Line 24, after the word “grant” delete the word “the” and insert “such a”;

Page 2 lines 29 and 30; delete the words “of superior court or state court.”

Senator Weber, 40th made the motion “Do pass by substitute”, seconded by Senator James, 35th. The vote was unanimous. **HB 858 Do Pass by Substitute.**

HB 896 (Rep. Collins, 27th) Demand for Speedy Trial: Military Witnesses

Representative Collins told the committee he had worked out concerns the committee had at the March 16th meeting and offered the following changes to the committee substitute (LC 38 1150S):

On page 1, line 17, (2) Delete the entire line and renumber sub-sections.

Upon further discussion, the Chairman decided to hold the bill until the next meeting so that issues with the substitute could be worked out.

HB 898 (Rep. Collins, 27th) Driving under the influence; notice of conviction publication; changes provisions

Representative Collins explained that current law requires the clerk of court where a person has been convicted of a DUI for the second or subsequent time within 5 years to publish notice of the conviction in the legal organ of the county where the person lives. This bill requires that the notice contain the city, county and zip code of the convicted person's residential address to his/her name, and the date, time, and place of the arrest.

Senator Cowser, 46th made the motion Do pass, seconded by Senator Ramsey, 43rd. The vote was unanimous. **HB 898 Do Pass.**

HB 1015 (Rep. Golick, 34th) Street gang terrorism and prevention; expand and change provisions

Representative Golick explained this bill adds new crimes to the statutes relating to criminal street gang activity. It will be unlawful to communicate, directly or indirectly, any threat of injury or damage to another person, that person's property, or to any associate or relative of that person:

- With the intent to punish him/her for refusing to or encouraging another person to refuse to join a criminal street gang;
- With the intent to intimidate, deter or prevent him/her for providing statements or testimony against criminal street gangs or any criminal street gang member; or
- With the intent to intimidate, deter or prevent him/her from communicating to any law enforcement or corrections officer, prosecuting attorney, or judge, information relating to criminal street gangs, gang members or associates, or gang activity.

All sentences imposed under these statutes will include a special condition that the defendant cannot knowingly have any contact with any criminal street gang member, cannot participate in any criminal street gang activity, and if the crime involves a victim, cannot knowingly have any contact with the victim or member of the victim's family or household.

Subject to available funding, this bill also mandates the establishment of a Georgia Criminal Street Gang Database, to be maintained by the Georgia Bureau of Investigation. The purpose of the database will be to facilitate the exchange of information between different law enforcement agencies. The GBI will create a uniform reporting format for entering information about criminal street gangs into the database. Information in the database will be made available for public inspection.

Under current law, probation supervision generally ceases after two years. For probation arising out of a conviction under the Georgia Street Gang Terrorism and Prevention Act, probation supervision will remain in effect until the termination of the sentence, not to exceed five (5) years.

DeKalb County District Attorney, Gwinn Keyes spoke in favor of this legislation stating that street gangs are not just an inner city problem but a statewide problem. She stated this legislation will strengthen our sound current laws. She also said under this bill kids can be punished for participation in criminal street gangs.

Senator Ramsey, 43rd made a motion Do pass, seconded by Senator Weber, 40th. The vote was unanimous. **HB 1015 Do pass.**

With there being no further business, the meeting adjourned at 3:15 p.m.

Respectfully submitted,

/s/ Kathleen Cominski, Recording Secretary

/s/ Senator Judson Hill, 32nd, Secretary

The **Senate Special Judiciary Committee** met on April 1, 2010 at 9:00 a.m. in Room 310 of the Coverdell Legislative Office Building. Members present were:

Wiles, 37th, Chairman
Cowsert, 46th
Harp, 29th
James, 35th
Weber, 40th

Chairman Wiles called the meeting to order at 9:10 a.m.

HB 1002 (Rep. Willard, 49th) Crimes and offenses; crimes against judges and court personnel; increase punishment

Representative Willard explained under this bill, anyone who is convicted of knowingly committing aggravated assault upon an officer of the court while he/she is engaged in, or on account of the performance of his/her official duties will be sentenced to five to twenty years in prison. "Officer of the court" means a judge, attorney, clerk or deputy clerk of court, court reporter or probation officer.

This bill also increases the maximum sentence for the intimidation or injury of grand or petit jurors or court officers to twenty years.

Judge Ozburn, Council of Superior Court Judges, stated he was chairman of the court security study committee and this is good public policy. Four different states have increased fines and penalties.

Senator Harp, 29th asked if this extends to any attorney protection.

Rep. Willard, 49th explained this is defined in 16-10-97, any threat letter or verbal communication.

Senator Cowsert showed concern for language on Page 1 line 15 "or on account of the performance". Judge Ozburn stated this wouldn't apply to specific known officer of the court. This happens more often than publicized. This is good policy and part of the overall effect to enhance security in the courtroom.

Senator James, 35th asked if the penalty was too strong.

Judge Ozburn stated this is just a ceiling. The judge has options.

Senator Harp, 29th made the motion Do pass, seconded by Senator Cowsert, 47th. The vote was unanimous. **HB 1002 Do Pass.**

HB 567 (Rep. Parsons, 42nd) Crime Victims' Bill of Rights; rights of crime victims; change certain provisions

Representative Parsons stated this bill expands the laws relating to victims' participation in juvenile and state courts. Permits a victim to address the juvenile court and present any information about the impact of the allegedly delinquent act upon the victim. Further provides the victims with the right not to be excluded from any scheduled court proceedings, to reasonable notice of any scheduled court date and of the escape, release or arrest of the accused, to file written objection in a parole hearing or confer with the prosecuting attorney related to the victim, to restitution provided by the law, and to be treated fairly by all criminal justice agencies.

A new code section gives victims the right to refuse to be interviewed by the accused or an attorney or agent of the accused. If the victim agrees to be interviewed, he/she will have the right to set conditions, such as time, date, location, who may be present and security arrangements.

Rick Malone, Prosecuting Attorney's Council, spoke in favor of the bill stating these changes gives the victims rights but does not take discretion away from the judge.

Restitution is the duty of the prosecuting attorney and the court has to set the amount.

Section 6 has 9 basic rights; 7 definitions

Section 8 notification adds language to lines 251 – 256; requires notice to victim

Section A line 344 – do not take any action

Section 12 – victim has right to be at all proceedings

Section 13 is new language

Section 14 – post sentencing - cleans up procedure

Section 15 – mail; controls contact with victim by offender

Chairman Wiles said he was giving committee members a substitute brought to him by the Lt. Governor's office (LC 35 1866S).

Section 17 – added new language. He stated this is language that the Governor vetoed last year, but since then have worked details out with Lt. Gov and Governor.

Senator James, 35th made a motion do pass by substitute, seconded by Senator Harp, 29th. The vote was unanimous. **HB 567 Do pass by substitute.**

HB 896 (Rep. Collins, 27th) Continuances; witness on active duty; change provisions

Representative Collins stated this bill adds an additional requirement for request for speedy trial. The party asking for a continuance must show that the witness has been activated to military duty, in addition to the first three requirements.

Senator Harp, 29th made a motion do pass by substitute, seconded by Senator Weber. The vote was unanimous. **HB 896 Do pass by substitute.**

HB 451 (Rep. Jacobs, 80th) **Revised Article 7 of the Uniform Commercial Code**
Representative Jacobs explained that the purpose of this bill is to adopt the revised Article 7 of the Uniform Commercial Code (UCC), relating to documents of title, in Georgia. Revised Article 7 of the UCC makes many changes, such as;

- Provides for the use of electronic document of title;
- Clarifies effectiveness of warehouse liens and security interests as against persons other than a bailor;
- Allows a lessee from the transferor of a nonnegotiable document of title to defeat the rights of the transferee in certain circumstances; and
- In case of a lost, stolen or destroyed document of title, prevents a court from ordering delivery of the goods or issuance of a new document until certain conditions are met.

Rep. Jacobs stated this bill passed out of committee last year but never made it out of the Rules committee.

Senator Harp, 29th made a motion to Do pass, seconded by Senator Weber, 40th. The vote was unanimous. **HB 451 Do pass.**

The meeting adjourned at 10:15 a.m.

Respectfully submitted,

/s/ Kathleen Cominski, Recording Secretary

/s/ Senator John Wiles, 37th, Chairman

The **Senate Special Judiciary Committee** met on April 12, 2010 in Room 310 CLOB at 1:30 p.m.

The following members were present:

Wiles, 37th, Chairman
Harp, 29th
James, 35th
Ramsey, 43rd
Weber, 40th

The meeting was called to order at 1:40 p.m.

HB 1046 (Rep. Willard, 49th) Fulton County Family Court Division

Representative Willard explained to the committee this bill eliminates the sunset date on the Family Court Division of the Fulton County Superior Court. This was a pilot project scheduled to end on July 1, 2010. The project will continue until a majority of the Fulton County Superior Court judges vote otherwise.

Judge Campbell, Fulton County, told the committee he is favor of this legislation.

Weber, 40th asked how many other circuits have gone to this system.

Judge Campbell said he is not aware of any other circuit other than Fulton County.

James, 35th made a motion Do pass, seconded by Ramsey, 43rd. The vote was unanimous. **HB 1046 Do Pass.**

HB 1095 (Rep. Chambers, 81st) Forensic Laboratories

Representative Chambers, 81st, explained to the committee under current law, the Division of Forensic Sciences of the Georgia Bureau of Investigation is responsible for all property of value found on a deceased person in the absence of the next of kin, even if a criminal prosecution arises. This bill gives custody over such property to the forensic laboratory that conducts the examination or the investigating agency.

Also, the Division of Forensic Sciences will no longer function as a central repository for medical examiner reports and coroner investigations; each medical examiner and coroner must maintain permanent records of such reports. When a report indicates foul play, a forensic laboratory will undertake the analysis, instead of the Division of Forensic Sciences.

John Bankhead, GBI spoke in favor of this legislation telling the committee the GBI asked for this legislation. He also stated it mainly applies in death cases.

Harp, 29th made a motion Do pass, seconded by Weber 40th. The vote was unanimous.
HB 1095 Do Pass.

With there being no further business the meeting adjourned at 1:55 p.m.

Respectfully submitted,

/s/ Kathleen Cominski, Recording Secretary

/s/ Senator Wiles, 37th, Chairman

OFFICE OF LIEUTENANT GOVERNOR
240 State Capitol
Atlanta, Georgia 30334

Casey Cagle
Lieutenant Governor

April 15, 2010

The Honorable Bob Ewing
Secretary of the Senate
353 State Capitol
Atlanta, GA 30334

Dear Bob:

Pursuant to Senate Rule 2-3.2, please let this letter serve as official notice that Senator John Crosby is hereby appointed to the Senate Committee on Special Judiciary as an Ex-Officio Member.

This appointment is effective immediately and expires at the end of the day.

Please contact my office if you have any questions or concerns.

Sincerely,

/s/ Casey Cagle
Lieutenant Governor

The **Senate Special Judiciary Committee** met on April 15, 2010 in the Senate Mezzanine at 1:00 p.m. Members present were:

Wiles, 37th, Chairman
Cowsert, 46th
Harp, 29th
James, 35th
Pearson, 51st, Ex-Officio
Crosby, 13th, Ex-Officio

Note: Senator Crosby was appointed Ex-Officio by the Lt. Governor.

Chairman Wiles called the meeting to order at 1:25 p.m.

HB 219 (Rep. Benton, 31st) Antifreeze; include aversive agent to render it unpalatable; provisions

Representative Benton sent Chairman Wiles a note asking the chairman to handle the bill for him. Senator Wiles presented the bill stating this bill creates a new requirement that antifreeze sold in Georgia manufactured after July 1, 2011, which contains more than 10% ethylene glycol, must also include denatonium benzoate in order to make the antifreeze unpalatable. This requirement will apply to all antifreeze manufacturers, packagers, distributors, recyclers and sellers, but not to sellers of a motor vehicle that contains antifreeze. However, distributors, manufacturers, etc. will not be liable for personal injury, death, property damage or economic loss resulting solely from the addition of denatonium benzoate to the antifreeze. This limited liability does not apply if the cause of the liability is unrelated to the denatonium benzoate.

Senator Harp asked if the benzoate was the only chemical that made it toxic. And is it toxic?

Those speaking in favor of the bill:

Bill Clark, Georgia Trial Lawyers Association (GTLA)
Wayne Morris, General Motors
Becky Davis

Senator Cowsert asked if this was going to create a liability on manufacturers.

Senator Wiles offered substitute language that would define the antifreeze for motor vehicles. On line nineteen after the word “contains” add “engine coolant or antifreeze.”

Senator Harp made the motion Do pass by substitute, seconded by Senator Cowsert. The vote was unanimous. **HB 219 Do Pass by Substitute.**

HB 1118 (Rep. Weldon, 3rd) Child Support Recovery Act; IV-D agency support orders; change provisions

Representative Weldon explained this bill updated Child Support statewide, to bring everyone on line. This legislation requires that the parents provide healthcare for the child if it is offered at the parent's place of work.

Senator Wiles asked what cost was reasonable. Some insurance for small businesses is very costly to the employee. Representative Weldon said the courts would take income, child/children and cost into consideration.

Samantha Byrd, legal counsel for the Office of Child Support Recovery, stated that only 5% or less would not be able to meet the obligation of covering cost of child/children health care.

Senator James asked how this would be monitored.

Senator Wiles said to do it under federal law.

Mr. Wayne Horton, Director of the Office of Child Support Recovery, stated this would align us directly with federal law.

Senator Harp made a motion to Do pass, seconded by Senator James. The vote was unanimous. **HB 1118 Do Pass.**

HB 235 (Rep. Powell, 171st) Court Reports; publishing a volume of rules; remove requirement

Representative Powell explained this bill strikes language requiring rules compilations listing the rules of Georgia courts to be printed in volume form. Instead, the reporter of the state Court of appeals and Supreme Court will be required to publish the rules compilation in electronic format that is publicly accessible, and the reporter must update the electronic version as necessary. He stated this bill was brought to him by the Administrative Office of the Courts. It removes the requirement of printed volumes of the rules of Georgia courts. This would save taxpayers dollars.

Senator Harp made the motion "do pass", seconded by Senator James. The vote was unanimous. **HB 235 Do pass.**

HB 1053 (Rep. Lunsford, 110th) Solicitors-general; act during pendency of vacancy in office; provide

Representative Lunsford explained the bill stating if a vacancy occurs in the office of solicitor-general, the Governor has the authority to appoint a new solicitor-general. However, after the vacancy occurs and before a qualified person is appointed, one of the following people will serve as acting solicitor-general:

The chief assistant solicitor-general

If there is no chief assistant solicitor-general, then the assistant solicitor-general most senior in time of service; or

If there is no assistant solicitor-general, then the probate court judge will appoint an acting solicitor-general.

Chuck Sapanos, Henry County Solicitors office, asked if there was a timetable for appointment by the Governor.

Senator Wiles stated that if the Governor appoints a replacement immediately, then this law will not be needed. He also stated that County officials should make the appointment.

Rep. Lunsford stated the original bill allowed for local government, the County Commission Chairman, to make the appointment it was taken out in committee in the House. On line 21 add: "Chairman of Board of Commissioners shall appoint".

Senator Cowsert, 46th made the motion Do pass by substitute, seconded by Senator James, 35th. The vote was unanimous. **[HB 1053](#) Do Pass by Substitute.**

[HB 1133](#) (*hearing only*) (Rep. Lunsford, 110th) Pretrial intervention and diversion programs; administration fees; increase

Representative Lunsford explained current law requires offenders to pay a \$300.00 administration fee to enter a pretrial intervention and diversion program. This bill increases the fee to \$1,000.00. However, the bill also allows the fee to be waived or made payable in monthly increments upon a showing of good cause.

Senator Cowsert made a statement that this was an excessive increase in fees and this needs to be given more thought. Private probation with all the junk fees is not as excessive.

Chairman Wiles said the author and members of the committee who have concerns need to work out differences and he will put this bill back on the agenda for our next meeting which will be April 19, 2010.

[HB 1147](#) (Rep. Knight, 126th) Special liens on personalty; eliminate aircraft liens; provisions

Representative Knight explained Code Section 44-14-363, relating to personalty liens, is amended to strike the requirement that a mechanic who repairs aircraft record his/her lien within 180 days after finishing the work.

Code Section 44-14-518 is amended so that a lien on aircraft or aircraft engines based on fueling, repair, storage, servicing, furnishing supplies, or providing indemnity contracts is superior to all other liens, except for tax liens.

Such liens may be asserted by the retention of the aircraft or aircraft engines; if so, the lienor will not be required to surrender the aircraft or aircraft engine to the holder of a subordinate security interest or lien. The bill also creates more stringent requirements for providing notice when possession of the aircraft or aircraft engine is surrendered by the person claiming the lien. These changes will become effective on July 1, 2010.

Rep. Knight stated on page 2, line 61, federal law under 49 U.S.C. Section 44107, federal law preempts Georgia law. That is clarified at the end of page 3, lines 62-66. If not under federal law it reverts back to state law.

Senator Wiles stated he was in agreement with centralized recording.

Senator James stated she would like to hear from the US Department of Aviation as to their position on this state law opposed to federal law.

Senator Wiles asked Representative Knight to work on some language and get with other members to try and get a good clean bill. He would have this bill on the next agenda.

With there being no further business, the meeting adjourned at 2:20 p.m.

Respectfully submitted,

/s/ Kathleen Cominski, Recording Secretary

/s/ Senator John Wiles, 37th, Chairman

June 2, 2010

Mr. Bob Ewing
Secretary of the Senate
State Capitol
Room 353
Atlanta, GA 30334

Dear Mr. Secretary:

The Senate Special Judiciary Committee is returning the following Senate and House Bills and Resolutions:

[SB 41](#)

[SB 73](#)

[SB 115](#)

[SB 127](#)

[SB 227](#)

[SB 314](#)

[SB 396](#)

[SB 495](#)

[SB 497](#)

[SB 530](#)

[SB 532](#)

[SR 50](#)

[HB 1057](#)

Respectfully,

/s/ Kathleen Cominski
Recording Secretary
Senate Special Judiciary Committee