

HOUSE SUBSTITUTE TO SENATE BILL 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) It shall be the duty of the municipal court clerk, or such other person designated by the
 60 governing authority of a municipality, to notify the Prosecuting Attorneys' Council of the
 61 State of Georgia of the name of any person appointed to be the prosecuting attorney of a
 62 municipal court within 30 days of such appointment.

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

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

72 15-18-92.

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

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 Such consent may be withdrawn at any time by the employing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 82 withdrawn shall be done in writing to the governing authority of such municipality not less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

85 15-18-93.

86 In addition to the oaths prescribed by Chapter 3 of Title 45, relating to official oaths, the
 87 prosecuting attorney of a municipal court shall take and subscribe to the following oath:
 88 'I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or
 89 affection discharge my duties as prosecuting attorney of the (City) (Town) of (here state
 90 the municipality).'

91 15-18-94.

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

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

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

102 15-18-95.

103 If the prosecuting attorney of a municipal court is disqualified from engaging in the
104 prosecution of a particular case or is unable to perform the duties of said office due to
105 illness or incapacity, the governing authority shall provide for the appointment of a
106 substitute prosecuting attorney. At any time in which a substitute prosecuting attorney is
107 not available or an appointment has not been made, the city attorney of the applicable
108 municipality may serve as the substitute prosecuting attorney until such time as a
109 prosecuting attorney or substitute prosecuting attorney is available or appointed.

110 15-18-96.

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

113 (1) In the municipal court:

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

117 (B) In the prosecution of any violation of state laws which by general law municipal
118 courts have been granted jurisdiction to try and dispose of such offenses, specifically
119 including those offenses described in Chapter 32 of Title 36 and Code Section
120 40-13-21;

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

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

125 (4) To administer the oaths required by law to the bailiffs or other officers of the court
126 and otherwise to aid the presiding judge in organizing the court as may be necessary; and
127 (5) To perform such other duties as are or may be required by law or ordinance or which
128 necessarily appertain to such prosecuting attorney's office.

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

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

132 (2) Dismiss, amend, or enter a nolle prosequi on any accusation, citation, or summons
133 filed in the municipal court as provided by law, except that the prosecuting attorney of
134 a municipal court shall not have the authority to dismiss or enter a nolle prosequi in any
135 case in which the accused is charged with a violation of state law other than one which
136 the municipal court has jurisdiction to try and dispose of such offense without the consent
137 of the proper prosecuting officer having jurisdiction to try and dispose of such offense.
138 As used in this paragraph, the term 'proper prosecuting officer' means, in the case of
139 felonies, the district attorney and, in the case of misdemeanors, the solicitor-general in
140 counties where there is a state court, or in counties where there is no solicitor-general, the
141 district attorney;

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

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

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

157 15-18-97.

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

163 15-18-98.

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

170 15-18-99.

171 Any assistant prosecuting attorney or other attorney at law employed by the municipality
 172 for the purposes of prosecuting in the municipal court shall be a member in good standing
 173 of the State Bar of Georgia or satisfy the provisions of Code Section 15-18-22."

174 **SECTION 5.**

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

177 "36-32-6.1.

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

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

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

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

192 **SECTION 6.**

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

195 **SECTION 7.**

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