

COMMITTEES OF CONFERENCE SUBSTITUTE TO HB 409

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to
2 prosecuting attorneys, so as to revise appointment of substitute for absent or disqualified
3 district attorneys; to revise provisions regarding disqualification of solicitors-general pro
4 tempore; to amend Article 4 of Chapter 15 of Title 45 of the Official Code of Georgia
5 Annotated, relating to counsel for public officials and agencies, so as to provide for a process
6 for state-funded representation of certain judges in legal actions resulting from performance
7 or nonperformance of their official duties; to provide for a definition; to establish the Judicial
8 Legal Defense Fund; to establish the Judicial Legal Defense Fund Commission; to provide
9 for appointments and duties; to provide for requirements; to provide for related matters; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting
14 attorneys, is amended by revising Code Section 15-18-5, relating to appointment of substitute
15 for absent or disqualified district attorney, as follows:

16 "15-18-5.

17 (a) When a district attorney's office is disqualified from interest or relationship to engage
18 in a prosecution, the district attorney shall notify the ~~Attorney General~~ executive director
19 of the Prosecuting Attorneys' Council of the State of Georgia of the disqualification. Upon
20 receipt of such notification, the ~~Attorney General~~ executive director of the Prosecuting
21 Attorneys' Council of the State of Georgia shall:

22 (1) Request the services of and thereafter appoint a district attorney, a solicitor-general,
23 ~~or~~ a retired prosecuting attorney as provided in Code Section 15-18-30, or an attorney
24 employed by the Department of Law;

25 (2) Designate an attorney from the ~~Department of Law~~ Prosecuting Attorneys' Council
26 of the State of Georgia; or

27 (3) Appoint a competent attorney to act as district attorney pro tempore in place of the
28 district attorney.

29 (b) A private attorney acting as district attorney pro tempore pursuant to paragraph (3) of
30 subsection (a) of this Code section is subject to all laws and regulations established
31 pursuant to Code Section 15-18-19 governing district attorneys. Such private attorney shall
32 receive the same compensation from state funds appropriated for the operations of the
33 district attorneys at the same rate as the district attorney during the term of such
34 appointment and shall incur the same penalties in the discharge of the duties of said office.

35 (c) Nothing in this Code section shall affect Code Section 45-15-30.

36 (d) The appointment of the district attorney pro tempore shall specify in writing the court
37 or courts to which the appointment applies, the county or counties where located, the time
38 period covered, and the name of the case or cases to which such appointment shall apply.
39 A copy of the appointment shall be filed with the clerk of court and copies shall be
40 provided to the presiding judge and the Prosecuting Attorneys' Council of the State of
41 Georgia and opposing counsel in any action affected by such order. An order appointing
42 a private attorney pursuant to this Code section shall also specify whether such attorney

will serve on a full-time or part-time basis and any restrictions which may apply to such attorney's private practice of law during the term of such appointment. Private attorneys who serve on a part-time basis shall be compensated at an hourly rate determined by the Prosecuting Attorneys' Council of the State of Georgia based on the annual salary of district attorneys paid from state funds. The Prosecuting Attorneys' Council of the State of Georgia shall establish such procedures or guidelines as may be necessary to ensure proper accountability of any funds paid to a private attorney pursuant to this Code section.

(e) A district attorney or solicitor-general who is designated as a district attorney pro tempore, or any assistant designated by such district attorney pro tempore to prosecute such case or cases, or an employee of the ~~Department of Law~~ Prosecuting Attorneys' Council of the State of Georgia shall not receive any additional compensation for such services. The actual expenses incurred by the district attorney pro tempore or members of the district attorney pro tempore's staff shall be reimbursed in the same manner and by the same funding source as is provided by law for such personnel when they are performing official duties, provided that, in the case of nonstate paid personnel, the actual expenses incurred shall be reimbursed by the county in which the said district attorney pro tempore is acting at the same rate as provided in Code Section 15-18-12 for district attorneys. Any court costs, filing costs, witness fees, costs of reporting and preparing transcripts of records, and any other expenses incurred for such services shall be paid as provided by law.

(f) If a disqualified district attorney fails or refuses to notify the ~~Attorney General~~ executive director of the Prosecuting Attorneys' Council of the State of Georgia as provided in subsection (a) of this Code section, the presiding judge may notify the ~~Attorney General~~ executive director of the Prosecuting Attorneys' Council of the State of Georgia.

(g) Any order entered by a court disqualifying a district attorney's office from engaging in the prosecution shall specify the legal basis for such order. The district attorney may, on behalf of the state and prior to the defendant in a criminal case being put in jeopardy,

69 apply for a certificate of immediate review as provided in Code Section 5-7-2, and such
70 order shall be subject to appellate review as provided in Chapter 7 of Title 5."

71 **SECTION 2.**

72 Said chapter is further amended by revising Code Section 15-18-65, relating to
73 disqualification of solicitor-general pro tempore, as follows:

74 "15-18-65.

75 (a) When a solicitor-general's office is disqualified from interest or relationship to engage
76 in the prosecution of a particular case or cases, such solicitor-general shall notify the
77 ~~Attorney General~~ executive director of the Prosecuting Attorneys' Council of the State of
78 Georgia of the disqualification. Upon receipt of such notification, the ~~Attorney General~~
79 executive director of the Prosecuting Attorneys' Council of the State of Georgia shall
80 request the services of and thereafter appoint a solicitor-general, a district attorney, a retired
81 prosecuting attorney as provided in Code Section 15-18-30, ~~or~~ other competent attorney
82 ~~to act in place of the solicitor-general, or may designate~~ an attorney from the Department
83 of Law or the Prosecuting Attorneys' Council of the State of Georgia to act in place of the
84 solicitor-general. The appointment of the solicitor-general pro tempore shall specify in
85 writing the name of the case or cases to which such appointment shall apply.

86 (b) A private attorney acting as solicitor-general pro tempore pursuant to subsection (a)
87 of this Code section shall be duly sworn and subject to all laws governing prosecuting
88 attorneys. Such solicitor-general pro tempore shall be compensated in the same manner
89 as appointed counsel in the county.

90 (c) A solicitor-general of another county or a district attorney who is designated as a
91 solicitor-general pro tempore, any assistant designated by such solicitor-general pro
92 tempore to prosecute such case or cases, or any employee of the Department of Law or the
93 Prosecuting Attorneys' Council of the State of Georgia shall not receive any additional
94 compensation for such services; provided, however, that the actual expenses incurred by

the solicitor-general pro tempore or members of the solicitor-general pro tempore's staff shall be reimbursed by the county in which said solicitor-general or district attorney is acting as solicitor-general pro tempore at the same rate as provided in Code Section 15-18-12 for district attorneys.

(d) Any order entered by a court disqualifying a solicitor-general's office from engaging in the prosecution shall specify the legal basis of such order. The solicitor-general may, on behalf of the state and prior to the defendant in a criminal case being put in jeopardy, apply for a certificate of immediate review as provided in Code Section 5-7-2, and such order shall be subject to appellate review as provided by Chapter 7 of Title 5."

SECTION 3.

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

"45-15-70.

(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 4.

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

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

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

(2) The commission shall be governed by five members who shall be appointed, by and with the advice and consent of the Senate, as follows:

(A) One member, who shall be a member of the judiciary, shall be appointed by the Chief Justice of the Supreme Court;

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

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

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

(E) One member, who shall be a member of the judiciary, shall be appointed by The Council of Superior Court Judges of Georgia.

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

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

(5) The commission shall elect a chairperson, a vice chairperson, a secretary, and other officers as it deems necessary. The members shall not be compensated for their services but they shall be reimbursed in an amount equal to the per diem received by the General Assembly for each day or portion thereof spent in serving as members of the commission. They shall be paid their necessary traveling expenses while engaged in the business of the commission. Reimbursements or expenses made to members shall be from appropriations made to the Governor's Emergency Fund.

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

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

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

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

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

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

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

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

(2) With the assistance of the State Bar of Georgia maintain a list of attorneys who are members in good standing with the State Bar of Georgia and who have agreed to provide legal representation for judges through the fund; provided, however, that no attorney shall be included on such list of attorneys without the approval of the Governor and each attorney on such list shall be maintained on such list only at the pleasure of the Governor.

(e) After receiving the service of a summons and complaint upon himself or herself for any action or proceeding filed in any court of this state, a defendant judge having a reasonable belief that such summons and complaint is seeking relief against such defendant judge for actions taken pursuant to, or for the nonperformance of actions required by, such defendant judge's official duties shall have 15 days after service of such summons and complaint to file notice with the court of such belief. The court shall accept such notice and, unless the judge presiding over the case has a reasonable basis for believing that such summons and complaint is not seeking relief against the defendant judge for actions taken pursuant to, or for the nonperformance of actions required by, such defendant judge's official duties,

such defendant judge shall file his or her answer within 45 days after the filing of such notice.

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

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

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

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

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

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

(C) Within five days of receiving such information from the commission, the Governor shall evaluate the endorsement of the commission and related information. If the Governor concurs with such endorsement, the selected attorney, and such attorney's estimated budget, the Governor shall authorize disbursements to the fund for such representation.

(g)(1) An attorney selected by a defendant judge pursuant to subparagraph (f)(2)(B) of this Code section shall submit an estimated budget for the representation of the defendant judge to the commission within three days of such attorney's selection. Such estimated budget shall be based on the general rate of pay established by the Department of Administrative Services for attorneys retained when the Attorney General has a conflict

of interest and the time that such attorney reasonably believes will be required to provide such representation.

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

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

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

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

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

278

SECTION 5.

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