

House Resolution 993 (COMMITTEE SUBSTITUTE)

By: Representatives Efration of the 104th, Rogers of the 10th, Rhodes of the 120th, Coomer of the 14th, Willard of the 51st, and others

A BILL TO BE ENTITLED
AN ACT

1 Proposing an amendment to the Constitution so as to create a business court with state-wide
2 jurisdiction; to provide for venue and uniformity of jurisdiction and powers; to provide for
3 selection, terms, and qualifications of business court judges; to provide for the submission
4 of this amendment for ratification or rejection; to provide for related matters; and for other
5 purposes.

6 BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article VI of the Constitution is amended by revising Sections I, II, III, IV, and VII as
9 follows:

10 **"SECTION I.**
11 **JUDICIAL POWER**

12 Paragraph I. *Judicial power of the state.* The judicial power of the state shall be vested
13 exclusively in the following classes of courts: magistrate courts, probate courts, juvenile
14 courts, state courts, superior courts, business court, Court of Appeals, and Supreme Court.
15 Magistrate courts, probate courts, juvenile courts, and state courts shall be courts of limited
16 jurisdiction. In addition, the General Assembly may establish or authorize the
17 establishment of municipal courts and may authorize administrative agencies to exercise
18 quasi-judicial powers. Municipal courts shall have jurisdiction over ordinance violations
19 and such other jurisdiction as provided by law. Except as provided in this Paragraph and
20 in Section X, municipal courts, county recorder's courts, and civil courts in existence on
21 June 30, 1983, and administrative agencies shall not be subject to the provisions of this
22 article. The General Assembly shall have the authority to confer 'by law' jurisdiction upon
23 municipal courts to try state offenses.

24 Paragraph II. *Unified judicial system.* All courts of the state shall comprise a unified
25 judicial system.

26 Paragraph III. *Judges; exercise of power outside own court; scope of term 'judge.'*
27 Provided the judge is otherwise qualified, a judge may exercise judicial power in any court
28 upon the request and with the consent of the judges of that court and of the judge's own
29 court under rules prescribed by law. The term 'judge,' as used in this article, shall include
30 Justices, judges, senior judges, magistrates, and every other such judicial office of whatever
31 name existing or created.

32 Paragraph IV. *Exercise of judicial power.* Each court may exercise such powers as
33 necessary in aid of its jurisdiction or to protect or effectuate its judgments; but only the
34 superior, business, and appellate courts shall have the power to issue process in the nature
35 of mandamus, prohibition, specific performance, quo warranto, and injunction. Each
36 superior court, business court, state court, and other courts of record may grant new trials
37 on legal grounds.

38 Paragraph V. *Uniformity of jurisdiction, powers, etc.* Except as otherwise provided in
39 this Constitution, the courts of each class shall have uniform jurisdiction, powers, rules of
40 practice and procedure, and selection, qualifications, terms, and discipline of judges. The
41 provisions of this Paragraph shall be effected by law within 24 months of the effective date
42 of this Constitution or, as related to the state-wide business court, within 24 months of the
43 effective date of the amendment creating such class of court.

44 Paragraph VI. *Judicial circuits; courts in each county; court sessions.* The state shall
45 be divided into judicial circuits, each of which shall consist of not less than one county.
46 Each county shall have at least one superior court, magistrate court, a probate court, and,
47 where needed, a state court and a juvenile court. The General Assembly may provide by
48 law that the judge of the probate court may also serve as the judge of the magistrate court.
49 In the absence of a state court or a juvenile court, the superior court shall exercise that
50 jurisdiction. Superior courts shall hold court at least twice each year in each county.

51 Paragraph VII. *Judicial circuits, courts, and judgeships, law changed.* The General
52 Assembly may abolish, create, consolidate, or modify judicial circuits and courts and
53 judgeships; but no circuit shall consist of less than one county.

54 Paragraph VIII. *Transfer of cases.* Any court shall transfer to the appropriate court in
55 the state any civil case in which it determines that jurisdiction or venue lies elsewhere.

56 Paragraph IX. *Rules of evidence; law prescribed.* All rules of evidence shall be as
57 prescribed by law.

58 Paragraph X. *Authorization for pilot projects.* The General Assembly may by general
59 law approved by a two-thirds' majority of the members of each house enact legislation
60 providing for, as pilot programs of limited duration, courts which are not uniform within
61 their classes in jurisdiction, powers, rules of practice and procedure, and selection,
62 qualifications, terms, and discipline of judges for such pilot courts and other matters
63 relative thereto. Such legislation shall name the political subdivision, judicial circuit, and
64 existing courts affected and may, in addition to any other power, grant to such court created
65 as a pilot program the power to issue process in the nature of mandamus, prohibition,
66 specific performance, quo warranto, and injunction. The General Assembly shall provide
67 by general law for a procedure for submitting proposed legislation relating to such pilot
68 programs to the Judicial Council of Georgia or its successor. Legislation enacted pursuant
69 to this Paragraph shall not deny equal protection of the laws to any person in violation of
70 Article I, Section I, Paragraph II of this Constitution.

71 SECTION II.

72 VENUE

73 Paragraph I. *Divorce cases.* Divorce cases shall be tried in the county where the
74 defendant resides, if a resident of this state; if the defendant is not a resident of this state,
75 then in the county in which the plaintiff resides; provided, however, a divorce case may be
76 tried in the county of residence of the plaintiff if the defendant has moved from that same
77 county within six months from the date of the filing of the divorce action and said county
78 was the site of the marital domicile at the time of the separation of the parties, and
79 provided, further, that any person who has been a resident of any United States army post
80 or military reservation within the State of Georgia for one year next preceding the filing
81 of the petition may bring an action for divorce in any county adjacent to said United States
82 army post or military reservation.

83 Paragraph II. *Land titles.* Cases respecting titles to land shall be tried in the county
84 where the land lies, except where a single tract is divided by a county line, in which case
85 the superior court of either county shall have jurisdiction.

86 Paragraph III. ***Equity cases.*** Equity cases shall be tried in the county where a defendant
87 resides against whom substantial relief is prayed.

88 Paragraph IV. ***Suits against joint obligors, copartners, or joint trespassers.*** Suits
89 against joint obligors, joint tort-feasors, joint promisors, copartners, or joint trespassers
90 residing in different counties may be tried in either county.

91 Paragraph V. ***Suits against maker, endorser, etc.*** Suits against the maker and endorser
92 of promissory notes, or drawer, acceptor, and endorser of foreign or inland bills of
93 exchange, or like instruments, residing in different counties, shall be tried in the county
94 where the maker or acceptor resides.

95 Paragraph VI. ***All other cases.*** All other civil cases, except juvenile court cases as may
96 otherwise be provided by the Juvenile Court Code of Georgia, shall be tried in the county
97 where the defendant resides; venue as to corporations, foreign and domestic, shall be as
98 provided by law; and all criminal cases shall be tried in the county where the crime was
99 committed, except cases in the superior courts where the judge is satisfied that an impartial
100 jury cannot be obtained in such county.

101 Paragraph VII. ***Venue in third-party practice.*** The General Assembly may provide by
102 law that venue is proper in a county other than the county of residence of a person or entity
103 impleaded into a pending civil case by a defending party who contends that such person
104 or entity is or may be liable to said defending party for all or part of the claim against said
105 defending party.

106 Paragraph VIII. ***Power to change venue.*** The power to change the venue in civil and
107 criminal cases shall be vested in the superior courts to be exercised in such manner as has
108 been, or shall be, provided by law.

109 Paragraph IX. ***Venue of state-wide business court.*** All cases properly before the
110 business court may have pretrial proceedings in any county as provided by law. Any trial
111 of a case that is properly before the business court shall be in the county as is otherwise
112 prescribed by this section.

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SECTION III.

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CLASSES OF COURTS OF LIMITED JURISDICTION

115 Paragraph I. *Jurisdiction of classes of courts of limited jurisdiction.* The magistrate,
 116 juvenile, and state courts shall have uniform jurisdiction as provided by law. Probate
 117 courts shall have such jurisdiction as now or hereafter provided by law, without regard to
 118 uniformity.

119 Paragraph II. *Jurisdiction of state-wide business court.* The business court shall have
 120 state-wide jurisdiction as provided by law.

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SECTION IV.

122

SUPERIOR COURTS

123 Paragraph I. *Jurisdiction of superior courts.* The superior courts shall have jurisdiction
 124 in all cases, except as otherwise provided in this Constitution. They shall have exclusive
 125 jurisdiction over trials in felony cases, except in the case of juvenile offenders as provided
 126 by law; in cases respecting title to land; in divorce cases; and in equity cases not otherwise
 127 before the business court. The superior courts shall have such appellate jurisdiction, either
 128 alone or by circuit or district, as may be provided by law."

129

"SECTION VII.

130

SELECTION, TERM, COMPENSATION,

131

AND DISCIPLINE OF JUDGES

132 Paragraph I. ***Election** Selection; term of office.* (a) All superior court and state court
 133 judges shall be elected on a nonpartisan basis for a term of four years. All Justices of the
 134 Supreme Court and the Judges of the Court of Appeals shall be elected on a nonpartisan
 135 basis for a term of six years. The terms of all judges thus elected shall begin the next
 136 January 1 after their election. All other judges shall continue to be selected in the manner
 137 and for the term they were selected on June 30, 1983, until otherwise provided by local
 138 law.

139 (b) All business court judges shall be appointed by the Governor for a term of five years;
 140 provided, however, that the initial term of an appointed business court judge shall be as
 141 provided by general law. Upon expiration of such term, a business court judge may be
 142 reappointed for any number of consecutive terms as long as he or she meets the
 143 qualifications of appointment at the time of each appointment. The business court shall

144 consist of the number of judges as provided for by law. For purposes of qualifications,
 145 business court judges shall be deemed to serve the geographical area of this state.

146 Paragraph II. ***Qualifications.*** (a) Appellate and superior court judges shall have been
 147 admitted to practice law for seven years.

148 (b) State court judges shall have been admitted to practice law for seven years, provided
 149 that this requirement shall be five years in the case of state court judges elected or
 150 appointed in the year 2000 or earlier. Juvenile court judges shall have been admitted to
 151 practice law for five years.

152 (b.1) Business court judges shall have been admitted to practice law for seven years and
 153 shall have significant experience in business or other complex litigation.

154 (c) Probate and magistrate judges shall have such qualifications as provided by law.

155 (d) All judges shall reside in the geographical area in which they are selected to serve.

156 (e) The General Assembly may provide by law for additional qualifications, including,
 157 but not limited to, minimum residency requirements.

158 Paragraph III. ***Vacancies.*** Vacancies shall be filled by appointment of the Governor
 159 except as otherwise provided by law in the magistrate, probate, and juvenile courts.

160 Paragraph IV. ***Period of service of appointees.*** An appointee to an elective office shall
 161 serve until a successor is duly selected and qualified and until January 1 of the year
 162 following the next general election which is more than six months after such person's
 163 appointment.

164 Paragraph V. ***Compensation and allowances of judges.*** All judges shall receive
 165 compensation and allowances as provided by law; county supplements are hereby
 166 continued and may be granted or changed by the General Assembly. County governing
 167 authorities which had the authority on June 30, 1983, to make county supplements shall
 168 continue to have such authority under this Constitution. An incumbent's salary, allowance,
 169 or supplement shall not be decreased during the incumbent's term of office.

170 Paragraph VI. ***Judicial Qualifications Commission; power; composition.*** (a) The
 171 General Assembly shall by general law create and provide for the composition, manner of
 172 appointment, and governance of a Judicial Qualifications Commission, with such
 173 commission having the power to discipline, remove, and cause involuntary retirement of
 174 judges as provided by this Article. Appointments to the Judicial Qualifications
 175 Commission shall be subject to confirmation by the Senate as provided for by general law.

176 (b) The procedures of the Judicial Qualifications Commission shall comport with due
177 process. Such procedures and advisory opinions issued by the Judicial Qualifications
178 Commission shall be subject to review by the Supreme Court.

179 (c) The Judicial Qualifications Commission which existed on June 30, 2017, is hereby
180 abolished.

181 Paragraph VII. *Discipline, removal, and involuntary retirement of judges.* (a) Any
182 judge may be removed, suspended, or otherwise disciplined for willful misconduct in
183 office, or for willful and persistent failure to perform the duties of office, or for habitual
184 intemperance, or for conviction of a crime involving moral turpitude, or for conduct
185 prejudicial to the administration of justice which brings the judicial office into disrepute.
186 Any judge may be retired for disability which constitutes a serious and likely permanent
187 interference with the performance of the duties of office. The Supreme Court shall adopt
188 rules of implementation.

189 (b)(1) Upon indictment for a felony by a grand jury of this state or by a grand jury of
190 the United States of any judge, the Attorney General or district attorney shall transmit a
191 certified copy of the indictment to the Judicial Qualifications Commission. The
192 commission shall, subject to subparagraph (b)(2) of this Paragraph, review the
193 indictment, and, if it determines that the indictment relates to and adversely affects the
194 administration of the office of the indicted judge and that the rights and interests of the
195 public are adversely affected thereby, the commission shall suspend the judge
196 immediately and without further action pending the final disposition of the case or until
197 the expiration of the judge's term of office, whichever occurs first. During the term of
198 office to which such judge was elected and in which the indictment occurred, if a nolle
199 prosequi is entered, if the public official is acquitted, or if after conviction the conviction
200 is later overturned as a result of any direct appeal or application for a writ of certiorari,
201 the judge shall be immediately reinstated to the office from which he was suspended.
202 While a judge is suspended under this subparagraph and until initial conviction by the
203 trial court, the judge shall continue to receive the compensation from his office. After
204 initial conviction by the trial court, the judge shall not be entitled to receive the
205 compensation from his office. If the judge is reinstated to office, he shall be entitled to
206 receive any compensation withheld under the provisions of this subparagraph. For the
207 duration of any suspension under this subparagraph, the Governor shall appoint a
208 replacement judge. Upon a final conviction with no appeal or review pending, the office
209 shall be declared vacant and a successor to that office shall be chosen as provided in this
210 Constitution or the laws enacted in pursuance thereof.

211 (2) The commission shall not review the indictment for a period of 14 days from the
212 day the indictment is received. This period of time may be extended by the commission.
213 During this period of time, the indicted judge may, in writing, authorize the commission
214 to suspend him from office. Any such voluntary suspension shall be subject to the same
215 conditions for review, reinstatement, or declaration of vacancy as are provided in this
216 subparagraph for a nonvoluntary suspension.

217 (3) After any suspension is imposed under this subparagraph, the suspended judge may
218 petition the commission for a review. If the commission determines that the judge should
219 no longer be suspended, he shall immediately be reinstated to office.

220 (4)(A) The findings and records of the commission and the fact that the public
221 official has or has not been suspended shall not be admissible in evidence in any court
222 for any purpose.

223 (B) The findings and records of the commission shall not be open to the public except
224 as provided by the General Assembly by general law.

225 (5) The provisions of this subparagraph shall not apply to any indictment handed down
226 prior to January 1, 1985.

227 (6) If a judge who is suspended from office under the provisions of this subparagraph
228 is not first tried at the next regular or special term following the indictment, the
229 suspension shall be terminated and the judge shall be reinstated to office. The judge shall
230 not be reinstated under this provision if he is not so tried based on a continuance granted
231 upon a motion made only by the defendant.

232 (c) Upon initial conviction of any judge for any felony in a trial court of this state or the
233 United States, regardless of whether the judge has been suspended previously under
234 subparagraph (b) of this Paragraph, such judge shall be immediately and without further
235 action suspended from office. While a judge is suspended from office under this
236 subparagraph, he shall not be entitled to receive the compensation from his office. If the
237 conviction is later overturned as a result of any direct appeal or application for a writ of
238 certiorari, the judge shall be immediately reinstated to the office from which he was
239 suspended and shall be entitled to receive any compensation withheld under the provisions
240 of this subparagraph. For the duration of any suspension under this subparagraph, the
241 Governor shall appoint a replacement judge. Upon a final conviction with no appeal or
242 review pending, the office shall be declared vacant and a successor to that office shall be
243 chosen as provided in this Constitution or the laws enacted in pursuance thereof. The
244 provisions of this subparagraph shall not apply to any conviction rendered prior to
245 January 1, 1987.

246 Paragraph VIII. *Due process; review by Supreme Court.* No action shall be taken
 247 against a judge except after hearing and in accordance with due process of law. No
 248 removal or involuntary retirement shall occur except upon order of the Supreme Court after
 249 review."

250 **SECTION 2.**

251 The above proposed amendment to the Constitution shall be published and submitted as
 252 provided in Article X, Section I, Paragraph II of the Constitution. The ballot submitting the
 253 above proposed amendment shall have written or printed thereon the following:

254 "() YES Shall the Constitution of Georgia be amended so as to create a state-wide
 255 business court to lower costs, improve the efficiency of all courts, and
 256 () NO promote predictability of judicial outcomes in certain complex business
 257 disputes for the benefit of all citizens of this state?"

258 All persons desiring to vote in favor of ratifying the proposed amendment shall vote "Yes."

259 All persons desiring to vote against ratifying the proposed amendment shall vote "No." If
 260 such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall
 261 become a part of the Constitution of this state.