

House Bill 1311

By: Representative Levitas of the 82nd

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 powers
7 and duties of the county commission and chief executive officer; to provide that contracts
8 with outside auditors shall be signed by the auditor and the presiding officer of the county
9 commission; to authorize the chief executive officer and county commission to refer certain
10 acts for prosecution; to revise provisions concerning the qualifications of the executive
11 assistant; to provide for related matters; to provide for a referendum; to provide for
12 submission for preclearance under the federal Voting Rights Act; to provide for a contingent
13 effective date; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

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

22 "(e) Each commissioner shall be a citizen of this state, at least 25 years of age, and shall
23 have been a resident of the geographic area encompassed by the respective commissioner
24 district for at least one year prior to taking office. Each commissioner shall be elected by
25 a majority of the electors voting within the respective commissioner district. Except for
26 displacement of their residences from their respective commissioner districts due to

1 reapportionment of the districts, any commissioners who cease to be residents of their
 2 respective commissioner districts during their terms of office shall thereby vacate their
 3 seats on the commission. All members of the commission shall be nominated and elected
 4 pursuant to the provisions of Chapter 2 of Title 21 of the O.C.G.A., the 'Georgia Election
 5 Code,' as now or hereafter amended."

6 **SECTION 2.**

7 Said Act is further amended by revising subsection (a) of Section 5 as follows:

8 "(a) The chief executive of DeKalb County shall be a citizen of this State, at least 30 years
 9 of age, and shall have been a resident of DeKalb County for at least two years immediately
 10 prior to taking office. The chief executive shall be elected by a majority of the electors
 11 voting from the county at large. The chief executive shall be nominated and elected
 12 pursuant to Chapter 21-2 of the O.C.G.A., the 'Georgia Election Code,' as now or hereafter
 13 amended."

14 **SECTION 3.**

15 Said Act is further amended by adding new paragraphs (20) through (25) to subsection (a)
 16 of Section 9 as follows:

17 "(20) To oversee and, where necessary, to investigate the operations of the chief
 18 executive and departments, authorities, or similar divisions of the county government.
 19 To effect the purposes of this paragraph, the commission may, through its presiding
 20 officer and upon the vote of three commissioners, issue subpoenas to compel the
 21 attendance of and to receive testimony from witnesses. Upon the affirmative vote of at
 22 least four members of the commission, the commission shall be authorized to refer to the
 23 superior court contempt proceedings for alleged violations of any subpoena issued
 24 pursuant to this paragraph, and the superior court shall conduct a hearing on the referred
 25 violation in the same manner as it would for an alleged violation of a subpoena issued by
 26 the clerk of superior court. The commission is authorized to draft the form of its
 27 subpoena, which shall be substantially similar in form to subpoenas issued by the clerk
 28 of superior court.

29 (21) To issue calls for agenda items, which list it shall prepare and publish, and the same
 30 shall serve as the agenda for the commission unless superseded by subsequent action of
 31 the commission.

32 (22) To fix the compensation of the executive assistant and the county attorney.

33 (23) To fix the compensation of administrators appointed by the chief executive pursuant
 34 to subsection (f) of Section 14 of this Act.

1 (24) Subject to the regulations of the Merit System of DeKalb County and budgetary
 2 limitations, to fix the compensation of the planning director, finance director, and merit
 3 system director.

4 (25) To fix the compensation of persons filling offices and positions created by state
 5 statutes within budgetary limitations when such state statutes authorize or require such
 6 compensation to be fixed by county governments or by county governing authorities."

7 **SECTION 4.**

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

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

18 **SECTION 5.**

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

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

23 **SECTION 6.**

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

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

30 **SECTION 7.**

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

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

- 1 (1) To convene such special meetings of the commission as are deemed necessary, but
 2 all members shall be notified at least three days in advance of any such special meeting;
 3 (2) To appoint the members and chairmen of such committees of the commission as the
 4 commission, by its rules, may establish and fill vacancies therein, but any such
 5 appointments may be rejected by a majority vote of the total membership of the
 6 commission;
 7 (3) To compel the attendance of members at meetings of the commission by subpoena,
 8 if necessary, and to refer for prosecution alleged violations of such subpoena to the
 9 superior court, subject to the policy of the commission as established by its rules; and
 10 (4) To exercise such other powers and duties as may be assigned to the presiding officer
 11 by ordinance or rules and regulations of the commission."

12 **SECTION 8.**

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

14 "SECTION 12.
 15 Meetings.

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

28 **SECTION 9.**

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

"SECTION 13.

Powers and duties of the chief executive.

(a) The chief executive shall have the power, subject to the oversight authority of the commission, to supervise, direct, and control the administration of the county government. The chief executive shall carry out, execute, and enforce all ordinances, policies, rules, and regulations of the commission when such ordinances, policies, rules, and regulations become effective. No member of the commission shall directly or indirectly order, instruct, or otherwise attempt to control the actions of county personnel subject to the administrative and supervisory control of the chief executive, except pursuant to the commission's oversight authority. Nothing herein shall be construed to preclude any commissioner from obtaining from any person, including any employee of DeKalb County, information necessary to provide ordinary constituent services and to establish policy. For purposes of this subsection, the term 'ordinary constituent services' shall include, by way of example and not of limitation, responding to constituent concerns and inquiries regarding the ministerial activities of the administration, such as road repairs, traffic control device management, licensing, and the like.

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

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

(2) Subject to confirmation by a majority vote of the commission, the chief executive shall appoint the planning director, finance director, and merit system director. No member of the commission or the commission itself shall be authorized to nominate

1 persons for any such position. All three of said officers shall be under the DeKalb
2 County Merit System.

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

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

11 (f) Reserved.

12 (g) The chief executive shall have the power to investigate the affairs, records, and
13 expenditures of the various authorities, boards, councils, commissions, committees, and
14 similar bodies or agencies, whether created by ordinance of the commission or by Acts of
15 the General Assembly, relating to the affairs of the county and to report thereon to the
16 commission.

17 (h) The chief executive shall represent the county in intergovernmental matters and shall
18 seek to promote and improve the government of the county and encourage the growth of
19 the county and promote and develop the prosperity and well-being of the citizens of the
20 county.

21 (i) The chief executive, within 120 days after the close of each fiscal year, shall prepare
22 and submit to the commission a complete annual report on the financial affairs and
23 activities of the county for the immediately preceding fiscal year. The annual report shall
24 show all income from all sources, including state, county, and federal funds, and all
25 expenditures. The chief executive shall cause a summary of said annual report to be
26 published in the official organ of DeKalb County. Said published summary shall state that
27 a copy of the full report is available from the office of the chief executive. The chief
28 executive shall also send copies of the full report to each branch of the county library. The
29 chief executive shall also make financial reports during the year as may be required by the
30 commission.

31 (j) The chief executive may recommend, at any time, to the commission for its formal
32 consideration such measures or proposals as are deemed necessary or desirable to improve
33 the administration of the affairs of the county.

34 (k) The chief executive shall devote full time to the duties of the office and shall have no
35 other source of employment."

1 authority, board, commission, or other body or agency, such law shall be construed to grant
2 such authority or apply such requirement to the chief executive.

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

7 **SECTION 11.**

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

9 "SECTION 14.

10 Executive assistant; administrators.

11 (a) Subject to the qualifications for said office as hereinafter provided in this section, the
12 chief executive shall nominate, and the commission shall confirm pursuant to the
13 provisions of paragraph (1) of subsection (a) of Section 13A, an executive assistant. The
14 executive assistant shall be the chief administrative aide to the chief executive and the
15 commission and shall be responsible to the chief executive and the commission for the
16 proper administration of the affairs of the county.

17 (b) When directed to do so by the chief executive, the executive assistant may exercise any
18 of the administrative duties and powers vested in the chief executive by law or by
19 ordinances, rules, and regulations adopted by the commission.

20 (c) The executive assistant shall hold a college degree in public administration, political
21 science, urban affairs, business administration, engineering, or a related field and must
22 have at least five years of experience in a supervisory capacity as an employee, director,
23 administrator, or manager of a city or county government or a state or federal agency or
24 equivalent experience in the private sector or any combination thereof.

25 (d) Reserved.

26 (e) After appointment, the executive assistant shall not take part in the management of any
27 political campaign for any elective public office or hold office in any political party or
28 body. If the executive assistant participates in political activities in violation of this
29 subsection, such participation, by operation of law, shall result in the immediate discharge
30 of the executive assistant, and the office of executive assistant shall be vacant.

31 (f) The chief executive shall also have exclusive power to appoint and remove from office
32 two administrators to assist the executive assistant in such manner as the chief executive
33 shall direct."

1 selling to the county any real or personal property, goods, or services. Any contract made
 2 in violation of any of the foregoing provisions shall be void, and the officer so offending
 3 shall be removed from office upon proper proceedings instituted by any taxpayer in said
 4 county in accordance with the provisions of Section 36-1-14 of the O.C.G.A.; provided,
 5 however, that the provisions of this Section shall not be applicable to any contract where
 6 such financial interest has been disclosed fully pursuant to Section 22A of this Act and which
 7 has been approved, prior to execution, performance, and payment thereon, by a majority vote
 8 of the commission by a proper entry on the minutes of the commission."

9 **SECTION 15.**

10 Said Act is further amended by revising paragraph (1) of subsection (a) of Section 22A as
 11 follows:

12 "(a)(1) It is essential to the proper administration and operation of the DeKalb County
 13 government that the members of its governing authority be and give the appearance of
 14 being independent and impartial; that public office not be used for private gain; and that
 15 there be public confidence in the integrity of the DeKalb County governing authority.
 16 Because the attainment of one or more of these ends is impaired whenever there exists
 17 or appears to exist a conflict between the private interests and public responsibilities of
 18 members of the DeKalb County governing authority, the public interest requires that the
 19 General Assembly protect against such conflicts of interest by establishing by law
 20 appropriate ethical standards with respect to the conduct of the members of the governing
 21 authority in situations where a conflict may exist."

22 **SECTION 16.**

23 Said Act is further amended by revising subsections (c), (d), and (e) of Section 22A as
 24 follows:

25 "(c) No member of the governing authority shall:

26 (1) By the member's conduct give reasonable basis for the impression that any person
 27 can improperly influence the member or unduly enjoy the member's favor in the
 28 performance of his or her official acts or actions or that the member is affected unduly
 29 by the rank or position of or kinship or association with any person;

30 (2)(A) Directly or indirectly request, exact, receive, or agree to receive a gift, loan,
 31 favor, promise, or thing of value for himself or herself or another person if:

32 (i) It tends to influence him or her in the discharge of his or her official duties; or

33 (ii) The member recently has been, or is now, or in the near future may be, involved
 34 in any official act or action directly affecting the donor or lender.

35 (B) Subparagraph (A) of this paragraph shall not apply in the case of:

- 1 (i) An occasional nonpecuniary gift of insignificant value;
- 2 (ii) An award publicly presented in recognition of public service; or
- 3 (iii) A commercially reasonable loan made in the ordinary course of business by an
- 4 institution authorized by the laws of Georgia to engage in the making of such a loan;
- 5 (3) Disclose or otherwise use confidential information acquired by virtue of the
- 6 member's position for his or her or another person's private gain;
- 7 (4) Appear on the member's own personal behalf or represent, advise, or appear on the
- 8 personal behalf of, whether paid or unpaid, any person before any court or before any
- 9 legislative, administrative, or quasi-judicial board, agency, commission, or committee of
- 10 the state or of any county or municipality concerning any contract or transaction which
- 11 is or may be the subject of an official act or action of DeKalb County or otherwise use
- 12 or attempt to use the member's official position to secure unwarranted privileges or
- 13 exemptions for himself or herself or other persons;
- 14 (5) Engage in, accept employment with, or render services for any private business or
- 15 professional activity when such employment or rendering of services is adverse to and
- 16 incompatible with the proper discharge of his or her official duties. For the purposes of
- 17 this paragraph, the employment of a consultant by any business involving matters
- 18 unrelated to any contract or transaction by or with DeKalb County shall not be deemed
- 19 incompatible with such consultant's official duties;
- 20 (6) Acquire an interest in any contract or transaction at a time when the member believes
- 21 or has reason to believe that such an interest will be affected directly or indirectly by his
- 22 or her official act or actions or by the official acts or actions of the governing authority
- 23 of DeKalb County; or
- 24 (7) Engage in any activity or transaction that is prohibited by law now existing or
- 25 hereafter enacted which is applicable to the member by virtue of being a member of the
- 26 governing authority.
- 27 (d) A member of the governing authority who has an interest that he or she has reason to
- 28 believe may be affected by the member's official acts or actions or by the official acts or
- 29 actions of the governing authority of DeKalb County shall disclose the precise nature and
- 30 value of such interest by sworn written statement to the board of ethics and ask for its
- 31 opinion as to the propriety of said interest. Every member of the governing authority who
- 32 knowingly has any interest, direct or indirect, in any contract to which DeKalb County is
- 33 or is about to become a party, or in any other business with DeKalb County, shall make full
- 34 disclosure of such interest to the governing authority of DeKalb County and to the board
- 35 of ethics. The information disclosed by such sworn statements, except for the valuation
- 36 attributed to the disclosed interest, shall be made a matter of public record by the board of
- 37 ethics.

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

5 **SECTION 17.**

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

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

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

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

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

19 **SECTION 18.**

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

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

28 **SECTION 19.**

29 Unless otherwise prohibited by the federal Voting Rights Act of 1965, as amended, the
30 election superintendent of DeKalb County shall call and conduct a special election for the
31 purpose of submitting this Act to the electors of DeKalb County for approval or rejection.
32 The election superintendent shall conduct that election on the Tuesday after the first Monday
33 in November, 2008. The election superintendent shall issue the call and conduct that election
34 as provided by general law. The superintendent shall cause the date and purpose of the

1 election to be published once a week for two weeks immediately preceding the date thereof
2 in the official organ of DeKalb County. The ballot shall have written or printed thereon the
3 words:

4 "() YES Shall the Act be approved which revises the qualifications, powers, and
5 () NO duties of the chief executive officer, the executive assistant, and members
6 of the county commission?"

7 All persons desiring to vote for approval of the Act shall vote "Yes," and all persons desiring
8 to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on
9 such question are for the approval of the Act, Sections 1 through 19 of this Act shall become
10 of full force and effect on the first day of the month immediately following such election.
11 If the Act is not approved or if the election is not conducted as provided in this section,
12 Sections 1 through 18 of this Act shall not become effective, and this Act shall be
13 automatically repealed on the first day of January immediately following that election date.
14 The expense of such election shall be borne by DeKalb County. It shall be the duty of the
15 election superintendent of DeKalb County to certify the results thereof to the Secretary of
16 State.

17 **SECTION 20.**

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

23 **SECTION 21.**

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

26 **SECTION 22.**

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