

The House Committee on Judiciary offers the following substitute to HB 73:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,
2 relating to civil trials, so as to provide for the appointment of special masters; to provide for
3 authority; to provide for orders and reports; to provide for procedure; to provide for
4 compensation; to provide for related matters; to provide for an effective date; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 6 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to civil
9 trials, is amended by adding a new Code section to read as follows:

10 "9-11-53.

11 (a) Appointment, removal, and substitution.

12 (1) Upon the motion of any party or upon the court's own motion, a court may appoint
13 a special master only to:

14 (A) Perform duties consented to by the parties;

15 (B) Monitor implementation of and compliance with orders of the court;

16 (C) Investigate and report to the court on factual issues identified by the court;

17 (D) Conduct an accounting as instructed by the court and report on the results of such
18 accounting; or

19 (E) Review other matters allowed to be reviewed by special masters under the laws of
20 this state, subject to the procedural requirements of this Code section.

21 (2) Upon the motion of any party, a court may appoint a special master only to:

22 (A) Address discovery matters that the court cannot efficiently, effectively, or
23 promptly address;

24 (B) Provide guidance, advice, and information to the court on complex or specialized
25 subjects, including, but not limited to, technology issues related to the discovery
26 process; or

27 (C) Monitor implementation of settlement agreements.

28 (3) A special master shall not have a relationship to the parties, counsel, action, or court
 29 that would require disqualification of a judge under Code Section 15-1-8, unless the
 30 parties consent with the court's approval to appointment of a particular person after
 31 disclosure of any potential grounds for disqualification.

32 (4) The court shall notify the parties in writing of its intention to appoint a special
 33 master, and the parties shall have ten days from the date of such notice to agree upon a
 34 person to be appointed as special master and to notify the court in writing of such
 35 agreement. If agreed upon, such person may be appointed as the special master. If the
 36 parties cannot agree on the person to serve as special master, the parties may suggest
 37 candidates for appointment, but the court may select any person to serve as special
 38 master.

39 (5) In appointing a special master, the court shall consider the fairness of imposing the
 40 likely expenses on the parties and shall protect against unreasonable expense or delay.

41 (6) A special master may be removed or substituted by order of the court, upon motion
 42 of a party, or sua sponte.

43 (b) Order appointing a special master.

44 (1) The court shall give the parties notice and an opportunity to be heard before
 45 appointing a special master.

46 (2) The order appointing a special master shall direct the special master to proceed with
 47 all reasonable diligence and shall state:

48 (A) The special master's duties, including any investigation or enforcement duties, and
 49 any limits on the special master's authority under subsection (c) of this Code section;

50 (B) The circumstances, if any, in which the special master may communicate ex parte
 51 with the court or a party;

52 (C) The nature of the materials to be preserved and filed as the record of the special
 53 master's activities;

54 (D) The time limits, method of filing the record, other procedures, and standards for
 55 reviewing the special master's orders, findings, and recommendations; and

56 (E) The basis, terms, and procedure for fixing the special master's compensation under
 57 subsection (h) of this Code section.

58 (3) The court may enter the order appointing a special master only after the special
 59 master has filed an affidavit disclosing whether there is any ground for disqualification
 60 under Code Section 15-1-8 and, if a ground for disqualification is disclosed, after the
 61 parties have consented with the court's approval to waive the disqualification; the special
 62 master shall certify in such affidavit that he or she will discharge his or her duties as

63 required by law and pursuant to the court's instructions without favor to, or prejudice
64 against any party.

65 (4) The order appointing a special master may be amended at any time after notice to the
66 parties and an opportunity to be heard.

67 (c) *Special master's authority.* Unless the appointing order expressly directs otherwise,
68 a special master has authority to regulate all proceedings and take all appropriate measures
69 to perform fairly and efficiently the assigned duties. The special master may by order
70 impose upon a party any noncontempt sanction provided by Code Section 9-11-37 or
71 9-11-45, and may recommend a contempt sanction against a party and sanctions against a
72 nonparty.

73 (d) *Evidentiary hearings.* Unless the appointing order expressly directs otherwise, a
74 special master conducting an evidentiary hearing may exercise the power of the appointing
75 court to compel, take, and record evidence.

76 (e) *Special master's orders.* A special master who makes an order shall file such order
77 with the clerk of court for docketing and promptly serve a copy of such order on each party
78 unless otherwise directed by the court. The clerk shall enter the order on the docket.

79 (f) *Special master's reports.* Unless otherwise indicated in the appointment order, a special
80 master shall report to the court:

81 (1) All motions submitted by the parties;

82 (2) All rulings made on all issues presented and all conclusions of law and findings of
83 fact;

84 (3) All evidence offered by the parties and all rulings as to the admissibility of such
85 evidence; and

86 (4) Such other matters as the master may deem appropriate.

87 (g) *Action on special master's order, report, or recommendations.*

88 (1) In acting on a special master's order, report, or recommendations, the court shall
89 afford the parties an opportunity to be heard and object to any portion thereof. The court
90 may receive evidence, and may adopt or affirm, modify, reject or reverse in whole or in
91 part, or resubmit some or all issues to the special master with instructions.

92 (2) A party may file a motion to reject or modify the special master's order, report, or
93 recommendations no later than 20 days from the date on which the special master's order,
94 report, or recommendations are served, unless the court sets a different time. The special
95 master's order, report, or recommendations shall be deemed received three days after
96 mailing by United States mail or transmission electronically, or on the same day if served
97 by hand delivery. In the absence of a motion to reject or modify an order, report, or
98 recommendation within the time provided, the order, report, or recommendation shall
99 have the force and effect of an order of the court.

- 100 (3) The court shall decide de novo all objections to findings of fact made or
 101 recommended by a special master unless the parties stipulate with the court's consent that:
 102 (A) The special master's findings will be reviewed for clear error; or
 103 (B) The findings of a special master appointed under subparagraph (a)(1)(A) of this
 104 Code section shall be final.
- 105 (4) The court shall decide de novo all objections to conclusions of law made or
 106 recommended by a special master.
- 107 (5) Unless the order of appointment establishes a different standard of review, the court
 108 may set aside a special master's ruling on a procedural matter only for an abuse of
 109 discretion.
- 110 (h) Compensation.
- 111 (1) The court shall fix the special master's compensation on the basis and terms stated
 112 in the order of appointment, but the court may set a new basis and terms after notice and
 113 an opportunity to be heard.
- 114 (2) The compensation fixed under paragraph (1) of subsection (h) of this Code section
 115 shall be paid either:
- 116 (A) By a party or parties; or
 117 (B) From a fund or subject matter of the action within the court's control.
- 118 (3) The court shall allocate payment of the special master's compensation among the
 119 parties after considering the nature and amount of the controversy, the means of the
 120 parties, and the extent to which any party is more responsible than other parties for the
 121 reference to a special master. An interim allocation may be amended to reflect a decision
 122 on the merits."

123 **SECTION 2.**

124 This Act shall become effective on January 1, 2010.

125 **SECTION 3.**

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