

Senate Bill 136

By: Senators Jones of the 25th, Gooch of the 51st, Watson of the 1st, Sims of the 12th and Harbison of the 15th

WITHDRAWN

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to
2 magistrate courts, so as to remove statutory requirements for officers and the executive
3 committee of the Council of Magistrate Court Judges; to allow senior magistrates to serve
4 as officers and on the executive committee of the Council of Magistrate Court Judges; to
5 remove provisions regarding the appointment and term of office of magistrates taking office
6 prior to January 1, 1985; to provide for nonpartisan elections of chief magistrates; to remove
7 the requirement for superior court judges consenting to the appointment of other magistrates;
8 to remove provisions regarding certain superior court judges becoming special judges of the
9 magistrate court in the event they are removed from the superior court by federal court order;
10 to change the qualifications for magistrates; to allow for additional qualifications for
11 magistrates by local law; to provide for minimum compensation for clerks or magistrates
12 performing the duties of clerk of magistrate court; to provide for qualifications for clerks of
13 magistrate court; to remove provisions continuing certain judicial officials in office on
14 July 1, 1983, as magistrates; to remove provisions relating to transferring cases pending on
15 July 1, 1983; to provide for related matters; to provide for an effective date; to repeal
16 conflicting laws; and for other purposes.

17 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18 **SECTION 1.**

19 Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to magistrate
20 courts, is amended by revising subsection (a) of Code Section 15-10-7, relating to the
21 Council of Magistrate Court Judges, as follows:

22 "(a) There is created a council of magistrate court judges to be known as the 'Council of
23 Magistrate Court Judges.' The council shall be composed of the chief magistrates,
24 magistrates, and senior magistrates of the magistrate courts of this state. The council is
25 authorized to organize itself and to develop a constitution and bylaws. ~~The officers of said~~
26 ~~council shall consist of a president, a first vice president, a second vice president, a~~

27 ~~secretary, a treasurer, and such other officers as the council shall deem necessary. The~~
 28 ~~council shall have an executive committee composed of two representatives from each~~
 29 ~~judicial administrative district. No senior magistrate shall serve as an officer of the council~~
 30 ~~or as a regular representative of a judicial administrative district to the executive committee~~
 31 ~~of the council."~~

32 SECTION 2.

33 Said chapter is further amended by revising Code Section 15-10-20, relating to the number,
 34 selection, and term of chief magistrates and certain judges being removed by federal court
 35 order becoming special judges, as follows:

36 "15-10-20.

37 (a) Each magistrate court shall have a chief magistrate and may have one or more other
 38 magistrates. Such magistrates shall be the judges of the magistrate court and shall be
 39 known as magistrates of the county. Unless otherwise provided by local law, the number
 40 of magistrates in each county shall be fixed from time to time by majority vote of the
 41 judges of the superior court of the county, but no magistrate shall be removed from office
 42 during a term of office except for cause as provided by Code Sections 15-10-24 and
 43 15-10-25. The number of magistrates authorized for the county shall be one magistrate
 44 until increased by the judges of superior court or by local law; but this subsection shall not
 45 operate to remove a magistrate from office during his or her term of office.

46 (b) ~~The term of office of any magistrate taking office prior to January 1, 1985, shall expire~~
 47 ~~on December 31, 1984, except that this subsection shall not operate to shorten any term of~~
 48 ~~office in violation of Article VI, Section X, Paragraph II of the Constitution. The term of~~
 49 office of any magistrate taking office on or after January 1, 1985, shall be for four years
 50 beginning on the first day of an odd-numbered year, except that in selecting magistrates to
 51 fill newly created positions or if otherwise necessary, a magistrate may be selected for a
 52 term of less than four years to expire on the last day of an even-numbered year.

53 (c)(1) ~~Unless otherwise provided by local law, all magistrates, other than the officers~~
 54 ~~becoming magistrates pursuant to Code Section 15-10-120, who are selected to take office~~
 55 ~~prior to January 1, 1985, shall be selected as provided in this subsection. The judges of the~~
 56 ~~superior court of the county shall by majority vote appoint as chief magistrate either an~~
 57 ~~officer becoming a magistrate pursuant to Code Section 15-10-120 or some other person~~
 58 ~~meeting the qualifications specified in subsection (a) of Code Section 15-10-22. Any other~~
 59 ~~magistrates, other than the officers becoming magistrates pursuant to Code Section~~
 60 ~~15-10-120, shall be appointed by the chief magistrate with the consent of the judges of~~
 61 ~~superior court.~~

62 ~~(2)(A) If the chief magistrate so selected is an officer becoming a magistrate pursuant~~
 63 ~~to Code Section 15-10-120, then his term as chief magistrate will be as provided by this~~
 64 ~~paragraph.~~

65 ~~(B) If the term which he was serving on June 30, 1983, will expire on the last day of~~
 66 ~~1984 or 1986, then his term as chief magistrate will likewise expire on the last day of~~
 67 ~~1984 or 1986.~~

68 ~~(C) If the term which he was serving on June 30, 1983, will expire other than on the~~
 69 ~~last day of 1984 or 1986, then his term as chief magistrate shall expire on December 31,~~
 70 ~~1984, even though he is granted a longer term as magistrate by Article VI, Section X,~~
 71 ~~Paragraph II of the Constitution; but his term as magistrate shall not be shortened in~~
 72 ~~violation of said Paragraph of the Constitution. In any case covered by this~~
 73 ~~subparagraph, the person whose term as chief magistrate expires December 31, 1984,~~
 74 ~~but who is granted by the Constitution a longer term as magistrate shall be eligible to~~
 75 ~~succeed himself for a four-year term as chief magistrate beginning January 1, 1985, if~~
 76 ~~he resigns his current term as magistrate prior to beginning such four-year term as chief~~
 77 ~~magistrate~~ Reserved.

78 (d) Unless otherwise provided by local law, all magistrates taking office on or after
 79 January 1, 1985, shall be selected as provided in this subsection. The chief magistrate shall
 80 be elected by the voters of the county at the general election next preceding the expiration
 81 of the term of the incumbent chief magistrate, in a partisan nonpartisan election in the same
 82 manner as county officers are elected, for a term beginning on the first day of January
 83 following his or her election. His or her successors shall likewise be elected quadrennially
 84 thereafter for terms beginning on the first day of January following their election.
 85 Magistrates other than the chief magistrate shall be appointed by the chief magistrate ~~with~~
 86 ~~the consent of the judges of superior court.~~ The term of a magistrate so appointed shall run
 87 concurrently with the term of the chief magistrate by whom he or she was appointed.

88 (e) Unless otherwise provided by local law, a vacancy in the office of chief magistrate
 89 shall be filled by an appointment by majority vote of the judges of superior court for the
 90 remainder of the unexpired term; and a vacancy in the office of any other magistrate shall
 91 be filled by an appointment by the chief magistrate ~~with the consent of the judges of~~
 92 ~~superior court~~ for the remainder of the unexpired term. If, however, a vacancy occurs
 93 which does not reduce the number of magistrates for the county below the number of
 94 magistrates authorized for the county, then such vacancy shall not be filled.

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

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

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

111 ~~(i)(1) Any person who is holding office on January 1, 1994, as a judge of the superior~~
 112 ~~courts of this state, whether within the term for which elected or appointed or otherwise,~~
 113 ~~and who subsequent to such date and prior to December 31, 1996, is effectively removed~~
 114 ~~from such office by federal court order shall upon such removal become a special judge~~
 115 ~~of the magistrate court as provided for in this subsection. As used in this subsection, the~~
 116 ~~term 'federal court order' shall mean only an order of a federal court which is entered in~~
 117 ~~a civil action challenging under federal law or federal constitutional provisions (or both)~~
 118 ~~the validity of the manner of selection of superior court judges in this state. A person~~
 119 ~~shall be considered as effectively removed from office by such an order if the order by~~
 120 ~~its terms prohibits such person's continued service as a judge of the superior courts~~
 121 ~~without by the terms of the order allowing such person a meaningful opportunity to seek~~
 122 ~~an appointment or election as a judge of the superior courts which would take effect~~
 123 ~~within 30 days following such removal. Nothing in this subsection shall apply with~~
 124 ~~respect to any removal from office resulting from criminal conduct or other malfeasance~~
 125 ~~on the part of the person removed from office.~~

126 ~~(2) Any person becoming a special judge of the magistrate court pursuant to this~~
 127 ~~subsection shall become a special judge of the magistrate court of the county in which~~
 128 ~~such person resides. Any such special judge of the magistrate court shall serve for a term~~
 129 ~~of office expiring December 31, 1996. The Governor shall issue to each such special~~
 130 ~~judge of the magistrate court a commission stating the date of commencement and~~
 131 ~~expiration of such term of office.~~

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

134 ~~(4) Any special judge of the magistrate court serving pursuant to this subsection shall be~~
 135 ~~compensated and reimbursed for expenses in such amount or amounts as are now or~~

136 hereafter provided by law for a judge of the superior courts, such compensation to be
 137 payable from state funds in the same manner as now or hereafter provided by law for a
 138 judge of the superior courts.

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

141 **SECTION 3.**

142 Said chapter is further amended by revising Code Section 15-10-22, relating to the
 143 qualifications for and limitations on the practice of law of magistrates, as follows:

144 "15-10-22.

145 (a) Each magistrate shall: ~~have been a resident of the county for one year next preceding~~
 146 ~~the beginning of his term of office and shall as of such date be at least 25 years of age and~~
 147 ~~shall possess a high school diploma or its equivalent. However, an officer becoming a~~
 148 ~~magistrate pursuant to Code Section 15-10-120 shall be eligible to the office of magistrate~~
 149 ~~without the necessity of meeting these qualifications. Additional qualifications for the~~
 150 ~~office of chief magistrate or magistrate or both may be imposed by local law.~~

151 (1) Have been a resident of the county for three years next preceding the beginning of
 152 his or her term of office, and remain a resident of such county during the term of office;

153 (2) Be at least 30 years of age prior to the date of qualifying for election;

154 (3) Be a citizen of the United States;

155 (4) Be a registered voter; and

156 (5) Have obtained an accredited high school diploma or a general educational
 157 development (GED) diploma.

158 (a.1) Additional qualifications for the office of chief magistrate or magistrate may be
 159 imposed by local law.

160 (b) A magistrate who is an attorney may practice in other courts but may not practice in
 161 the magistrate's own court or appear in any matter as to which that magistrate has exercised
 162 any jurisdiction."

163 **SECTION 4.**

164 Said chapter is further amended by revising subsections (b), (e), and (f) of Code Section
 165 15-10-105, relating to the selection, eligibility, and compensation of clerks of magistrate
 166 court, as follows:

167 "(b) With the consent of the clerk of superior court and the chief magistrate, the county
 168 governing authority may provide that the clerk of superior court shall serve as clerk of
 169 magistrate court and shall be compensated for his or her ~~services~~ service as clerk of
 170 magistrate court in an amount not less than \$323.59 per month. With the consent of the

171 clerk of the superior court, ~~and the~~ clerk of the state court, and the chief magistrate, the
 172 county governing authority may provide that the state court clerk shall serve as clerk of
 173 magistrate court and shall be compensated for his or her service as clerk of magistrate court
 174 in an amount not less than \$323.59 per month. Such compensation shall be retained by the
 175 clerk of superior court as his or her personal funds without regard to whether he or she is
 176 otherwise compensated on a fee basis or salary basis or both."

177 "(e) The compensation of the clerk or magistrate performing the duties of clerk shall be
 178 paid in equal monthly installments from county funds and shall be fixed by the county
 179 governing authority at not less than \$329.59 per month.

180 (f) The clerk shall be required to be at least 18 years of age and shall ~~possess a high school~~
 181 ~~diploma or its equivalent~~ have obtained an accredited high school diploma or a general
 182 educational development (GED) diploma. The clerk shall not be subject to a residency
 183 requirement."

184 SECTION 5.

185 Said chapter is further amended by revising Code Section 15-10-120, relating to certain
 186 officials becoming magistrates, as follows:

187 "15-10-120.

188 ~~(a) Except as otherwise provided in subsection (b) of this Code section, on July 1, 1983,~~
 189 ~~each of the following officers shall become a magistrate of the county in which he formerly~~
 190 ~~exercised jurisdiction:~~

191 ~~(1) Each justice of the peace in office on June 30, 1983;~~

192 ~~(2) Each notary public ex officio justice of the peace in office on June 30, 1983;~~

193 ~~(3) Each judge of a small claims court in office on June 30, 1983;~~

194 ~~(4) Each magistrate or judge of a magistrate court in office on June 30, 1983; and~~

195 ~~(5) Each judge of the County Court of Echols County.~~

196 ~~(b) Any officer who was required to be certified under former Article 5 of this chapter,~~
 197 ~~'The Georgia Justice Courts Training Council Act,' and who was not so certified as of~~
 198 ~~June 30, 1983, or any officer holding over beyond the expiration of the term for which he~~
 199 ~~was selected shall not so become a magistrate on July 1, 1983.~~

200 ~~(c) Each magistrate taking office on July 1, 1983, shall continue in office for a term which~~
 201 ~~shall expire on the date of expiration of the term which he was serving in such other~~
 202 ~~capacity. Such magistrates may thereafter be reappointed or reelected as provided in~~
 203 ~~Article 2 of this chapter. However, at the expiration of the term of any magistrate other~~
 204 ~~than the chief magistrate, no magistrate shall be selected to replace him unless the number~~
 205 ~~of magistrates remaining in office is less than the number fixed by local law or by the~~
 206 ~~judges of superior court under Code Section 15-10-20~~ Reserved."

207 **SECTION 6.**

208 Said chapter is further amended by revising Code Section 15-10-121, relating to transfers of
209 certain pending cases to magistrate courts, as follows:

210 "15-10-121.

211 ~~On July 1, 1983, any matter pending in the court of an officer referred to in Code Section~~
212 ~~15-10-120 shall by operation of law be transferred to the magistrate court of the same~~
213 ~~county. Such pending matters shall be decided by the magistrate court of the county even~~
214 ~~if the magistrate court would not otherwise have jurisdiction over the case Reserved."~~

215 **SECTION 7.**

216 This Act shall become effective on July 1, 2019.

217 **SECTION 8.**

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