

Senate Bill 22

By: Senator Jones of the 10th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend an Act to provide for a new Board of Commissioners of Henry County, approved
2 March 28, 1974 (Ga. L. 1974, p. 3680), as amended, so as to revise provisions regarding
3 vacancies on the board of commissioners; to provide for temporary vacancies; to provide a
4 code of ethics; to establish a board of ethics; to revise the authority, roles, and responsibilities
5 of the chairperson, the board of commissioners, and the county manager; to provide for
6 related matters; to repeal conflicting laws; and for other purposes.

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

8 **SECTION 1.**

9 An Act to provide for a new Board of Commissioners of Henry County, approved
10 March 28, 1974 (Ga. L. 1974, p. 3680), as amended, is amended in Section 3 by revising
11 subsection (c) as follows:

12 "(c) Vacancies occurring in the membership of the board shall be filled in the following
13 manner:

14 (1) If, at the time the vacancy occurs, there are less than 360 days until the date of the
15 next general election, a qualified successor from the district in which the vacancy
16 occurred shall be appointed by the remaining members of the board to serve until the first

day of January following the next general election. Such appointment shall be made from a list of nominees provided by the county executive committee of the political party of which the vacated board member was the candidate at the last general election in which the board seat was up for election. A qualified successor shall be elected at the next general election to serve for the remainder of the unexpired term or for the next term, whichever shall be applicable, and shall take office immediately upon the results of such election being certified by the election superintendent. If the vacancy is in the office of chairperson, the vice chairperson shall serve as chairperson until a successor shall be elected as provided herein and, during such period, the board of commissioners shall be composed of five members;

(2) If, at the time the vacancy occurs, there are more than 360 days until the next general election:

(A) No later than 14 days after the occurrence of the vacancy, a qualified interim successor from the district in which the vacancy occurred shall be appointed by the remaining members of the board to serve until a special election can be held to fill the vacancy for the remainder of the unexpired term. Such appointment shall be made from a list of nominees provided by the county executive committee of the political party of which the vacated board member was the candidate at the last general election in which the board seat was up for election; and

(B) A qualified permanent successor from the district in which the vacancy occurred shall be elected at a special election called for such purpose. Only the qualified electors of Henry County residing within the commissioner district wherein the vacancy occurred shall be eligible to vote at such election. The election superintendent of Henry County shall call such election to be held on the earliest available date provided by general law for a special election to fill a vacancy. The election shall be governed by the provisions of Chapter 2 of Title 21 of the O.C.G.A., the 'Georgia Election Code,' relative to special elections for the filling of vacancies. The person elected at such

special election shall take office immediately upon the results of such election being certified by the election superintendent. All persons so elected to fill a vacancy shall serve for the remainder of the unexpired term. If the vacancy is in the office of chairperson, the special election provided for herein shall apply to filling such vacancy, except that the qualified electors of Henry County voting on a county-wide basis shall be eligible to vote at said special election; and

(3)(A) The chief judge of the superior court of Henry County shall have the power to declare a temporary vacancy on the board created by the ill health or suspension from office of a board member, provided that the length of such a temporary vacancy shall not exceed 90 days. In the event of a temporary vacancy, no later than 14 days after the declaration of the vacancy, a qualified interim successor from the district in which the vacancy occurred shall be appointed by the remaining members of the board. Such appointment shall be made from a list of nominees provided by the county executive committee of the political party of which the vacated board member was the candidate at the last general election in which the board seat was up for election.

(B) In the event that a temporary vacancy exceeds 90 days, a special election shall be held in the same manner as provided for in subparagraph (B) of paragraph (2) of this subsection. The person elected at such special election shall take office immediately upon the results of such election being certified by the election superintendent. All persons so elected to fill a temporary vacancy shall serve until the vacancy of the incumbent board member ends or for the remainder of the unexpired term, whichever event occurs first."

SECTION 2.

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

"SECTION 7.1.

(a) Purpose.

(1) It is essential to the proper administration and operation of the Henry County government that its officials and employees be, and give the appearance of being, independent and impartial, that public office not be used for private gain, and that there be public confidence in the integrity of Henry County officials and employees. Because the attainment of one or more of these ends is impaired whenever there exists in fact, or appears to exist, a conflict between the private interests and public responsibilities of officials and employees, the public interest requires that the General Assembly protect against such conflicts of interest by establishing by law appropriate ethical standards with respect to the conduct of the officials and employees of Henry County in situations where a conflict may exist.

(2) The General Assembly recognizes that an appropriate and effective code of ethics for appointed officials and employees of Henry County is also essential for the proper administration and operation of the Henry County government.

(b) Definitions. As used in this section, the term:

(1) 'Agency' means any board, bureau, body, commission, committee, department, or office of Henry County to which the board of commissioners has appointment powers.

(2) 'Business' means any corporation, partnership, organization, sole proprietorship, other entity operated for economic gain, whether professional, industrial, or commercial, and entity which for purposes of federal income taxation is treated as a nonprofit organization.

(3) 'Confidential information' means information which has been obtained in the course of holding public office, employment, acting as an independent contractor, or otherwise acting as an official or employee and which information is not available to members of the public under state law or other law or regulation and which the official, independent contractor, or employee is not authorized to disclose.

(4) 'Contract' means any claim or demand against or any lease, account, or agreement with any person, whether express or implied, executed or executory, verbal or in writing.

(5) 'Emergency situation' means any circumstance or condition giving rise to an immediate necessity for the execution of a contract by and between Henry County and an official or employee or between Henry County and a business in which an official or employee has an interest and where, to the satisfaction of the board of commissioners, it is shown that there is no one other than such persons with whom the contract could have been made and that the necessity was not brought about by such persons' own fault or neglect.

(6) 'Immediate family' means an official or employee and his or her spouse, parents, brothers, sisters, and natural or adopted children.

(7) 'Interest' means any direct or indirect pecuniary or material benefit held by or accruing to the official or employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with Henry County. Unless otherwise provided in this section, the term 'interest' does not include any remote interest. An official or employee shall be deemed to have an interest in transactions involving:

(A) Any person in the official's or employee's immediate family;

(B) Any person, business, or entity that the official or employee knows or should know is seeking official action with Henry County, is seeking to do or does business with Henry County, has interests that may be substantially affected by performance or nonperformance of the official's or employee's official duties, or with whom a contractual relationship exists whereby the official or employee may receive any payment or other benefit;

(C) Any business in which the official or employee is a director, officer, employee, shareholder, or consultant; or

(D) Any person of whom the official or employee is a creditor, whether secured or unsecured.

(8) 'Official or employee' means any person elected or appointed to or employed or retained by Henry County or any agency, whether paid or unpaid and whether part time or full time. Such term includes retired employees or former county employees during the period of time in which they are later employed or retained by the county or any agency. Such term does not include superior and state court judges and their immediate staffs, the district attorney, the solicitor of the state court, the clerks of the superior and state courts, magistrates, the judge of the probate court, and their respective staffs.

(9) 'Official act or action' means any legislative, administrative, appointive, or discretionary act of the board of commissioners, the chairperson of the board of commissioners, or a commissioner.

(10) 'Paid' means the receipt of, or right to receive, a salary, commission, percentage, brokerage, or contingent fee.

(11) 'Participate' means to take part in official acts, actions, or proceedings personally as an official or employee through approval, disapproval, decision, recommendation, investigation, the rendering of advice, or the failure to act or perform a duty.

(12) 'Person' means any individual, business, labor organization, representative, fiduciary, trust, or association, whether paid or unpaid, and includes any official or employee of Henry County.

(13) 'Property' means any property, whether real or personal or tangible or intangible, and includes currency and commercial paper.

(14) 'Remote interest' means the interest of:

(A) A nonsalaried director, officer, or employee of a nonprofit organization;

(B) A holder of less than 5 percent of the legal or beneficial ownership of the total shares of a business;

(C) Any person in a representative capacity, such as a receiver, trustee, or administrator; or

(D) Any person who, by determination of the board of ethics, is deemed to have such an interest.

(15) 'Transaction' means the conduct of any activity that results in or may result in an official act or action of an official or employee of Henry County.

(c) Proscribed Conduct. No official or employee of Henry County shall:

(1) By his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official acts or actions or that he or she is affected unduly by the rank or position of or kinship or association with any person;

(2)(A) Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for himself or herself or another person if:

(i) It tends to influence him or her in the discharge of his or her official duties; or

(ii) He or she recently has been, or is now, or in the near future may be, involved in any official act or action directly affecting the donor or lender.

(B) Subparagraph (A) of this paragraph shall not apply in the case of:

(i) An occasional nonpecuniary gift of value less than \$100.00;

(ii) An award publicly presented in recognition of public service; or

(iii) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of Georgia to engage in the making of such a loan;

(3) Disclose or otherwise use confidential information acquired by virtue of his or her position for his or her or another person's private gain;

(4) Appear on his or her own personal behalf, or represent, advise, or appear on the personal behalf, whether paid or unpaid, of any person before any court or before any legislative, administrative, or quasi-judicial board, agency, commission, or committee of this state or of any county or municipality concerning any contract or transaction which is or may be the subject of an official act or action of Henry County or otherwise use or

attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or other persons;

(5) Engage in, accept employment with, or render services for any agency, private business, or professional activity when such employment or rendering of services is adverse to and incompatible with the proper discharge of his or her official duties;

(6) Acquire an interest in any contract or transaction at a time when he or she believes or has reason to believe that such an interest will be affected directly or indirectly by his or her official act or actions or by the official acts or actions of other officials or employees of Henry County; or

(7) Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to him or her by virtue of his or her being an official or employee of Henry County.

(c.1) Additional Proscribed Conduct for Commissioners. Members of the board of commissioners shall not issue directives to employees who report to the county manager, threaten to terminate the employment of a county employee, threaten to terminate a county contract so as to exert undue influence, or engage in conduct that is unbecoming of a member of the board of commissioners.

(d) Gifts to certain employees. No employee of the purchasing department of Henry County shall accept any gift of value from anyone who has had or may reasonably be anticipated to have any business with or before such department. Gifts from persons who do not have or who would not be reasonably anticipated to have any business with or before such department may be accepted by an employee of such department only when such gifts are based solely on a family relationship or personal friendship.

(e) Disclosure of interests. An official or employee who has an interest that he or she has reason to believe may be affected by his or her official acts or actions or by the official acts or actions of another official or employee of Henry County shall disclose the precise nature and value of such interest by sworn written statement to the board of ethics and ask for the

board's opinion as to the propriety of such interest. Every official or employee who knowingly has any interest, direct or indirect, in any contract to which Henry County is or is about to become a party, or in any other business with Henry County, shall make full disclosure of such interest to the board of commissioners and to the ethics officer and the board of ethics. The information disclosed by such sworn statements, except for the valuation attributed to the disclosed interest, shall be made a matter of public record by the board of ethics. In cases where a conflict of interest exists, such official or employee shall recuse himself or herself from participating or taking any official acts or actions in any matter for the county affected by such conflict of interest.

(f) Participation in contracts.

(1) An official or employee shall disqualify himself or herself from participating in any official act or action of Henry County directly affecting a business or activity in which he or she has any interest, whether or not a remote interest.

(2) Henry County shall not enter into any contract involving services or property with an official or employee of the county or with a business in which an official or employee of the county has an interest. This subsection shall not apply in the case of:

(A) The designation of a bank or trust company as a depository for county funds;

(B) The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest for such loans;

(C) Contracts for services entered into with a business which is the only available source for such goods or services; or

(D) Contracts entered into under circumstances which constitute an emergency situation, provided that a record explaining the emergency is prepared by the board of commissioners and submitted to the board of ethics at its next regular meeting and thereafter kept on file.

(3) Henry County shall not enter into any contract with, or take any official act or action favorably affecting, any person, or business represented by such person, who has been within the preceding two-year period an official or employee of Henry County.

(g) Reporting violations.

(1) Any person who witnesses or becomes aware of a violation of this section may complain of the violation as follows:

(A) A complaint may be communicated anonymously to the ethics administrator. Such complaint shall be made in good faith and with veracity and sufficient specificity so as to provide the ethics officer with salient and investigable facts. The ethics administrator may require the anonymous complaint to be made in a manner and form that is intended only to obtain relevant facts related to the alleged violation of this section and that is not designed to reveal the identity of the complainant; and

(B) A sworn written complaint may be filed with the ethics administrator as described in this subparagraph. All written complaints to be considered by the board of ethics and the ethics officer shall contain the following, if applicable:

(i) The name and address of the person or persons filing the complaint;

(ii) The sworn verification and signature of the complainant;

(iii) The name and address of the party or parties against whom the complaint is filed and, if such party is a candidate, the office being sought;

(iv) A clear and concise statement of facts upon which the complaint is based along with an allegation that such facts constitute one or more violations of law under the jurisdiction of the board of ethics;

(v) A general reference to the allegedly violated statutory provisions of the code of ethics within the jurisdiction of the board of ethics; and

(vi) Any further information which might support the allegations in the complaint, including, but not limited to, the following:

(I) The names and addresses of all other persons who have first-hand knowledge of the facts alleged in the complaint; and

(II) Any documentary evidence that supports the facts alleged in the complaint.

(2) Upon receipt of a complaint by the ethics administrator, the ethics administrator shall send a written notice to the subject of the complaint by the next business day. Both this notice and any subsequent documents shall be subject to Article 4 of Chapter 18 of Title 50 of the O.C.G.A.

(3) Upon receipt of a written, nonanonymous complaint which does not conform to the applicable requirements of subparagraph (B) of paragraph (1) of this subsection, the ethics administrator shall by letter acknowledge receipt of the complaint and advise the complainant of the defect in the complaint and that the complaint will not be considered by the board of ethics unless the defect is corrected.

(h) Enactment.

(1) This section shall be construed liberally to effectuate its purpose and policies and to supplement such existing laws as may relate to the conduct of officials or employees.

(2) The propriety of any official act or action taken by or transaction involving any officials or employees immediately prior to the time this section shall take effect shall not be affected by the enactment of this section.

(3) The provisions of this section are severable, and if any of its provisions shall be held unconstitutional or invalid by a court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining provisions.

(i) Board of Ethics.

(1)(A) There is created the Board of Ethics of Henry County to be composed of seven citizens of Henry County to be appointed as provided in paragraph (2) of this subsection.

(B) Each member of the board of ethics shall have been a resident of Henry County for at least one year immediately preceding the date of taking office and shall remain a

resident of the county, and where applicable the commission district he or she represents, while serving as a member of the board of ethics.

(C) No person shall serve as a member of the board of ethics if the person has, or has had within the immediately preceding two-year period, any interest in any contract, transaction, or official act or action of Henry County.

(D) No member of the board of ethics shall be a member of an agency or an official or employee of Henry County or shall have served in such a capacity in the two-year period immediately preceding such person's appointment to the board of ethics.

(E) No person shall serve as a member of the board of ethics if the person has been a candidate for, or was elected to, public office in the immediately preceding three-year period. Filing for an elective office shall constitute a resignation from the board of ethics on the date of filing.

(F) Appointees to the board of ethics shall have professional knowledge or expertise in matters of ethics, finance, governance, or the law.

(G) All proposed appointments to the board of ethics shall be subject to an education and employment background check as well as a criminal history check. Persons proposed to be appointed to the board of ethics shall execute all releases necessary for the appointing authority to accomplish such checks. If the nominee is determined to have committed a felony, the nomination shall be withdrawn.

(2)(A) The initial board of ethics shall be appointed as provided in this paragraph to take office on January 1, 2022, and to serve for the terms prescribed in this paragraph.

(B) Not later than December 1, 2021, the members of the initial board of ethics shall be selected as follows:

(i) Five members shall be appointed by the grand jury of Henry County, provided that each such member shall reside in a different commission district than the other members appointed pursuant to this subparagraph; and

(ii) Two members shall be appointed by the tax commissioner of Henry County.

(C) In addition to the members appointed as provided in subparagraph (B) of this paragraph, there shall be two alternate members who shall serve to ensure a quorum when members of the board are absent, have a conflict of interest, or find it necessary to recuse themselves or while a vacancy exists on the board. The alternates shall be selected by the clerk of the Superior Court of Henry County.

(D) The members and alternates shall each serve for terms of three years; provided, however, that the terms of the initial appointees of the grand jury shall be specified at the time of their appointments. One shall serve until December 31, 2022, and until the appointment and qualification of his or her successor, whichever occurs later; one shall serve until December 31, 2023, and until the appointment and qualification of his or her successor, whichever occurs later; and one shall serve until December 31, 2024, and until the appointment and qualification of his or her successor, whichever occurs later. The initial member appointed by the tax commissioner of Henry County shall serve until December 31, 2023, and until the appointment and qualification of his or her successor, whichever occurs later. The initial alternate members appointed by the clerk of the Superior Court of Henry County shall serve the terms specified by the clerk of the superior court at the time of the initial appointments. One shall serve until December 31, 2022, and until the appointment and qualification of his or her successor, whichever occurs later, and one shall serve until December 31, 2024, and until the appointment and qualification of his or her successor, whichever occurs later.

(E) Successors to all members and alternates of the board of ethics and future successors shall be appointed by the respective appointing authorities not less than 30 days prior to the expiration of each such member's term of office, and such successors shall take office on January 1 following such appointment and shall serve terms of three years and until their respective successors are appointed and qualified. No individual shall be appointed to more than two consecutive terms, provided that the initial terms under this Act shall not be counted in such determination.

(F) The clerk of the Superior Court of Henry County shall provide administrative assistance to the grand jury regarding the appointment of board members pursuant to this section. Upon a vacancy occurring or the conclusion of the term of a board member appointed pursuant to division (i) of subparagraph (B) of this paragraph, the clerk of the Superior Court of Henry County shall notify the then sitting grand jury of its duty pursuant to this section.

(3) If a member of the board of ethics ceases to be a resident of Henry County, and where applicable the commission district he or she represents, that member's position on the board of ethics, by operation of law, shall become vacant upon the establishment of the fact of such nonresidency, if contested, by a court of competent jurisdiction. A vacancy in the board of ethics shall exist by reason of death, the disability or incapacity of a member for more than 90 days, resignation, or loss of residency as described in this paragraph. A member of the board of ethics may be removed from office during a term if the member becomes ineligible to hold civil office within the meaning of Code Section 45-2-1 of the O.C.G.A. and that ineligibility is established by decision of a court of competent jurisdiction which declares the office vacant because of such ineligibility or for good cause by a majority vote of the board of ethics. The ethics officer shall notify the clerk of the Superior Court of Henry County and the tax commissioner of Henry County of a vacancy upon its occurrence, and such vacancy shall be filled for the unexpired term by the respective appointing authority.

(4) The members of the board of ethics shall serve without compensation and shall elect from their own membership a chairperson and otherwise provide for their own internal organization. The board of commissioners shall provide adequate office and meeting space and pay all administrative costs, including those specifically stipulated in this section, pertaining to the operation of the board of ethics. The board of ethics shall be authorized to employ its own staff and clerical personnel and contract for the services of a competent court reporter, an attorney, and a private investigator as it deems necessary.

The members of the board of ethics shall have the authority to propose the budget of the board and shall recommend the budget to the board of commissioners, who shall fund it as a priority. In the event that the proposed budget is in excess of \$200,000.00, the board of commissioners shall have the authority to authorize the additional funds requested in accordance with standard budgetary procedures and requirements. The board of ethics shall be completely independent and shall not be subject to control or supervision by the chairperson of the board of commissioners, the board of commissioners, or any other official, employee, or agency of the county government.

(5) The board of ethics shall have the following duties:

(A) To establish procedures, rules, and regulations governing its internal organization and the conduct of its affairs;

(B) To render advisory opinions with respect to the interpretation and application of this section to all officials or employees who seek advice as to whether a particular course of conduct would constitute a violation of the standards imposed in this section or other applicable ethical standards. Such opinions shall be binding on the board of ethics in any subsequent complaint concerning the official or employee who sought the opinion and acted in good faith, unless material facts were omitted or misstated in the request for the advisory opinion;

(C) To prescribe forms for the disclosures required in this section and to make available to the public the information disclosed as provided in this section;

(D) To receive and hear complaints of violations of the standards required by this section over which it has personal and subject matter jurisdiction;

(E) To make such investigations as it deems necessary to determine whether any official or employee has violated or is about to violate any provisions of this section; and

(F) To hold such hearings and make such inquiries as it deems necessary for it to carry out properly its functions and powers.

(j) Ethics officer.

(1) There is hereby created as a full-time salaried position an ethics officer for Henry County. The ethics officer must be an active member of the State Bar of Georgia in good standing with five years' experience in the practice of law. The ethics officer shall be appointed by a majority of the members of the board of ethics for a period not to exceed six years. Removal of the ethics officer before the expiration of the designated term shall be for cause by a majority vote of the members of the board of ethics. The ethics officer need not be a resident of the county at the time of his or her appointment, but he or she shall reside in Henry County within six months of such appointment and continue to reside therein throughout such appointment.

(2) The ethics officer shall not be involved in partisan or nonpartisan political activities or the political affairs of Henry County.

(3) The duties of the ethics officer shall include, but not be limited to, the following:

(A) Educating and training all county officials and employees to have an awareness and understanding of the mandate for and enforcement of ethical conduct and advising them of the provisions of the code of ethics of Henry County;

(B) Meeting with the board of ethics;

(C) Advising officials and employees regarding disclosure statements and reviewing the same to ensure full and complete financial reporting;

(D) Urging compliance with the code of ethics by calling to the attention of the board of ethics any failure to comply or any issues, including the furnishing of false or misleading information, that the ethics officer believes should be investigated by the board of ethics so that the board of ethics may take such action as it deems appropriate;

(E) Monitoring, evaluating, and acting upon information obtained from an ethics hotline, which shall be a county telephone number for the receipt of information about ethical violations. Each complaint, as of the time it is reported, whether by telephone or otherwise, shall be deemed to be a separate pending investigation of a complaint

against a public officer or employee as provided by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;

(F) Reporting, as appropriate, suspected ethical violations to the board of ethics;

(G) Reporting, as appropriate, suspected criminal violations to state or federal law enforcement agencies; and

(H) Filing with the board of ethics and the board of commissioners on the first Tuesday of each February a written report describing the activities of the ethics officer in carrying out the goals of his or her office and the code of ethics and reporting on the ethical health of Henry County.

(k) Ethics administrator.

(1) There is hereby created as a full-time salaried position an ethics administrator for Henry County. The ethics administrator shall be selected by the board of ethics and shall serve at the pleasure of the board.

(2) The ethics administrator shall not be involved in partisan or nonpartisan political activities or the political affairs of Henry County.

(3) The duties of the ethics administrator shall include, but not be limited to, the following:

(A) Maintaining the records of the board of ethics as required by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;

(B) Notifying the subject of a report of any alleged violation of the ethics code, whether the report is anonymous, made by an identified individual, or written. Such notice shall be given in writing to the subject of the complaint at the same time and in the same form that any disclosure of information is required by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;

(C) Notifying the board of ethics of any report of an alleged violation of the ethics code received by the ethics administrator; and

(D) Such other duties as may be assigned by the board of ethics.

441 (l) Investigations and hearings.

442 (1) The board of ethics shall conduct investigations into alleged violations of the code
443 of ethics, hold hearings, and issue decisions as prescribed in this subsection.

444 (2) The proceedings and records of the board of ethics shall be open unless otherwise
445 permitted by state law.

446 (3) Upon request of the board of ethics, the Henry County Solicitor or any attorney
447 representing the office of the Henry County Solicitor, or in the event of a conflict any
448 attorney who shall be selected by a majority vote of the board of ethics, shall advise the
449 board of ethics.

450 (4) A complaint may be filed by the ethics officer, any resident, or a group of residents
451 of Henry County by submitting to the ethics administrator a written, verified, and sworn
452 complaint under the penalty of perjury or false swearing. The complaint shall specifically
453 identify all provisions of the Henry County code of ethics which the subject of the
454 complaint is alleged to have violated, set forth facts as would be admissible in evidence
455 in a court proceeding, and show affirmatively that the complainant or affiant, if in
456 addition to or different from the complainant, is competent to testify to the matter set
457 forth therein. All documents referenced in the complaint as well as supporting affidavits
458 shall be attached to the complaint.

459 (5) Upon receipt of the complaint, the ethics administrator shall bring the complaint
460 before the board of ethics which shall cause the ethics officer to conduct a preliminary
461 investigation to determine whether it meets the jurisdictional requirements as set forth in
462 this section. Upon the conclusion of the preliminary investigation, the ethics officer shall
463 report his or her findings to the board. If, in the opinion of the board, the complaint fails
464 to meet the jurisdictional requirements as set forth in this section, the board shall direct
465 the ethics officer to notify the person who filed the complaint and such person shall have
466 ten days from the date of notice to correct and refile the complaint with the board. A
467 complaint which fails to satisfy the jurisdictional requirements as established by this

section and by the rules and procedures established by the board of ethics shall be dismissed by the board of ethics no later than 30 days after the complaint is filed with the ethics administrator, unless extended by a majority vote of the board of ethics.

(6) The ethics officer will report his or her findings and recommendation to the board of ethics and advise whether there is probable cause for belief that the code of ethics has been violated, warranting a formal hearing. If the board of ethics determines, after the preliminary investigation of a complaint by the ethics officer, that there does not exist probable cause for belief that this section has been violated, the board of ethics shall so notify the complainant and the subject of the investigation, and the complaint will be dismissed. If the board of ethics determines, after a preliminary investigation of the complaint by the ethics officer, that there does exist probable cause for belief that this section has been violated, the board of ethics shall give notice to the person involved to attend a hearing to determine whether there has been a violation of this section.

(7) For use in proceedings under this section, the board of ethics shall have the power to issue subpoenas to compel any person to appear, give sworn testimony, or produce documentary or other evidence. Any person who fails to respond to such subpoenas may be subjected to the penalties set forth in subsection (m) of this section.

(8) All hearings of the board of ethics pursuant to this section shall be as follows:

(A) All testimony shall be under oath, which shall be administered by a member of the board of ethics. Any person who appears before the board of ethics shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state. Any person whose name is mentioned during a proceeding of the board of ethics and who may be adversely affected thereby may appear personally before the board of ethics on such person's own behalf or may file a written sworn statement for incorporation into the record to be made part of all proceedings pursuant to this subsection;

(B) The decision of the board of ethics shall be governed by a preponderance of the evidence standard; and

(C) At the conclusion of proceedings concerning an alleged violation, the board of ethics shall immediately begin deliberations on the evidence and proceed to determine by a majority vote of members present whether there has been a violation of this section. The findings of the board of ethics concerning a violation and the record of the proceedings shall be made public by the ethics officer as soon as practicable after the determination has been made.

(9) Any investigation or hearing pursuant to this subsection shall be commenced within two years of the date of the alleged violation; provided, however, that any complaint filed against an elected official within 60 days of an election in which such official is a candidate for public office shall not be acted upon until such election is concluded and certified.

(10) The county attorney shall be prohibited from appearing before the board of ethics on behalf of any person.

(m) Violations; appeals.

(1) Any intentional violation of this section, furnishing of false or misleading information to the board of ethics or the ethics officer, failure to follow an opinion rendered by the board of ethics, or failure to comply with a subpoena issued by the board of ethics pursuant to this section shall subject the violator to any one or more of the following:

(A) Administrative sanction of not more than \$1,000.00 assessed by the board of ethics;

(B) Public reprimand by the board of ethics; and

(C) Prosecution by the Henry County Solicitor in the magistrate court of Henry County and, upon conviction, a fine of up to \$1,000.00 per violation and up to six months' imprisonment whether the official or employee is elected or appointed, paid or unpaid.

Nothing in this section shall be interpreted to conflict with state law. An action for violation of this section or the furnishing of false or misleading information or the failure to comply with a subpoena issued by the board of ethics must be brought within two years after the violation is discovered.

(2) With regard to violations by persons other than officials or employees, in addition to the remedies in paragraph (1) of this subsection, the board of ethics may recommend to the board of commissioners any one or more of the following:

(A) Suspension of a contractor; and

(B) Disqualification or debarment from contracting or subcontracting with Henry County.

(3) The decision of the board of ethics after a hearing shall be final; provided, however, that such proceeding shall be subject to review by writ of certiorari to the Superior Court of Henry County. The ethics administrator shall be authorized to acknowledge service of any such writ and shall, within the time provided by law, certify and cause to be filed with the clerk of the superior court a record of the proceedings before the board of ethics, the decision of the board of ethics, and the notice of the final actions of the board of ethics."

SECTION 3.

Said Act is further amended by revising Section 8.2 as follows:

"SECTION 8.2.

(a) The Board of Commissioners of Henry County, Georgia, in addition to such power and authority granted to it by local law, general statute, the Constitution of the State of Georgia, or the now existing ordinances of Henry County, Georgia, shall have the power to:

(1) Reject, within 30 days of appointment, the chairperson's appointment of a nonelected individual to serve as county manager and individuals to serve as county clerk and county

attorney, provided that any such vote to reject an appointment must be approved by at least four commissioners;

(2) Establish the compensation and job description of the county manager and assistant county managers;

(3) Establish the compensation and job description of the county clerk and such assistant county clerks as deemed necessary; provided, however, that, in addition to any additional duties and responsibilities, the county clerk shall be the official custodian of records for Henry County and shall keep and maintain the minutes of meetings of the Board of Commissioners of Henry County;

(4) Establish the compensation of such attorney or attorneys designated to serve as county attorney and assistant county attorneys who shall serve as legal counsel to the chairperson and the board of commissioners; provided, however, that where there is a conflict between the chairperson and members of the board of commissioners, and unless otherwise provided by the board of commissioners, the Georgia Rules of Professional Conduct for attorneys in Georgia, or order of court, the county attorney shall serve as legal counsel to the board of commissioners. Unless otherwise provided by the board of commissioners, the Georgia Rules of Professional Conduct for attorneys in Georgia, or order of court, the county attorney in all legal proceedings shall serve as the attorney of record for Henry County, Georgia, and the chairperson and the board of commissioners shall serve in their official capacities;

(5) Establish personnel policies for the personnel of Henry County government;

(6) Appoint, from time to time, one or more individuals to serve as executive assistant to the board of commissioners;

(7) Establish the qualifications, compensation, and job description of such executive assistant or assistants;

(8) Hire, fire, discipline, suspend, or demote such executive assistant or assistants; and

(9) Add or remove items from the agenda set by the chairperson of any board of commissioners meeting, provided that at least four commissioners vote to approve the change.

(b) The chairperson shall:

(1) Serve as the chief executive and elective officer of the county;

(2) Serve as a full voting member of the board of commissioners;

(3) Serve as presiding officer over meetings of the board of commissioners and shall set the agenda for all meetings of the board of commissioners;

(4)(A) Appoint, subject to rejection of the board of commissioners, and have the authority to fire, discipline, or suspend the county manager, county clerk, and county attorney.

(B) In the event that the board of commissioners rejects an appointment made pursuant to subparagraph (A) of this paragraph, the chairperson shall appoint a new officer to serve subject to rejection by the board of commissioners as provided for in paragraph (1) of subsection (a) of this section;

(5) Execute documents and instruments on behalf of the county;

(6) After consultation with the county manager, submit to the board of commissioners an annual budget for consideration and adoption by the board of commissioners;

(7) See that the ordinances, resolutions, and regulations of the board of commissioners and the laws of the state are faithfully executed and enforced;

(8) Coordinate intergovernmental activity between the county and municipalities, other counties, other political subdivisions, and state and federal agencies;

(9) Either individually or with the other members of the board of commissioners, initiate the assessment of the needs of the county, evaluate county services, and develop the policies of the county;

(10) Represent or designate an individual to represent Henry County at ceremonial functions;

(11) Have the power to delegate, in writing, administrative duties of the county to the county manager;

(12) Approve all expense, reimbursement, or other nonsalary payments to commissioners, provided that if such payment is denied by the chairperson, a majority of the board of commissioners may vote to approve such payment at a regular meeting of the board of commissioners;

(13) Unless a specific appointment authority is otherwise provided by state law, appoint a member to any authority, board, or commission established by the board of commissioners; and

(14) After consultation with the board of commissioners, approve an annual work plan for the county manager.

(c)(1) Except as provided in paragraph (2) of this subsection, the county manager shall have the power to hire, fire, discipline, suspend, or demote any employee of Henry County or delegate such power to one or more nonelected employees. Assistant county managers and department heads may be hired, fired, disciplined, suspended, or demoted by the county manager with the approval of the chairperson. Subject to the approval of the chairperson, the county manager shall have the power to establish and change organizational charts for all county departments.

(2)(A) Assistant county clerks may be hired, fired, disciplined, suspended, or demoted by the county clerk.

(B) Assistant county attorneys may be hired, fired, disciplined, suspended, or demoted by the county attorney."

SECTION 4.

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