

Senate Bill 276

By: Senators Meyer von Bremen of the 12th, Hecht of the 34th and Lee of the 29th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting attorneys, so as to change the procedures relating to the appointment of a substitute for a district attorney or solicitor-general who is disqualified from engaging in a prosecution; to provide for other matters relative to the foregoing; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting attorneys, is amended by striking in its entirety Code Section 15-18-5, relating to the appointment of a substitute for an absent or disqualified district attorney, and inserting in lieu thereof the following:

"15-18-5.

(a) When a district attorney is ~~absent, indisposed, or is~~ or his or her assistants are disqualified from interest or relationship to engage in a prosecution, the ~~presiding judge,~~ as the emergency, in his discretion, requires, may district attorney shall notify the Attorney General of the disqualification. Upon receipt of such notification, the Attorney General shall:

(1) ~~Appoint a competent attorney of the circuit to act in his place~~ Request the services of and thereafter appoint a district attorney, a solicitor-general, or a retired prosecuting attorney as provided in Code Section 15-18-30;

(2) ~~Command the services of a district attorney of any other accessible circuit~~ Designate an attorney from the Department of Law; or

(3) ~~Make a requisition to the Governor for the services of the Attorney General~~ Appoint a competent attorney to act as district attorney pro tempore in place of the district attorney.

1 (b) A private attorney acting as district attorney pro tempore pursuant to paragraph ~~(1)~~ (3)
2 of subsection (a) of this Code section is subject to all laws and regulations established
3 pursuant to Code Section 15-18-19 governing district attorneys. ~~He~~ Such private attorney
4 shall receive the same compensation from the state funds appropriated for the operations
5 of the district attorneys at the same rate as the district attorney during the term of such
6 appointment and shall incur the same penalties in the discharge of ~~his~~ the duties of said
7 office.

8 (c) Nothing in this Code section shall affect Code Section 45-15-30.

9 (d) The appointment of the district attorney pro tempore shall specify in writing the court
10 or courts to which the appointment applies, the county or counties where located, the time
11 period covered, and the name of the case or cases to which such appointment shall apply.
12 A copy of the appointment shall be filed with the clerk of court and copies shall be
13 provided to the presiding judge and the Prosecuting Attorneys' Council of the State of
14 Georgia and opposing counsel in any action affected by such order. An order appointing
15 a private attorney pursuant to this Code section shall also specify whether such attorney
16 will serve on a full or part-time basis and any restrictions which may apply to such
17 attorney's private practice of law during the term of such appointment. Private attorneys
18 who serve on a part-time basis shall be compensated at an hourly rate determined by the
19 Prosecuting Attorneys' Council of the State of Georgia based on the annual salary of
20 district attorneys paid from state funds. The Prosecuting Attorneys' Council of the State
21 of Georgia shall establish such procedures or guidelines as may be necessary to ensure
22 proper accountability of any funds paid to a private attorney pursuant to this Code section.
23 (e) A district attorney or solicitor-general who is designated as a district attorney pro
24 tempore, or any assistant designated by such district attorney pro tempore to prosecute such
25 case or cases, or an employee of the Department of Law shall not receive any additional
26 compensation for such services. The actual expenses incurred by the district attorney pro
27 tempore or members of the district attorney pro tempore's staff shall be reimbursed in the
28 same manner and by the same funding source as is provided by law for such personnel
29 when they are performing official duties, provided that, in the case of nonstate paid
30 personnel, the actual expenses incurred shall be reimbursed by the county in which the said
31 district attorney pro tempore is acting at the same rate as provided in Code Section
32 15-18-12 for district attorneys. Any court costs, filing costs, witness fees, costs of
33 reporting and preparing transcripts of records, and any other expenses incurred for such
34 services shall be paid as provided by law.

35 (f) If a disqualified district attorney fails or refuses to notify the Attorney General as
36 provided in subsection (a) of this Code section, the presiding judge may notify the Attorney
37 General.

1 (g) Any order entered by a court disqualifying a district attorney's office from engaging
 2 in the prosecution shall specify the legal basis for such order. The district attorney may,
 3 on behalf of the state and prior to the defendant in a criminal case being put in jeopardy,
 4 apply for a certificate of immediate review as provided in Code Section 5-7-2, and such
 5 order shall be subject to appellate review as provided in Chapter 7 of Title 5."

6 **SECTION 2.**

7 Said chapter is further amended by striking subsection (a) of Code Section 15-18-27, relating
 8 to allegations that a district attorney or staff member has committed an indictable offense,
 9 and inserting in lieu thereof the following:

10 "(a) When any person makes an affidavit before a judge of the superior court which alleges
 11 that the district attorney or a member of the staff of the district attorney has committed an
 12 indictable offense and the court finds that there is probable cause to believe that the
 13 accused has committed the alleged offense or the grand jury files a sealed report with the
 14 presiding judge that the grand jury has found reasonable grounds to believe that the district
 15 attorney or a member of the staff of the district attorney has committed such an offense and
 16 intends to proceed as provided in Code Sections 45-11-4 and 45-15-11, it shall be the duty
 17 of the court to ~~appoint a substitute~~ notify the Attorney General as provided in Code Section
 18 15-18-5."

19 **SECTION 3.**

20 Said chapter is further amended by striking in its entirety Code Section 15-18-30, relating
 21 to the temporary use of retired district attorneys, and inserting in lieu thereof the following:
 22 "15-18-30.

23 (a) As used in this Code section, 'retired ~~district~~ prosecuting attorney' means a retired
 24 district attorney, assistant district attorney, solicitor-general, assistant solicitor-general, or
 25 retired attorney from the staff of the Department of Law or the Prosecuting Attorneys'
 26 Council of the State of Georgia who is receiving benefits under Title 47 or is retired in
 27 good standing and receiving benefits from a county or municipal retirement system and
 28 who has a minimum of ten years of service in any combination of such offices.

29 (b) In addition to any other provision of law, if a district attorney determines that the
 30 business of the court requires the temporary assistance of any retired ~~district~~ prosecuting
 31 attorney, that district attorney may make a request for assistance to the ~~chairman~~
 32 chairperson of the Prosecuting Attorneys' Council of the State of Georgia under such
 33 guidelines as the council may adopt. Subject to funds being available for such purpose and
 34 in accordance with such guidelines as the council may prescribe, the ~~chairman~~ chairperson
 35 may approve the temporary assistance requested.

(c) If a district attorney is disqualified pursuant to Code Section 15-18-5, the ~~presiding judge~~ Attorney General may appoint a retired district attorney as district attorney pro tempore subject to the provisions of subsection (d) of this Code section. The order appointing the district attorney pro tempore shall identify the court in need of assistance, the county where located, the time period covered, the specific case or cases for which assistance is sought, if applicable, and the reason that assistance is needed. A copy of the order shall be submitted to the ~~chairman~~ chairperson of the Prosecuting Attorneys' Council of the State of Georgia.

(d) A retired ~~district~~ prosecuting attorney who provides temporary assistance under this Code section or who is appointed as district attorney pro tempore pursuant to Code Section 15-18-5 may receive compensation from state funds for each day of service in an amount to be fixed by the council and not to exceed the annual state salary for the position from which such person retired, divided by 235. In addition to such compensation, such retired district attorney shall be reimbursed for actual expenses as provided by Code Section 15-18-12. Such compensation and expenses shall be paid by the council from state funds appropriated or otherwise available for the operation of the office of district attorney, upon a certificate by the district attorney, or in the case of a district attorney pro tempore by the ~~judge~~ Attorney General, as to the number of days served or the expenses incurred. No person subject to the provisions of this Code section shall serve for more than 1,040 hours in any calendar year, and no such person shall be eligible for employee health benefits other than those available to him or her as a part of his or her retirement benefits or for any annual leave, any sick leave, or any other employee benefits available to a state employee except those which are available to him or her as a retired employee. In the event of any conflict, the provisions of Title 47 shall prevail over any provision of this Code section."

SECTION 4.

Said chapter is further amended by striking in its entirety Code Section 15-18-65, relating to the disqualification of solicitors-general, and inserting in lieu thereof the following:

"15-18-65.

(a) When a ~~solicitor-general~~ solicitor-general's office is disqualified from interest or relationship to engage in the prosecution of a particular case or cases, such solicitor-general ~~may~~ shall notify the Attorney General of the disqualification. Upon receipt of such notification, the Attorney General shall request the services of and thereafter appoint a solicitor-general, a district attorney, a retired prosecuting attorney as provided in Code Section 15-18-30, or other competent attorney to act in place of the solicitor-general, or may designate an attorney from the Department of Law. The appointment of the

1 solicitor-general pro tempore shall specify in writing the name of the case or cases to which
2 such appointment shall apply.

3 (b) A private attorney acting as solicitor-general pro tempore pursuant to subsection (a)
4 of this Code section shall be duly sworn and subject to all laws governing prosecuting
5 attorneys. Such solicitor-general pro tempore shall be compensated in the same manner
6 as appointed counsel in the county.

7 (c) A solicitor-general of another county or a district attorney who is designated as a
8 solicitor-general pro tempore, ~~or any assistant designated by such solicitor-general pro~~
9 ~~tempore to prosecute such case or cases, or employee of the Department of Law~~ shall not
10 receive any additional compensation for such services; provided, however, that the actual
11 expenses incurred by the solicitor-general pro tempore or members of the solicitor-general
12 pro tempore's staff shall be reimbursed by the county in which said solicitor-general or
13 district attorney is acting as solicitor-general pro tempore at the same rate as provided in
14 Code Section 15-18-12 for district attorneys.

15 (d) Any order entered by a court disqualifying a solicitor-general's office from engaging
16 in the prosecution shall specify the legal basis of such order. The solicitor-general may,
17 on behalf of the state and prior to the defendant in a criminal case being put in jeopardy,
18 apply for a certificate of immediate review as provided in Code Section 5-7-2, and such
19 order shall be subject to appellate review as provided by Chapter 7 of Title 5.

20 SECTION 5.

21 This Act shall become effective upon its approval by the Governor or upon its becoming law
22 without such approval.

23 SECTION 6.

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