

House Bill 409 (COMMITTEE SUBSTITUTE)

By: Representatives Gunter of the 8th, Fleming of the 121st, Efstoration 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:

H. B. 409 (SUB)

16 (1) When any action or proceeding is filed in any court of this state, in any federal court,
 17 or with any professional licensing board, disciplinary board or commission, or other
 18 similar body, which action or proceeding is against a public officer, public official, a state
 19 board or bureau, or against any member of such board or bureau and which action or
 20 proceeding seeks relief against such officer, official, board, or bureau in the
 21 administration of his, her, or its duties, and when the state compensates or appropriates
 22 or allocates moneys to such officer, official, board, or bureau which is used in the
 23 administration of his, her, or its duties, and this shall include county registrars, and when
 24 no regular counsel is provided within a reasonable time for such officer, official, board,
 25 bureau, or county registrar by the Attorney General, then the Governor may direct the
 26 Attorney General to provide such counsel. In the event the Attorney General refuses to
 27 provide such counsel within a reasonable time after having been directed by the Governor
 28 to do so, the Governor is authorized to designate legal counsel in such case for such
 29 officer, official, board, or bureau, or any member of such board or bureau, or county
 30 registrar; and
 31 ~~(b)~~(2) Whenever the Governor designates counsel in any action specified in ~~subsection~~
 32 ~~(a)~~ paragraph (1) of this Code section, any fees or expenses paid to or on account of such
 33 counsel and any court costs may be paid by the state."

34

SECTION 2.

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

36 "45-15-71.

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

40 (b)(1) There is created a fund to be known as the 'Judicial Legal Defense Fund' to
 41 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; provided,
94 however, that no attorney shall be included on such list of attorneys without the approval

95 of the Governor and each attorney on such list shall be maintained on such list only at the
96 pleasure of the Governor.

97 (e) After receiving the service of a summons and complaint upon himself or herself for any
98 action or proceeding filed in any court of this state, a defendant judge having a reasonable
99 belief that such summons and complaint is seeking relief against such defendant judge for
100 actions taken pursuant to, or for the nonperformance of actions required by, such defendant
101 judge's official duties shall have 15 days after service of such summons and complaint to
102 file notice with the court of such belief. The court shall accept such notice and, unless the
103 judge presiding over the case has a reasonable basis for believing that such summons and
104 complaint is not seeking relief against the defendant judge for actions taken pursuant to,
105 or for the nonperformance of actions required by, such defendant judge's official duties,
106 such defendant judge shall file his or her answer within 45 days after the filing of such
107 notice.

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

114 (1) Within three days after service of such summons and complaint, file a written request
115 for representation for such action or proceeding with the Attorney General with a copy
116 of such written request sent to the Department of Administrative Services. The Attorney
117 General may render such representation, or the Department of Administrative Services
118 may provide for such representation, if the Attorney General determines such
119 representation to be in the public interest and that such representation would not violate
120 any legal principles, including, but not limited to, a legal conflict or if the Department of
121 Administrative Services determines that such representation may be provided for under

122 an insurance policy maintained by the department, respectively. The Attorney General
123 and the Department of Administrative Services shall make such determination within ten
124 days of receiving such written request; and

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

131 (i) A copy of the complaint seeking relief against such defendant judge for actions
132 taken pursuant to, or for the nonperformance of actions required by, such defendant
133 judge's official duties; and

134 (ii) A statement showing why such defendant judge is entitled to representation
135 provided for by the Judicial Legal Defense Fund.

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

147 (C) Within five days of receiving such information from the commission, the Governor
148 shall evaluate the endorsement of the commission and related information. If the

149 Governor concurs with such endorsement, the selected attorney, and such attorney's
150 estimated budget, the Governor shall authorize disbursements to the fund for such
151 representation.

152 (g)(1) An attorney selected by a defendant judge pursuant to subparagraph (f)(2)(B) of
153 this Code section shall submit an estimated budget for the representation of the defendant
154 judge to the commission within three days of such attorney's selection. Such estimated
155 budget shall be based on the general rate of pay established by the Department of
156 Administrative Services for attorneys retained when the Attorney General has a conflict
157 of interest and the time that such attorney reasonably believes will be required to provide
158 such representation.

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

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

171 (4) In the event that an attorney providing representation to a defendant judge pursuant
172 to this Code section is no longer able to provide such representation prior to the final
173 disposition of the underlying action or proceeding against such defendant judge, such
174 attorney shall notify the commission and provide a final accounting of the cost of
175 representation. Any unused funds received by such attorney shall be returned to the fund

176 with notice to the commission. Such defendant judge shall then select a substitute
177 attorney from the list maintained pursuant to paragraph (2) of subsection (d) of this Code
178 section and such attorney shall prepare and submit for concurrence an estimated budget
179 as provided for under this subsection.

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

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

184 **SECTION 3.**

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