

House Bill 1296

By: Representatives Levitas of the 82nd, Jacobs of the 80th, Chambers of the 81st, and Millar of the 79th

A BILL TO BE ENTITLED
AN ACT

1 To amend an Act revising, superseding, and consolidating the laws relating to the governing
2 authority of DeKalb County, approved March 8, 1956 (Ga. L. 1956, p. 3237), as amended,
3 particularly by an Act establishing the form of government of DeKalb County and fixing the
4 powers and duties of the officers constituting the governing authority of DeKalb County,
5 approved April 9, 1981 (Ga. L. 1981, p. 4304), as amended, so as to revise the qualifications
6 for the chief executive officer and members of the county commission; to revise the
7 composition of the county commission and the commission districts; to provide for certain
8 elections; to revise the powers and duties of the county commission and chief executive
9 officer; to provide that contracts with outside auditors shall be signed by the auditor and the
10 presiding officer of the county commission; to authorize the chief executive officer and
11 county commission to refer certain acts for prosecution; to revise provisions concerning the
12 qualifications of the executive assistant; to provide for related matters; to provide for a
13 referendum; to provide for submission for preclearance under the federal Voting Rights Act;
14 to provide for a contingent effective date; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

17 An Act revising, superseding, and consolidating the laws relating to the governing authority
18 of DeKalb County, approved March 8, 1956 (Ga. L. 1956, p. 3237), as amended, particularly
19 by an Act establishing the form of government of DeKalb County and fixing the powers and
20 duties of the officers constituting the governing authority of DeKalb County, approved
21 April 9, 1981 (Ga. L. 1981, p. 4304), as amended, is amended by revising Section 2 as
22 follows:

23 "(a) The commission shall consist of nine members who shall be elected by the electors
24 of their respective districts.

25 (b) For purposes of electing members of the board of commissioners, DeKalb County is
26 divided into nine commissioner districts. One member of the board shall be elected from

1 each such district. Commissioner Districts 1, 2, 3, 4, 5, 6, 7, 8, and 9 shall be and
2 correspond to those nine numbered districts described in and attached to and made a part
3 of this Act and further identified as Plan Name: dekcc07prop7 Plan Type: Local User:
4 Gina Administrator: H091.

5 (c) When used in such attachment, the terms 'Tract' and 'BG' (Block Group) shall mean
6 and describe the same geographical boundaries as provided in the report of the Bureau of
7 the Census for the United States decennial census of 2000 for the State of Georgia. The
8 separate numeric designations in a Tract description which are underneath a 'BG' heading
9 shall mean and describe individual Blocks within a Block Group as provided in the report
10 of the Bureau of the Census for the United States decennial census of 2000 for the State of
11 Georgia. Any part of DeKalb County which is not included in any such district described
12 in that attachment shall be included within that district contiguous to such part which
13 contains the least population according to the United States decennial census of 2000 for
14 the State of Georgia. Any part of DeKalb County which is described in that attachment as
15 being in a particular district shall nevertheless not be included within such district if such
16 part is not contiguous to such district. Such noncontiguous part shall instead be included
17 within that district contiguous to such part which contains the least population according
18 to the United States decennial census of 2000 for the State of Georgia. Except as otherwise
19 provided in the description of any commissioner district, whenever the description of such
20 district refers to a named city, it shall mean the geographical boundaries of that city as
21 shown on the census map for the United States decennial census of 2000 for the State of
22 Georgia.

23 (d) Each commissioner shall be a citizen of this state, at least 25 years of age, and shall
24 have been a resident of the geographic area encompassed by the respective commissioner
25 district for at least one year prior to taking office. Each commissioner shall be elected by
26 a majority of the electors voting within the respective commissioner district. Except for
27 displacement of their residences from their respective commissioner districts due to
28 reapportionment of the districts, any commissioners who cease to be residents of their
29 respective commissioner districts during their terms of office shall thereby vacate their
30 seats on the commission. All members of the commission shall be nominated and elected
31 pursuant to the provisions of Chapter 2 of Title 21 of the O.C.G.A., the 'Georgia Election
32 Code,' as now or hereafter amended."

33 SECTION 2.

34 Said Act is further amended by revising Section 3 as follows:

"SECTION 3.

(a) Commissioner Districts 1, 2, 3, 4, 5, 6, and 7, as they exist on January 1, 2009, shall continue to be designated as Commissioner Districts 1, 2, 3, 4, 5, 6, and 7, respectively, but as newly described under this Act and such members of the board serving from those former commissioner districts shall be deemed to be serving from and representing their respective districts as newly described under this Act.

(b) Those members of the Board of Commissioners of DeKalb County who are serving as such on January 1, 2009, and any person selected to fill a vacancy in any such office shall continue to serve as such members until the regular expiration of their respective terms of office and until the election and qualification of their respective successors. The successor to each such member shall be elected as provided in this section.

(c) The first members for new Commissioner Districts 2, 3, and 7 shall be elected at the general election on the Tuesday next following the first Monday in November 2010. Those members of the board elected thereto from new Commissioner Districts 2, 3, and 7 in 2010 shall take office the first day of January immediately following that election and shall serve for initial terms of office which expire December 31, 2014, and upon the election and qualification of their respective successors.

(d) The first members for new Commissioner Districts 1, 4, 5, and 6 shall be elected at the general election on the Tuesday next following the first Monday in November 2012. Those members of the board elected thereto from new Commissioner Districts 1, 4, 5, and 6 in 2012 shall take office the first day of January immediately following that election and shall serve for initial terms of office which expire December 31, 2016, and upon the election and qualification of their respective successors.

(e) The first members for new Commissioner Districts 8 and 9 shall be elected at a special election to be held on the third Tuesday in March 2009. Those members of the board elected thereto from new Commissioner Districts 8 and 9 in 2009 shall take office on the first day of April immediately following that election and shall serve for initial terms of office which expire December 31, 2010, and upon the election and qualification of their respective successors.

(f) Those and all future successors to members of the board whose terms of office are to expire shall be elected by the electors of their respective districts at the time of the state-wide general election immediately preceding the expiration of such terms, shall take office the first day of January immediately following that election, and shall serve for terms of office of four years each. Members of the board shall serve for the terms of office specified therefor in this subsection and until their respective successors are elected and qualified."

SECTION 5.

Said Act is further amended by revising subsection (b) of Section 10 as follows:

"(b) The outside auditor shall be employed pursuant to written contract to be signed by the auditor and the presiding officer of the commission and to be entered upon the minutes of the commission. The contract shall state clearly and concisely the depth and scope of the audit and that it shall be conducted in accordance with the requirements of the Act providing uniform standards for audits of municipalities and counties within the State of Georgia, approved April 21, 1967 (Ga. L. 1967, p. 883), as amended, by an Act approved March 28, 1968 (Ga. L. 1968, p. 464). The auditor shall immediately inform the commission in writing of any irregularities found in the management of county business by an officer or department of the county government."

SECTION 6.

Said Act is further amended by adding a new subsection (e) to Section 10 as follows:

"(e) The commission shall be authorized to refer for prosecution alleged violations of this Act, county ordinances, and other laws of this state or of the United States to the appropriate law enforcement agency."

SECTION 7.

Said Act is further amended by revising subsection (a) of Section 11 as follows:

"(a) The chief executive shall have no vote at any regular or specially called meeting of the commission unless the members of the commission are equally divided. Even when the members of the commission are equally divided, the chief executive may not vote on a matter which is not subject to veto by said officer under the provisions of subsection (d) of Section 15 of this Act."

SECTION 8.

Said Act is further amended by revising subsection (c) of Section 11 as follows:

"(c) The presiding officer shall preside at meetings of the commission and shall have the following additional duties:

- (1) To convene such special meetings of the commission as are deemed necessary, but all members shall be notified at least three days in advance of any such special meeting;
- (2) To appoint the members and chairmen of such committees of the commission as the commission, by its rules, may establish and fill vacancies therein, but any such appointments may be rejected by a majority vote of the total membership of the commission;

1 (3) To compel the attendance of members at meetings of the commission by subpoena,
 2 if necessary, and to refer for prosecution alleged violations of such subpoena to the
 3 superior court, subject to the policy of the commission as established by its rules; and
 4 (4) To exercise such other powers and duties as may be assigned to the presiding officer
 5 by ordinance or rules and regulations of the commission."

6 **SECTION 9.**

7 Said Act is further amended by revising Section 12 as follows:

8 "SECTION 12.

9 Meetings.

10 The commission shall hold regular meetings on the second and fourth Tuesdays of each
 11 month at the county seat, which meetings shall be open to the public, and may hold such
 12 additional meetings as shall be necessary when called by the chief executive, the presiding
 13 officer, or any four members of the commission, but all members shall be notified at least
 14 three days in advance of any such additional meeting. No official action shall be taken by
 15 the commission except in a meeting which is open to the public. The presiding officer and
 16 any three members of the commission, or any four members of the commission exclusive of
 17 the presiding officer, shall constitute a quorum, except that a lesser number shall be sufficient
 18 to recess or adjourn any meeting; but no official action shall be taken except upon the
 19 affirmative vote of at least four members of the commission. The presiding officer shall be
 20 entitled to the same voting rights as the commission members on questions considered by the
 21 commission."

22 **SECTION 10.**

23 Said Act is further amended by revising Section 13 as follows:

24 "SECTION 13.

25 Powers and duties of the chief executive.

26 (a) The chief executive shall have the power, subject to the oversight authority of the
 27 commission, to supervise, direct, and control the administration of the county government.
 28 The chief executive shall carry out, execute, and enforce all ordinances, policies, rules, and
 29 regulations of the commission when such ordinances, policies, rules, and regulations
 30 become effective. No member of the commission shall directly or indirectly order, instruct,
 31 or otherwise attempt to control the actions of county personnel subject to the administrative

1 and supervisory control of the chief executive, except pursuant to the commission's
2 oversight authority. Nothing herein shall be construed to preclude any commissioner from
3 obtaining from any person, including any employee of DeKalb County, information
4 necessary to provide ordinary constituent services and to establish policy. For purposes of
5 this subsection, the term 'ordinary constituent services' shall include, by way of example
6 and not of limitation, responding to constituent concerns and inquiries regarding the
7 ministerial activities of the administration, such as road repairs, traffic control device
8 management, licensing, and the like.

9 (b) Subject to the approval of the commission, the chief executive shall have the power to
10 change, consolidate, or abolish any departments, agencies, or offices over which the chief
11 executive exercises supervision and control, except that the department of finance shall be
12 maintained at all times as a separate and distinct department and may not be abolished by
13 the chief executive or by the commission. Subject to the approval of the commission, the
14 chief executive may create other departments, agencies, and offices, which departments,
15 agencies, and offices, when created, shall be under the supervision and control of the chief
16 executive.

17 (c)(1) Subject to confirmation by a majority vote of the commission, the chief executive
18 shall appoint the executive assistant and the county attorney. The executive assistant
19 shall be subject to the requirements of Section 14 of this Act. No member of the
20 commission or the commission itself shall be authorized to nominate persons for the
21 office of executive assistant or county attorney. Both of said officers shall serve at the
22 pleasure of the chief executive. The commission may also discharge either such officer
23 for cause, but the affirmative vote of at least five members of the commission shall be
24 required to discharge either such officer.

25 (2) Subject to confirmation by a majority vote of the commission, the chief executive
26 shall appoint the planning director, finance director, and merit system director. No
27 member of the commission or the commission itself shall be authorized to nominate
28 persons for any such position. All three of said officers shall be under the DeKalb
29 County Merit System.

30 (d) Subject to budgetary limitations and DeKalb County Merit System regulations, the
31 chief executive shall have exclusive authority to appoint and remove all employees and
32 officials of the county, except employees of the commission, and except that deputies and
33 employees of the elected county officers of DeKalb County shall be subject to
34 appointment, removal, supervision, and control of the respective elective county officers.

35 (e) The chief executive may convene special meetings of the commission when deemed
36 necessary, but all members shall be notified at least three days in advance of any such
37 special meeting.

- 1 (f) Reserved.
- 2 (g) The chief executive shall have the power to investigate the affairs, records, and
3 expenditures of the various authorities, boards, councils, commissions, committees, and
4 similar bodies or agencies, whether created by ordinance of the commission or by Acts of
5 the General Assembly, relating to the affairs of the county and to report thereon to the
6 commission.
- 7 (h) The chief executive shall represent the county in intergovernmental matters and shall
8 seek to promote and improve the government of the county and encourage the growth of
9 the county and promote and develop the prosperity and well-being of the citizens of the
10 county.
- 11 (i) The chief executive, within 120 days after the close of each fiscal year, shall prepare
12 and submit to the commission a complete annual report on the financial affairs and
13 activities of the county for the immediately preceding fiscal year. The annual report shall
14 show all income from all sources, including state, county, and federal funds, and all
15 expenditures. The chief executive shall cause a summary of said annual report to be
16 published in the official organ of DeKalb County. Said published summary shall state that
17 a copy of the full report is available from the office of the chief executive. The chief
18 executive shall also send copies of the full report to each branch of the county library. The
19 chief executive shall also make financial reports during the year as may be required by the
20 commission.
- 21 (j) The chief executive may recommend, at any time, to the commission for its formal
22 consideration such measures or proposals as are deemed necessary or desirable to improve
23 the administration of the affairs of the county.
- 24 (k) The chief executive shall devote full time to the duties of the office and shall have no
25 other source of employment."

26 **SECTION 11.**

27 Said Act is further amended by revising Section 13A as follows:

28 "SECTION 13A.

- 29 (a)(1) When this Act or any other law of this state authorizes or requires a county
30 governing authority, including any such law which refers to a local governing body with
31 the intention of including a county governing authority, to appoint or elect a person to fill
32 a post or vacancy in any public office or as a member of any public authority, board,
33 commission, or other body or agency, such post or vacancy shall be filled as follows:
- 34 (A) The chief executive shall nominate a person by sending a written notice to the
35 commission, and such notice shall specify the post or vacancy to be filled, the date such

1 post or vacancy is to be filled, the qualifications, if any, which must be possessed by
2 a person filling the post or vacancy, and the name of the person nominated by the chief
3 executive;

4 (B) Within 20 days after the date the notice described in subparagraph (A) of this
5 subsection is received, the commission, either at a regular or called meeting, shall
6 confirm or reject the nominee of the chief executive; and

7 (C) If the nominee of the chief executive is rejected by the commission, then the
8 process in subparagraphs (A) and (B) of this paragraph shall be repeated, beginning ten
9 days after such rejection, until the commission approves a person nominated by the
10 chief executive.

11 (2) When the need to fill a post or vacancy is known by the chief executive at least 60
12 days in advance of the date on which the post or vacancy should be filled, the chief
13 executive shall initiate the procedures provided by paragraph (1) of this subsection far
14 enough in advance to permit such post or vacancy to be filled at the proper time. In all
15 other cases, the chief executive shall initiate such procedures as soon as practicable after
16 learning of the need to fill the post or vacancy.

17 (b) When a law described in subsection (a) of this section authorizes a person elected or
18 appointed to fill a post or vacancy to be removed from office by a county governing
19 authority, such power of removal may be exercised by the affirmative vote of at least four
20 members of the commission. Such power of removal may be exercised by the commission
21 without the concurrence of the chief executive, but the chief executive may recommend
22 such removal to the commission.

23 (c) Whenever any other law of this state authorizes or requires the chairman of the board
24 of commissioners of a county or the elected chief executive officer of a county, by
25 whatever name designated, to hold another office or to serve as a member of any public
26 authority, board, commission, or other body or agency, such law shall be construed to grant
27 such authority or apply such requirement to the chief executive.

28 (d) Whenever any other law of this state refers, for purposes other than those described in
29 subsection (c) of this section, to the chairman of the board of commissioners of a county
30 or to the elected chief executive officer of a county, by whatever name designated, such
31 law shall be construed to refer to the chief executive."

32 SECTION 12.

33 Said Act is further amended by revising Section 14 as follows:

1 the hearing on the proposed budget from time to time, provided that the time and place to
2 which the hearing is continued shall be publicly announced at the previous hearing.
3 However, the final budget shall be approved and adopted before March 1 of the year to
4 which it pertains. The final budget shall constitute the commission's appropriations of all
5 funds for such year. The budget may be amended during the calendar year which it covers
6 upon formal action of the commission in a regular meeting, but no increase in
7 appropriations shall be made therein without provision also being made for financing
8 same."

9 **SECTION 14.**

10 Said Act is further amended by revising paragraph (11) of subsection (a) of Section 19 as
11 follows:

12 "(11) Perform such other duties as may be assigned by the chief executive to the extent
13 that they relate reasonably to the functions listed herein."

14 **SECTION 15.**

15 Said Act is further amended by revising Section 22 as follows:

16 "SECTION 22.

17 Officials not to be interested in contracts.

18 Neither the chief executive nor any member of the commission or other county officer
19 empowered to use public or county funds for the purchase of goods, property, or services of
20 any kind for public or county purposes shall be financially interested, directly or indirectly,
21 in any contract to which the county is a party, either as principal, surety, or otherwise. Such
22 officer and any partner, agent, servant, or employee of a firm of which such officer is a
23 member or by whom he or she is employed shall be prohibited from purchasing from or
24 selling to the county any real or personal property, goods, or services. Any contract made
25 in violation of any of the foregoing provisions shall be void, and the officer so offending
26 shall be removed from office upon proper proceedings instituted by any taxpayer in said
27 county in accordance with the provisions of Section 36-1-14 of the O.C.G.A.; provided,
28 however, that the provisions of this Section shall not be applicable to any contract where
29 such financial interest has been disclosed fully pursuant to Section 22A of this Act and which
30 has been approved, prior to execution, performance, and payment thereon, by a majority vote
31 of the commission by a proper entry on the minutes of the commission."

1 the state or of any county or municipality concerning any contract or transaction which
 2 is or may be the subject of an official act or action of DeKalb County or otherwise use
 3 or attempt to use the member's official position to secure unwarranted privileges or
 4 exemptions for himself or herself or other persons;

5 (5) Engage in, accept employment with, or render services for any private business or
 6 professional activity when such employment or rendering of services is adverse to and
 7 incompatible with the proper discharge of his or her official duties. For the purposes of
 8 this paragraph, the employment of a consultant by any business involving matters
 9 unrelated to any contract or transaction by or with DeKalb County shall not be deemed
 10 incompatible with such consultant's official duties;

11 (6) Acquire an interest in any contract or transaction at a time when the member believes
 12 or has reason to believe that such an interest will be affected directly or indirectly by his
 13 or her official act or actions or by the official acts or actions of the governing authority
 14 of DeKalb County; or

15 (7) Engage in any activity or transaction that is prohibited by law now existing or
 16 hereafter enacted which is applicable to the member by virtue of being a member of the
 17 governing authority.

18 (d) A member of the governing authority who has an interest that he or she has reason to
 19 believe may be affected by the member's official acts or actions or by the official acts or
 20 actions of the governing authority of DeKalb County shall disclose the precise nature and
 21 value of such interest by sworn written statement to the board of ethics and ask for its
 22 opinion as to the propriety of said interest. Every member of the governing authority who
 23 knowingly has any interest, direct or indirect, in any contract to which DeKalb County is
 24 or is about to become a party, or in any other business with DeKalb County, shall make full
 25 disclosure of such interest to the governing authority of DeKalb County and to the board
 26 of ethics. The information disclosed by such sworn statements, except for the valuation
 27 attributed to the disclosed interest, shall be made a matter of public record by the board of
 28 ethics.

29 (e) A member of the governing authority shall disqualify himself or herself from
 30 participating in any official act or action of DeKalb County directly affecting a business
 31 or activity in which the member has any interest, regardless of whether it is a remote
 32 interest."

33 **SECTION 18.**

34 Said Act is further amended by revising subsections (g) and (h) of Section 22A as follows:

1 "(g) DeKalb County shall not enter into any contract with or take any official act or action
2 favorably affecting any person or business represented by such person who has been within
3 the preceding 12-month period a member of the governing authority.

4 (h)(1) This section shall be construed liberally to effectuate its purposes and policies and
5 to supplement such existing laws as may relate to the conduct of members of the
6 governing authority.

7 (2) The propriety of any official act or action taken by or transaction involving any
8 member of the governing authority immediately prior to the time this section shall take
9 effect shall not be affected by the enactment of this section.

10 (3) The provisions of this section are severable and, if any of its provisions shall be held
11 unconstitutional or invalid by a court of competent jurisdiction, the decision of the court
12 shall not affect or impair any of the remaining provisions."

13 **SECTION 19.**

14 Said Act is further amended by revising subparagraph (i)(5)(B) of Section 22A as follows:

15 "(B) To render advisory opinions with respect to the interpretation and application
16 of this section to all persons who seek such opinions regarding whether a particular
17 course of conduct would constitute a violation of the standards imposed in this section
18 or other applicable ethical standards. Such opinions shall be binding on the board of
19 ethics in any subsequent complaint concerning the person who sought the opinion and
20 acted in good faith, unless material facts were omitted or misstated in the request for
21 the advisory opinion;".

22 **SECTION 20.**

23 Unless otherwise prohibited by the federal Voting Rights Act of 1965, as amended, the
24 election superintendent of DeKalb County shall call and conduct a special election for the
25 purpose of submitting this Act to the electors of DeKalb County for approval or rejection.
26 The election superintendent shall conduct that election on the Tuesday after the first Monday
27 in November, 2008. The election superintendent shall issue the call and conduct that election
28 as provided by general law. The superintendent shall cause the date and purpose of the
29 election to be published once a week for two weeks immediately preceding the date thereof
30 in the official organ of DeKalb County. The ballot shall have written or printed thereon the
31 words:

32 "() YES Shall the Act be approved which revises the qualifications, powers, and
33 () NO duties of the chief executive officer, the executive assistant, and members
34 of the county commission and increases the membership of the commission
35 to nine members?"

1 All persons desiring to vote for approval of the Act shall vote "Yes," and all persons desiring
2 to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on
3 such question are for the approval of the Act, Sections 1 through 19 of this Act shall become
4 of full force and effect on the first day of the month immediately following such election.
5 If the Act is not approved or if the election is not conducted as provided in this section,
6 Sections 1 through 19 of this Act shall not become effective, and this Act shall be
7 automatically repealed on the first day of January immediately following that election date.
8 The expense of such election shall be borne by DeKalb County. It shall be the duty of the
9 election superintendent of DeKalb County to certify the results thereof to the Secretary of
10 State.

11 **SECTION 21.**

12 The governing authority of DeKalb County shall through its legal counsel cause this Act to
13 be submitted for preclearance under the federal Voting Rights Act of 1965, as amended; and
14 such submission shall be made to the United States Department of Justice or filed with the
15 appropriate court no later than 45 days after the date on which this Act is approved by the
16 Governor or otherwise becomes law without such approval.

17 **SECTION 22.**

18 Except as otherwise provided in Section 20 of this Act, this Act shall become effective upon
19 its approval by the Governor or its becoming law without such approval.

20 **SECTION 23.**

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