

House Bill 409

By: Representatives Gunter of the 8th, Fleming of the 121st, Efstration of the 104th, Reeves of the 34th, Kelley of the 16th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 15 of Title 45 of the Official Code of Georgia Annotated,
2 relating to counsel for public officials and agencies, so as to provide for a process for
3 state-funded representation of certain judges in legal actions resulting from performance or
4 nonperformance of their official duties; to provide for a definition; to establish the Judicial
5 Legal Defense Fund; to establish the Judicial Legal Defense Fund Commission; to provide
6 for appointments and duties; to provide for requirements; to provide for related matters; to
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 4 of Chapter 15 of Title 45 of the Official Code of Georgia Annotated, relating to
11 counsel for public officials and agencies, is amended by revising Code Section 45-15-70,
12 relating to Governor authorized to provide counsel for public officials and agencies and fees
13 and costs to be paid by state, as follows:

14 "45-15-70.

15 (a) Except as provided for in Code Section 45-15-71:

(1) When any action or proceeding is filed in any court of this state, in any federal court, or with any professional licensing board, disciplinary board or commission, or other similar body, which action or proceeding is against a public officer, public official, a state board or bureau, or against any member of such board or bureau and which action or proceeding seeks relief against such officer, official, board, or bureau in the administration of his, her, or its duties, and when the state compensates or appropriates or allocates moneys to such officer, official, board, or bureau which is used in the administration of his, her, or its duties, and this shall include county registrars, and when no regular counsel is provided within a reasonable time for such officer, official, board, bureau, or county registrar by the Attorney General, then the Governor may direct the Attorney General to provide such counsel. In the event the Attorney General refuses to provide such counsel within a reasonable time after having been directed by the Governor to do so, the Governor is authorized to designate legal counsel in such case for such officer, official, board, or bureau, or any member of such board or bureau, or county registrar; and

~~(b)(2) Whenever the Governor designates counsel in any action specified in subsection (a) paragraph (1) of this Code section, any fees or expenses paid to or on account of such counsel and any court costs may be paid by the state."~~

SECTION 2.

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

"45-15-71.

(a) As used in this Code section, the term 'defendant judge' means a Justice of the Supreme Court, judge of the Court of Appeals, judge of the Georgia State-wide Business Court, or judge of the superior court against whom an action or proceeding has been filed.

(b)(1) There is created a fund to be known as the 'Judicial Legal Defense Fund' to provide state-funded legal representation, including, but not limited to, legal costs and

42 attorney's fees, for defendant judges in actions or proceedings in which such legal
43 representation is authorized under this Code section by the Judicial Legal Defense Fund
44 Commission and the Governor.

45 (2) The Judicial Legal Defense Fund shall be administered by the director of the Office
46 of Planning and Budget and shall be funded by disbursements made through the
47 Governor's Emergency Fund as approved by the Governor.

48 (c)(1) There is created a body to be known as the 'Judicial Legal Defense Fund
49 Commission.'

50 (2) The commission shall be governed by five members who shall be active Justices of
51 the Supreme Court or judges of the Court of Appeals, Georgia State-wide Business Court,
52 or superior court who shall be appointed as follows:

53 (A) One member shall be appointed by the Chief Justice of the Supreme Court;

54 (B) One member shall be appointed by the Governor;

55 (C) One member shall be appointed by the President of the Senate;

56 (D) One member shall be appointed by the Speaker of the House of Representatives;
57 and

58 (E) One member shall be appointed by The Council of Superior Court Judges of
59 Georgia.

60 (3) Members appointed to the commission shall serve a two-year term from the date of
61 their appointment and may serve consecutive terms.

62 (4) All successors to appointed members shall be appointed in the same manner as initial
63 appointments. Vacancies in office of appointed members shall be filled in the same
64 manner as initial appointments. An appointment to fill a vacancy shall be for a new term
65 of appointment.

66 (5) The commission shall elect a chairperson, a vice chairperson, a secretary, and other
67 officers as it deems necessary. The members shall not be compensated for their services
68 but they shall be reimbursed in an amount equal to the per diem received by the General

69 Assembly for each day or portion thereof spent in serving as members of the commission.
70 They shall be paid their necessary traveling expenses while engaged in the business of
71 the commission. Reimbursements or expenses made to members shall be from
72 appropriations made to the Governor's Emergency Fund.

73 (6) The vote of at least a majority of the members present at any meeting is necessary for
74 any action to be taken by the commission. No vacancy in the membership of the
75 commission shall impair the commission's ability to perform its duties.

76 (7) Meetings of the members of the commission shall be held at the call of the
77 chairperson, or whenever any two members so request.

78 (8) The executive director of The Council of Superior Court Judges of Georgia shall
79 serve as staff to the commission.

80 (d) It shall be the purpose of the Judicial Legal Defense Fund Commission to:

81 (1) Evaluate requests from defendant judges for representation through the fund in an
82 action or proceeding. The commission shall endorse such request and representation if:

83 (A) The Attorney General has declined to represent the defendant judge in such action
84 or proceeding;

85 (B) The financial liability for such representation is not covered by any insurance
86 policy maintained by the Department of Administrative Services; and

87 (C) The commission determines that such action or proceeding is seeking relief against
88 such defendant judge for actions taken pursuant to, or the nonperformance of actions
89 required by, such defendant judge's official duties and that such representation is
90 consistent with the purposes of the fund; and

91 (2) With the assistance of the State Bar of Georgia maintain a list of attorneys who are
92 members in good standing with the State Bar of Georgia and who have offered
93 themselves to provide legal representation for judges through the fund.

94 (e) After receiving the service of a summons and complaint upon himself or herself for any
95 action or proceeding filed in any court of this state, a defendant judge having a reasonable

96 belief that such summons and complaint is seeking relief against such defendant judge for
97 actions taken pursuant to, or for the nonperformance of actions required by, such defendant
98 judge's official duties shall have 15 days after service of such summons and complaint to
99 file notice with the court of such belief. The court shall accept such notice and, unless the
100 judge presiding over the case has a reasonable basis for believing that such summons and
101 complaint is not seeking relief against the defendant judge for actions taken pursuant to,
102 or for the nonperformance of actions required by, such defendant judge's official duties,
103 such defendant judge shall file his or her answer within 45 days after the filing of such
104 notice.

105 (f) After receiving the service of a summons and complaint upon himself or herself for any
106 action or proceeding filed in any court of this state or in any federal court, a defendant
107 judge who has a reasonable belief that such summons and complaint is seeking relief
108 against such defendant judge for actions taken pursuant to, or for the nonperformance of
109 actions required by, such defendant judge's official duties and who desires state-funded
110 representation shall:

111 (1) Within three days after service of such summons and complaint, file a written request
112 for representation for such action or proceeding with the Attorney General with a copy
113 of such written request sent to the Department of Administrative Services. The Attorney
114 General may render such representation, or the Department of Administrative Services
115 may provide for such representation, if the Attorney General determines such
116 representation to be in the public interest and that such representation would not violate
117 any legal principles, including, but not limited to, a legal conflict or if the Department of
118 Administrative Services determines that such representation may be provided for under
119 an insurance policy maintained by the department, respectively. The Attorney General
120 and the Department of Administrative Services shall make such determination within ten
121 days of receiving such written request; and

122 (2)(A) If the Attorney General determines that he or she will not provide representation
123 for such defendant judge and if the Department of Administrative Services determines
124 such representation is not covered by an insurance policy maintained by the department,
125 such defendant judge shall file a request with the Judicial Legal Defense Fund
126 Commission for the appointment of representation through the fund. Such request shall
127 be in writing and shall include:

- 128 (i) A copy of the complaint seeking relief against such defendant judge for actions
129 taken pursuant to, or for the nonperformance of actions required by, such defendant
130 judge's official duties; and
131 (ii) A statement showing why such defendant judge is entitled to representation
132 provided for by the Judicial Legal Defense Fund.

133 (B) Within seven days of receiving such request, the commission shall evaluate the
134 request pursuant to subsection (d) of this Code section. If the commission determines
135 that such request shall receive its endorsement by a majority or tied vote of the
136 commission, the defendant judge shall select an attorney from the list maintained
137 pursuant to paragraph (2) of subsection (d) of this Code section and the commission
138 shall secure such attorney's agreement to provide any approved representation of such
139 defendant judge through the fund. The commission shall then forward the defendant
140 judge's request, the commission's endorsement, the name of the selected attorney, and
141 an estimated budget for such representation created pursuant to subsection (g) of this
142 Code section to the Governor. Within five days of receiving such information from the
143 commission, the Governor shall evaluate the endorsement and related information. If
144 the Governor concurs with the endorsement of the commission, the Governor shall
145 authorize disbursements to the fund for such representation.

146 (g)(1) An attorney selected by a defendant judge from the list maintained pursuant to
147 paragraph (2) of subsection (d) of this Code section shall submit an estimated budget for
148 the representation of the defendant judge to the commission within three days of such

149 attorney's selection. Such estimated budget shall be based on the general rate of pay
150 established by the Department of Administrative Services for attorneys retained when the
151 Attorney General has a conflict of interest and the time that such attorney reasonably
152 believes will be required to provide such representation.

153 (2) In the event that the expense of representation of such defendant judge exceeds the
154 estimated budget provided, such attorney shall submit to the commission an amended
155 estimated budget. Such amended estimated budget shall provide a list of services and
156 expenses to date and the estimated cost of continued representation. Within five days of
157 receipt of such amended estimated budget, if the commission concurs with the amended
158 estimated budget, the commission shall forward the amended estimated budget to the
159 Governor. If the Governor concurs with such budget, the Governor shall authorize
160 additional disbursements to the fund for such continued representation.

161 (3) Upon the final disposition of the underlying action or proceeding against such
162 defendant judge, such attorney shall submit a final accounting of the cost of
163 representation. Any funds received by such attorney in excess of the final expense shall
164 be returned to the fund with notice to the commission.

165 (4) In the event that an attorney providing representation to a defendant judge pursuant
166 to this Code section is no longer able to provide such representation prior to the final
167 disposition of the underlying action or proceeding against such defendant judge, such
168 attorney shall notify the commission and provide a final accounting of the cost of
169 representation. Any unused funds received by such attorney shall be returned to the fund
170 with notice to the commission. Such defendant judge shall then select a substitute
171 attorney from the list maintained pursuant to paragraph (2) of subsection (d) of this Code
172 section and such attorney shall prepare and submit for concurrence an estimated budget
173 as provided for under this subsection.

174 (h) Nothing in this Code section shall be construed to prevent any defendant judge from
175 selecting his or her own attorney at his or her own expense.

176 (i) Nothing in this Code section shall be construed as providing insurance coverage or
177 constituting a waiver of sovereign, qualified, or official immunity."

178

SECTION 3.

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