

The House Committee on Judiciary Non-civil offers the following substitute to SB 352:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to
2 prosecuting attorneys, so as to authorize district attorneys and solicitors-general to bring
3 actions to enforce Code Section 40-6-163, relating to vehicles overtaking school buses; to
4 provide for an acting solicitor-general of a state court in the event of the death or resignation
5 of a solicitor-general; to provide for prosecuting attorneys in municipal courts, and courts
6 exercising municipal court jurisdiction; to provide for the appointment, compensation, oath
7 of office, duties, and authority of such prosecuting attorneys; to authorize the appointment
8 of staff; to amend Chapter 32 of Title 36 of the Official Code of Georgia Annotated, relating
9 to municipal courts, so as to provide for jurisdiction in transactions in drug objects in
10 violation of Code Section 16-13-32; to provide for disposition of fines and the transfer of
11 cases; to provide for related matters; to provide for an effective date; to repeal conflicting
12 laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting
16 attorneys, is amended by revising paragraph (5) of Code Section 15-18-6, relating to the
17 duties of district attorneys, as follows:

18 "(5) To prosecute civil actions to enforce any civil penalty set forth in Code Section
19 40-6-163 and to prosecute or defend any other civil action in the prosecution or defense
20 of which the state is interested, unless otherwise specially provided for;"

21 **SECTION 2.**

22 Said chapter is further amended by revising paragraph (4) of subsection (b) of Code Section
23 15-18-66, relating to duties of solicitors-general of state courts, as follows:

24 "(4) ~~When authorized by law,~~ To prosecute civil actions to enforce any civil penalty set
25 forth in Code Section 40-6-163 and when authorized by law to prosecute or defend any

26 civil action in the state court in the prosecution or defense of which the state is interested,
 27 unless otherwise specially provided for;"

28 **SECTION 3.**

29 Said chapter is further amended by adding a new Code section to read as follows:

30 "15-18-70.1.

31 (a) Upon the death or resignation of a solicitor-general, the chief assistant solicitor-general
 32 or, if there is no chief assistant solicitor-general, the assistant solicitor-general senior in
 33 time of service shall perform the duties of the deceased or resigned solicitor-general until
 34 such official's successor is appointed or elected and qualified. An assistant
 35 solicitor-general performing the duties of a deceased or resigned solicitor-general shall be
 36 compensated as provided for acting solicitor-generals in subsection (b) of Code Section
 37 15-18-70.

38 (b) If there is no assistant solicitor-general available to perform the duties of the deceased
 39 or resigned solicitor-general as provided in subsection (a) of this Code section, the
 40 presiding judge may request the assistance of the district attorney of the judicial circuit in
 41 which such county is located or another solicitor-general of a state court to prosecute cases
 42 until a solicitor-general is appointed or elected and qualified as provided by subsection (b)
 43 of Code Section 15-18-60. Any such district attorney or solicitor-general who is acting
 44 pursuant to this subsection shall be reimbursed by the county governing authority for actual
 45 expenses incurred while assisting in the state court pursuant to this subsection."

46 **SECTION 4.**

47 Said chapter is further amended by adding a new article to read as follows:

48 "ARTICLE 5

49 15-18-90.

50 The provisions of this article shall apply to a municipality authorized by the provisions of
 51 Article 1 of Chapter 32 of Title 36 to establish and maintain a municipal court, including
 52 a municipality for which a county is furnishing municipal court services pursuant to a
 53 contract authorized by Article 9 of Chapter 10 of this title.

54 15-18-91.

55 (a) Subject to the provisions of this article, the governing authority of a municipality shall
 56 be authorized to create the office of prosecuting attorney of the municipal court. A copy

57 of the resolution or ordinance creating the office of prosecuting attorney of the municipal
 58 court shall be provided to the Prosecuting Attorneys' Council of the State of Georgia.

59 (b) Unless provided by the charter of such municipality or other local law, the prosecuting
 60 attorney of a municipal court shall be appointed by the governing authority of such
 61 municipality in the same manner as is the city attorney or, if there is no city attorney, the
 62 city manager. It shall be the duty of the municipal court clerk to notify the Prosecuting
 63 Attorneys' Council of the State of Georgia of the name of any person appointed to be the
 64 prosecuting attorney of a municipal court within 30 days of such appointment.

65 (c) Unless otherwise provided by the charter of such municipality or other local law, the
 66 prosecuting attorney of the municipal court shall serve a term of office to be determined
 67 by the governing authority of such municipality.

68 (d) The governing authority of a municipality shall also be authorized to contract with the
 69 district attorney of the judicial circuit in which such municipality is located or the
 70 solicitor-general of the state court of the county in which such municipality is located for
 71 such officer to perform the duties of the prosecuting attorney in such municipal court. Any
 72 district attorney or solicitor-general entering into any such contract may assign such other
 73 members of his or her staff to prosecute in the municipal court.

74 15-18-92.

75 (a) Any person appointed as the prosecuting attorney of a municipal court shall be a
 76 member in good standing of the State Bar of Georgia and admitted to practice before the
 77 appellate courts of this state.

78 (b) Notwithstanding the provisions of subsection (a) of Code Section 15-18-21 or
 79 subsection (b) of 15-18-72, an assistant district attorney or assistant solicitor-general may
 80 be appointed as the prosecuting attorney of a municipal court with the prior written consent
 81 of the district attorney or solicitor-general who employs such assistant district attorney or
 82 assistant solicitor-general. Such consent may be withdrawn at any time by the employing
 83 district attorney or solicitor-general. Notice that consent for such appointment is being
 84 withdrawn shall be done in writing to the governing authority of such municipality not less
 85 than 30 days prior to the day that such assistant district attorney or assistant
 86 solicitor-general shall cease to serve as the prosecuting attorney of a municipal court.

87 15-18-93.

88 In addition to the oaths prescribed by Chapter 3 of Title 45, relating to official oaths, the
 89 prosecuting attorney of a municipal court shall take and subscribe to the following oath:
 90 I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or

91 affection discharge my duties as prosecuting attorney of the (City) (Town) of (here state
 92 the municipality).'

93 15-18-94.

94 (a) Unless otherwise provided by local law, the governing authority of the municipality
 95 shall determine whether the prosecuting attorney of a municipal court shall be a full-time
 96 or part-time prosecuting attorney.

97 (b) Any full-time prosecuting attorney of a municipal court and any full-time employees
 98 of the prosecuting attorney of a municipal court shall not engage in the private practice of
 99 law.

100 (c) Any part-time prosecuting attorney of a municipal court and any part-time assistant
 101 prosecuting attorney of a municipal court may engage in the private practice of law, but
 102 shall not practice in the municipal court or appear in any matter in which that prosecuting
 103 attorney has exercised jurisdiction.

104 15-18-95.

105 If the prosecuting attorney of a municipal court is disqualified from engaging in the
 106 prosecution of a particular case or is unable to perform the duties of said office due to
 107 illness or incapacity, the governing authority shall provide for the appointment of a
 108 substitute prosecuting attorney.

109 15-18-96.

110 (a) The prosecuting attorney of a municipal court shall have the duty and authority to
 111 represent the municipality:

112 (1) In the municipal court:

113 (A) In the prosecution of any violation of the laws or ordinances of such municipality
 114 which is within the jurisdiction of such municipal court and punishable by confinement
 115 or a fine or both or by a civil penalty authorized by Code Section 40-6-163; and

116 (B) In the prosecution of any violation of state laws which by general law municipal
 117 courts have been granted jurisdiction to try and dispose of such offenses, specifically
 118 including those offenses described in Chapter 32 of Title 36 and Code Section
 119 40-13-21;

120 (2) In the appeal of any case prosecuted in the municipal court to the superior court or
 121 the appellate courts of this state;

122 (3) In any case in which the defendant was convicted in the municipal court and is
 123 challenging such conviction through habeas corpus;

124 (4) To attend each session of the state court when municipal ordinance cases are to be
125 heard unless excused by the judge thereof and to remain until the business of the
126 municipality is disposed of;

127 (5) To administer the oaths required by law to the bailiffs or other officers of the court
128 and otherwise to aid the presiding judge in organizing the court as may be necessary; and

129 (6) To perform such other duties as are or may be required by law or ordinance or which
130 necessarily appertain to such prosecuting attorney's office.

131 (b) The prosecuting attorney of a municipal court shall have the authority to:

132 (1) File, amend, and prosecute any citation, accusation, summons, or other form of
133 charging instrument authorized by law for use in the municipal court;

134 (2) Dismiss, amend, or enter a nolle prosequi on any accusation, citation, or summons
135 filed in the municipal court as provided by law, except that the prosecuting attorney of
136 a municipal court shall not have the authority to dismiss or enter a nolle prosequi in any
137 case in which the accused is charged with a violation of state law other than one which
138 the municipal court has jurisdiction to try and dispose of such offense without the consent
139 of the proper prosecuting officer having jurisdiction to try and dispose of such offense.

140 As used in this paragraph, the term 'proper prosecuting officer' means, in the case of
141 felonies, the district attorney and, in the case of misdemeanors, the solicitor-general in
142 counties where there is a state court, or in counties where there is no solicitor-general, the
143 district attorney;

144 (3) Reduce to judgment any fine, forfeiture, or restitution imposed by the municipal court
145 as part of a sentence in an ordinance case or forfeiture of a recognizance which is not paid
146 in accordance with the order of the court. A prosecuting attorney of a municipal court
147 may institute such civil action in the courts of this state or of the United States or any of
148 the several states to enforce such judgment against the property of the defendant; and

149 (4) Request and utilize the assistance of any other municipal prosecutor,
150 solicitor-general, assistant solicitor-general, district attorney, assistant district attorney,
151 or other attorney employed by an agency of this state or its political subdivisions or
152 authorities in the prosecution of any criminal action.

153 (c) The provisions of this Code section shall not be deemed to restrict, limit, or diminish
154 any authority or power of the district attorney or any solicitor-general to represent this state
155 in any criminal case in which the accused is charged with a felony or misdemeanor, when
156 the municipal court is acting as a court of inquiry pursuant to Article 2 of Chapter 7 of Title
157 17 or setting bail for any such offense, other than one which the municipal court has, by
158 law, jurisdiction to try and dispose of.

159 15-18-97.

160 The prosecuting attorney of a municipal court shall be compensated by the municipality
 161 as provided by local law or, in the absence of such local law, as provided by the governing
 162 authority of such municipality. The prosecuting attorney of a municipal court shall be
 163 entitled to be reimbursed for actual expenses incurred in the performance of his or her
 164 official duties in the same manner and rate as other municipal employees.

165 15-18-98.

166 The prosecuting attorney of a municipal court may employ such additional assistant
 167 prosecuting attorneys and other employees or independent contractors as may be provided
 168 for by local law or as may be authorized by the governing authority of the municipality.
 169 The prosecuting attorney of a municipal court shall define the duties and fix the title of any
 170 attorney or other employee of the prosecuting attorney's office. Personnel employed
 171 pursuant to this Code section shall be compensated by the municipality.

172 15-18-99.

173 Any assistant prosecuting attorney or other attorney at law employed by the prosecuting
 174 attorney of a municipal court shall be a member in good standing of the State Bar of
 175 Georgia, shall serve at the pleasure of the prosecuting attorney, and shall have such
 176 authority, powers, and duties as may be assigned by the prosecuting attorney of the
 177 municipal court."

178 **SECTION 5.**

179 Chapter 32 of Title 36 of the Official Code of Georgia Annotated, relating to municipal
 180 courts, is amended by adding a new Code section to read as follows:

181 "36-32-6.1.

182 (a) The municipal court of any municipality shall be granted jurisdiction to try and dispose
 183 of cases where a person is charged with transactions in drug related objects in violation of
 184 Code Section 16-13-32 if the offense occurred within the corporate limits of such
 185 municipality. The jurisdiction of any such court shall be concurrent with the jurisdiction
 186 of any other courts within the county having jurisdiction to try and dispose of such cases.

187 (b) Any fines arising from the prosecution of such cases shall be retained by the
 188 municipality and shall be paid into the treasury of such municipality.

189 (c) Any defendant charged with transactions in drug related objects in violation of Code
 190 Section 16-13-32 in a municipal court shall be entitled, upon request, to have the case
 191 against him or her transferred to the court having general misdemeanor jurisdiction in the
 192 county where the alleged offense occurred.

193 (d) Nothing in this Code section shall be construed to give any municipality the right to
194 impose a fine or punish by imprisonment in excess of the limits as set forth in the
195 municipality's charter."

196 **SECTION 6.**

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

199 **SECTION 7.**

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