

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 members of the county commission; to revise the powers and duties of the county
7 commission and chief executive officer; to revise provisions concerning the qualifications
8 of the executive assistant; to revise certain provisions concerning ethics; to provide for
9 related matters; to provide for a referendum; to provide for submission for preclearance
10 under the federal Voting Rights Act; to provide for a contingent effective date; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

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

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

27 seats on the commission. All members of the commission shall be nominated and elected
28 pursuant to the provisions of Chapter 2 of Title 21 of the O.C.G.A., the 'Georgia Election
29 Code,' as now or hereafter amended."

30 **SECTION 2.**

31 Said Act is further amended by adding a new paragraph to subsection (a) of Section 9 as
32 follows:

33 "(21) To oversee and, where necessary, to investigate the operations of the chief
34 executive and departments, authorities, or similar divisions of the county government.
35 To effect the purposes of this paragraph, the commission may, through its presiding
36 officer and upon the vote of three commissioners, issue subpoenas to compel the
37 attendance of and to receive testimony from witnesses. Upon the affirmative vote of at
38 least four members of the commission, the commission shall be authorized to refer to the
39 superior court contempt proceedings for alleged violations of any subpoena issued
40 pursuant to this paragraph, and the superior court shall conduct a hearing on the referred
41 violation in the same manner as it would for an alleged violation of a subpoena issued by
42 the clerk of superior court. The commission is authorized to draft the form of its
43 subpoena, which shall be substantially similar in form to subpoenas issued by the clerk
44 of superior court."

45 **SECTION 3.**

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

47 **"SECTION 13.**

48 Powers and duties of the chief executive.

49 (a) The chief executive shall have the power to supervise, direct, and control the
50 administration of the county government. The chief executive shall carry out, execute, and
51 enforce all ordinances, policies, rules, and regulations of the commission when such
52 ordinances, policies, rules, and regulations become effective. No member of the
53 commission shall directly or indirectly order, instruct, or otherwise attempt to control the
54 actions of county personnel subject to the administrative and supervisory control of the
55 chief executive; however, any commissioner may directly request action by the head of any
56 department necessary to accomplish the duties and responsibilities of the role of
57 commissioner. Nothing herein shall be construed to preclude any commissioner from
58 obtaining from any person, including any employee of DeKalb County, information
59 necessary to provide ordinary constituent services and to establish policy. For purposes of

60 this subsection, the term 'ordinary constituent services' shall include, by way of example
61 and not of limitation, responding to constituent concerns and inquiries regarding the
62 ministerial activities of the administration, such as road repairs, traffic control device
63 management, and licensing.

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

72 (c)(1) Subject to confirmation by a majority vote of the commission, the chief executive
73 shall appoint the executive assistant and the county attorney. The executive assistant
74 shall be subject to the requirements of Section 14 of this Act. No member of the
75 commission or the commission itself shall be authorized to nominate persons for the
76 office of executive assistant or county attorney. Within the budgetary limitations and
77 subject to the approval by a majority vote of the commission, the chief executive shall fix
78 the compensation of the executive assistant and the county attorney. Both of said officers
79 shall serve at the pleasure of the chief executive. The commission may also discharge
80 either such officer for cause, but the affirmative vote of at least five members of the
81 commission shall be required to discharge either such officer.

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

87 (d) Subject to budgetary limitations and DeKalb County Merit System regulations and
88 except as provided in subsection (c) of this section, the chief executive shall have exclusive
89 authority to appoint and remove all employees and officials of the county, except
90 employees of the commission, and except that deputies and employees of the elected
91 county officers of DeKalb County shall be subject to appointment, removal, supervision,
92 and control of the respective elective county officers. The compensation of persons filling
93 offices and positions created by state statutes shall be fixed by the chief executive within
94 budgetary limitations when such state statutes authorize or require such compensation to
95 be fixed by county governments or by county governing authorities.

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

99 (f) Reserved.

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

105 (h) The chief executive shall represent the county in intergovernmental matters and shall
106 seek to promote and improve the government of the county and encourage the growth of
107 the county and promote and develop the prosperity and well-being of the citizens of the
108 county.

109 (i) The chief executive, within 120 days after the close of each fiscal year, shall prepare
110 and submit to the commission a complete annual report on the financial affairs and
111 activities of the county for the immediately preceding fiscal year. The annual report shall
112 show all income from all sources, including state, county, and federal funds, and all
113 expenditures, including, but not limited to, records of all contracts and contract changes.
114 The chief executive shall cause a summary of said annual report to be published in the
115 official organ of DeKalb County. Said published summary shall state that a copy of the full
116 report is available from the office of the chief executive. The chief executive shall also
117 send copies of the full report to each branch of the county library. The chief executive
118 shall also make financial reports during the year as may be required by the commission.

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

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

124 **SECTION 4.**

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

126 "SECTION 13A.

127 (a)(1) When this Act or any other law of this state authorizes or requires a county
128 governing authority, including any such law which refers to a local governing body with
129 the intention of including a county governing authority, to appoint or elect a person to fill

130 a post or vacancy in any public office or as a member of any public authority, board,
131 commission, or other body or agency, such post or vacancy shall be filled as follows:

132 (A) The chief executive shall nominate a person by sending a written notice to the
133 commission, and such notice shall specify the post or vacancy to be filled, the date such
134 post or vacancy is to be filled, the qualifications, if any, which must be possessed by
135 a person filling the post or vacancy, and the name of the person nominated by the chief
136 executive;

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

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

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

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

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

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

165

SECTION 5.

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

167 **"SECTION 14.**
168 Executive assistant; administrators.169 (a) Subject to the qualifications for said office as hereinafter provided in this section, the
170 chief executive shall nominate, and the commission shall confirm pursuant to the
171 provisions of paragraph (1) of subsection (a) of Section 13A, an executive assistant. The
172 executive assistant shall be the chief administrative aide to the chief executive and the
173 commission and shall be responsible to the chief executive and the commission for the
174 proper administration of the affairs of the county.175 (b) When directed to do so by the chief executive, the executive assistant may exercise any
176 of the administrative duties and powers vested in the chief executive by law or by
177 ordinances, rules, and regulations adopted by the commission.178 (c) The executive assistant shall hold a college degree and must have at least five years of
179 experience in a supervisory capacity as an employee, director, administrator, or manager
180 of a city or county government or a state or federal agency or equivalent experience in the
181 private sector or any combination thereof.182 (d) Any person who has held the office of or served as chief executive shall not be eligible
183 to hold the position of executive assistant.184 (e) After appointment, the executive assistant shall not take part in the management of any
185 political campaign for any elective public office or hold office in any political party or
186 body. If the executive assistant participates in political activities in violation of this
187 subsection, such participation, by operation of law, shall result in the immediate discharge
188 of the executive assistant, and the office of executive assistant shall be vacant.189 (f) The chief executive shall also have exclusive power to appoint, remove from office,
190 and, within budgetary limitations, fix the compensation of two administrators to assist the
191 executive assistant in such manner as the chief executive shall direct; provided, however,
192 that such directives shall reasonably relate to the chief executive's official duties."

193

SECTION 6.194 Said Act is further amended by revising the second unnumbered paragraph of Section 17 as
195 follows:196 "The chief executive shall cause to be published in the official organ of DeKalb County a
197 copy of the proposed budget along with a notice to the public that a public hearing on the
198 proposed budget shall be held at a time and place certain, which time shall be not less than

ten days following the date of the publication. At this public hearing, the commission shall review the proposed budget. It may adopt the budget as presented by the chief executive or it may make such amendments thereto as it deems necessary to maintain the county in a sound financial condition. Nothing herein shall prevent the commission from continuing the hearing on the proposed budget from time to time, provided that the time and place to which the hearing is continued shall be publicly announced at the previous hearing. However, the final budget shall be approved and adopted before March 1 of the year to which it pertains. The final budget shall constitute the commission's appropriations of all funds for such year. The budget may be amended during the calendar year which it covers upon formal action of the commission in a regular meeting, but no increase in appropriations shall be made therein without provision also being made for financing same."

SECTION 7.

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

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

SECTION 8.

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

"SECTION 22.

Officials not to be interested in contracts.

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

232 has been approved, prior to execution, performance, and payment thereon, by a majority vote
233 of the commission by a proper entry on the minutes of the commission."

234 **SECTION 9.**

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

237 " (a)(1) It is essential to the proper administration and operation of the DeKalb County
238 government that the members of its governing authority be and give the appearance of
239 being independent and impartial; that public office not be used for private gain; and that
240 there be public confidence in the integrity of the DeKalb County governing authority.
241 Because the attainment of one or more of these ends is impaired whenever there exists
242 or appears to exist a conflict between the private interests and public responsibilities of
243 members of the DeKalb County governing authority, the public interest requires that the
244 General Assembly protect against such conflicts of interest by establishing by law
245 appropriate ethical standards with respect to the conduct of the members of the governing
246 authority in situations where a conflict may exist."

247 **SECTION 10.**

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

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

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

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

257 (i) It tends to influence him or her in the discharge of his or her official duties; or
258 (ii) The member recently has been, or is now, or in the near future may be, involved
259 in any official act or action directly affecting the donor or lender.

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

261 (i) An occasional nonpecuniary gift of insignificant value;
262 (ii) An award publicly presented in recognition of public service; or
263 (iii) A commercially reasonable loan made in the ordinary course of business by an
264 institution authorized by the laws of Georgia to engage in the making of such a loan;

265 (3) Disclose or otherwise use confidential information acquired by virtue of the
266 member's position for his or her or another person's private gain;

267 (4) Appear on the member's own personal behalf or represent, advise, or appear on the
268 personal behalf of, whether paid or unpaid, any person before any court or before any
269 legislative, administrative, or quasi-judicial board, agency, commission, or committee of
270 the state or of any county or municipality concerning any contract or transaction which
271 is or may be the subject of an official act or action of DeKalb County or otherwise use
272 or attempt to use the member's official position to secure unwarranted privileges or
273 exemptions for himself or herself or other persons;

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

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

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

287 (d) A member of the governing authority who has an interest that he or she has reason to
288 believe may be affected by the member's official acts or actions or by the official acts or
289 actions of the governing authority of DeKalb County shall disclose the precise nature and
290 value of such interest by sworn written statement to the board of ethics and ask for its
291 opinion as to the propriety of said interest. Every member of the governing authority who
292 knowingly has any interest, direct or indirect, in any contract to which DeKalb County is
293 or is about to become a party, or in any other business with DeKalb County, shall make full
294 disclosure of such interest to the governing authority of DeKalb County and to the board
295 of ethics. The information disclosed by such sworn statements, except for the valuation
296 attributed to the disclosed interest, shall be made a matter of public record by the board of
297 ethics.

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

SECTION 11.

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

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

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

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

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

SECTION 12.

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

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

SECTION 13.

Unless otherwise prohibited by the federal Voting Rights Act of 1965, as amended, the election superintendent of DeKalb County shall call and conduct a special election for the purpose of submitting this Act to the electors of DeKalb County for approval or rejection. The election superintendent shall conduct that election on the Tuesday after the first Monday in November, 2009. The election superintendent shall issue the call and conduct that election as provided by general law. The superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of DeKalb County. The ballot shall have written or printed thereon the words:

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

SECTION 14.

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

SECTION 15.

355 Except as otherwise provided in Section 13 of this Act, this Act shall become effective upon
356 its approval by the Governor or its becoming law without such approval.

SECTION 16.

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