

House Bill 149 (COMMITTEE SUBSTITUTE)

By: Representatives Bearden of the 68th, Powell of the 171st, Willard of the 49th, Cheokas of the 134th, and Weldon of the 3rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated,
2 relating to magistrates, so as to change provisions relating to magistrates under certain
3 circumstances; to provide for related matters; to provide an effective date; to repeal
4 conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Article 2 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to
8 magistrates, is amended by revising Code Section 15-10-20, relating to the number and
9 selection of magistrates, as follows:

10 "15-10-20.

11 (a) Each magistrate court shall have a chief magistrate and may have one or more other
12 magistrates. Such magistrates shall be the judges of the magistrate court and shall be
13 known as magistrates of the county. Unless otherwise provided by local law, the number
14 of magistrates in each county shall be fixed from time to time by majority vote of the
15 judges of the superior court of the county, but no magistrate shall be removed from office
16 during a term of office except for cause as provided by Code Sections 15-10-24 and
17 15-10-25. The number of magistrates authorized for the county shall be one magistrate
18 until increased by the judges of superior court or by local law; ~~but this subsection shall not~~
19 ~~operate to remove a magistrate from office during his term of office.~~

20 (b) ~~The term of office of any magistrate taking office prior to January 1, 1985, shall expire~~
21 ~~on December 31, 1984, except that this subsection shall not operate to shorten any term of~~
22 ~~office in violation of Article VI, Section X, Paragraph II of the Constitution.~~ The term of
23 office of any magistrate taking office on or after January 1, 1985, shall be for four years
24 beginning on the first day of an odd-numbered year, except that in selecting magistrates to

25 fill newly created positions or if otherwise necessary, a magistrate may be selected for a
 26 term of less than four years to expire on the last day of an even-numbered year.

27 (c)(1) Unless otherwise provided by local law, all magistrates, other than the officers
 28 becoming magistrates pursuant to Code Section 15-10-120, who are selected to take
 29 office prior to January 1, 1985, shall be selected as provided in this subsection. The
 30 judges of the superior court of the county shall by majority vote appoint as chief
 31 magistrate either an officer becoming a magistrate pursuant to Code Section 15-10-120
 32 or some other person meeting the qualifications specified in subsection (a) of Code
 33 Section 15-10-22. Any other magistrates, other than the officers becoming magistrates
 34 pursuant to Code Section 15-10-120, shall be appointed by the chief magistrate with the
 35 consent of the judges of superior court.

36 (2)(A) If the chief magistrate so selected is an officer becoming a magistrate pursuant
 37 to Code Section 15-10-120, then his or her term as chief magistrate will be as provided
 38 by this paragraph.

39 ~~(B) If the term which he was serving on June 30, 1983, will expire on the last day of~~
 40 ~~1984 or 1986, then his term as chief magistrate will likewise expire on the last day of~~
 41 ~~1984 or 1986.~~

42 ~~(C)~~ If the term which he or she was serving on June 30, 1983, will expire other than
 43 on the last day of 1984 or 1986, then his or her term as chief magistrate shall expire on
 44 December 31, 1984, even though he or she is granted a longer term as magistrate by
 45 Article VI, Section X, Paragraph II of the Constitution; but his or her term as magistrate
 46 shall not be shortened in violation of said Paragraph of the Constitution. In any case
 47 covered by this subparagraph, the person whose term as chief magistrate expires
 48 December 31, 1984, but who is granted by the Constitution a longer term as magistrate
 49 shall be eligible to succeed himself or herself for a four-year term as chief magistrate
 50 beginning January 1, 1985, if he or she resigns his or her current term as magistrate
 51 prior to beginning such four-year term as chief magistrate.

52 (d)(1) Unless otherwise provided by local law, all magistrates taking office on or after
 53 January 1, 1985, shall be selected as provided in this subsection. The chief magistrate
 54 shall be elected by the voters of the county at the general election next preceding the
 55 expiration of the term of the incumbent chief magistrate, in a partisan election in the same
 56 manner as county officers are elected, for a term beginning on the first day of January
 57 following his or her election. His or her successors shall likewise be elected
 58 quadrennially thereafter for terms beginning on the first day of January following their
 59 election.

60 (2) Magistrates other than the chief magistrate shall be appointed by the chief magistrate
 61 with the consent of the judges of the superior court. ~~The term of a magistrate so~~

62 ~~appointed shall run concurrently with the term of the chief magistrate by whom he was~~
 63 ~~appointed~~ Upon the expiration of the term of office of a magistrate who is serving on July
 64 1, 2011, and who was appointed pursuant to this paragraph, such magistrate shall no
 65 longer have a set term and shall serve at the pleasure of the chief magistrate.

66 (e) Unless otherwise provided by local law, a vacancy in the office of chief magistrate
 67 shall be filled by an appointment by majority vote of the judges of superior court for the
 68 remainder of the unexpired term; and a vacancy in the office of any other magistrate shall
 69 be filled by an appointment by the chief magistrate with the consent of the judges of
 70 superior court for the remainder of the unexpired term. If, however, a vacancy occurs
 71 which does not reduce the number of magistrates for the county below the number of
 72 magistrates authorized for the county, then such vacancy shall not be filled.

73 (f) The General Assembly may by local law provide for the number of magistrates of a
 74 county, provide for a different method of selecting magistrates than that specified in
 75 subsections (c) and (d) of this Code section, and provide for a different method of filling
 76 vacancies than that specified in subsection (e) of this Code section.

77 (g) The General Assembly may at any time provide by local law that the probate judge
 78 shall serve as chief magistrate or magistrate and provide for compensation of the probate
 79 judge in his or her capacity as chief magistrate or magistrate; and in such a case the chief
 80 magistrate or magistrate shall not be separately elected but shall be the probate judge.

81 (h) Each magistrate taking office after July 1, 1985, shall before entering on the
 82 performance of his or her duties execute bond in the amount of \$25,000.00 for the faithful
 83 performance of his or her duties. Each magistrate in office on July 1, 1985, shall execute
 84 such a bond not later than September 1, 1985. The amount of bond required of the
 85 magistrate or magistrates of any county may be increased by local law. Such bonds shall
 86 be subject to all provisions of Chapter 4 of Title 45 in the same manner as bonds of other
 87 county officials. The premiums due on such bonds shall be paid by the fiscal authority of
 88 the county out of county funds.

89 ~~(i)(1) Any person who is holding office on January 1, 1994, as a judge of the superior~~
 90 ~~courts of this state, whether within the term for which elected or appointed or otherwise,~~
 91 ~~and who subsequent to such date and prior to December 31, 1996, is effectively removed~~
 92 ~~from such office by federal court order shall upon such removal become a special judge~~
 93 ~~of the magistrate court as provided for in this subsection. As used in this subsection, the~~
 94 ~~term 'federal court order' shall mean only an order of a federal court which is entered in~~
 95 ~~a civil action challenging under federal law or federal constitutional provisions (or both)~~
 96 ~~the validity of the manner of selection of superior court judges in this state. A person~~
 97 ~~shall be considered as effectively removed from office by such an order if the order by~~
 98 ~~its terms prohibits such person's continued service as a judge of the superior courts~~

99 without by the terms of the order allowing such person a meaningful opportunity to seek
100 an appointment or election as a judge of the superior courts which would take effect
101 within 30 days following such removal. Nothing in this subsection shall apply with
102 respect to any removal from office resulting from criminal conduct or other malfeasance
103 on the part of the person removed from office.

104 (2) Any person becoming a special judge of the magistrate court pursuant to this
105 subsection shall become a special judge of the magistrate court of the county in which
106 such person resides. Any such special judge of the magistrate court shall serve for a term
107 of office expiring December 31, 1996. The Governor shall issue to each such special
108 judge of the magistrate court a commission stating the date of commencement and
109 expiration of such term of office.

110 (3) Any special judge of the magistrate court serving pursuant to this subsection shall
111 have all the same powers and duties as any other judge of such magistrate court.

112 (4) Any special judge of the magistrate court serving pursuant to this subsection shall be
113 compensated and reimbursed for expenses in such amount or amounts as are now or
114 hereafter provided by law for a judge of the superior courts, such compensation to be
115 payable from state funds in the same manner as now or hereafter provided by law for a
116 judge of the superior courts.

117 (5) The provisions of this subsection shall control over any other conflicting provisions
118 of this chapter."

119 **SECTION 2.**

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

122 **SECTION 3.**

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