

House Bill 1275 (AS PASSED HOUSE AND SENATE)

By: Representatives Rich of the 97<sup>th</sup>, Leverett of the 33<sup>rd</sup>, and Oliver of the 82<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 32 of Title 36 of the Official Code of Georgia Annotated,  
2 relating to municipal courts generally, so as to revise provisions related to appointment and  
3 removal of municipal court judges; to provide for vacancies in office; to provide for related  
4 matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Article 1 of Chapter 32 of Title 36 of the Official Code of Georgia Annotated, relating to  
8 municipal courts generally, is amended in Code Section 36-32-2, relating to appointment of  
9 judges, by revising subsection (a) as follows:

10 "(a)(1) Notwithstanding any other provision of this chapter or any general or local Act,  
11 the governing authority of each municipal corporation within this state having a  
12 municipal court, as provided by the Act incorporating the municipal corporation or any  
13 amendments thereto, is authorized to appoint a judge of such court. Any individual  
14 appointed as a judge under this Code section shall possess such qualifications as set forth  
15 in Code Section 36-32-1.1 and shall receive such compensation as shall be fixed by the  
16 governing authority of the municipal corporation. ~~Any~~ Notwithstanding the failure of the

17 governing body of a municipal corporation to enter into a written agreement or enact an  
18 ordinance as provided for in this paragraph, any individual appointed as a judge under  
19 this Code section shall serve for a minimum term of one year from the date of  
20 appointment as reflected in the minutes of the municipal corporation, unless such  
21 municipal corporation's charter provides for a longer term, and until a successor is  
22 appointed or if the judge is removed from office as provided in Code Section 36-32-2.1.  
23 Such term shall be memorialized in a written agreement between such individual and the  
24 governing authority of the municipal corporation or in an ordinance or a charter. ~~With~~  
25 ~~respect to an individual serving as a municipal court judge in a consolidated government,~~  
26 ~~the local Act shall determine the term of such judge.~~

27 (2) Except as otherwise provided for in Code Section 36-32-2.1, in the event of a  
28 vacancy occurring during the term of a judge appointed under this Code section, the  
29 governing authority of the municipal corporation is authorized to appoint an individual  
30 to serve for the remainder of the unexpired term created by such vacancy, provided such  
31 individual is qualified by law to serve as a municipal court judge."

32 **SECTION 2.**

33 Said article is further amended in Code Section 36-32-2.1, relating to removal of judges, by  
34 revising subsections (c), (e), (g), and (h) as follows:

35 "(c)(1) Removal proceedings pursuant to subsection (b) of this Code section may be  
36 initiated only by written petition setting forth the grounds for removal of a judge signed  
37 by one or more members of the governing authority of the municipal corporation.

38 (2) A petition for removal shall state:

39 (A) The cause or causes for his or her termination in sufficient detail to enable him or  
40 her fairly to show any error that may exist therein;

41 (B) The names of the known witnesses and a concise summary of the evidence to be  
42 used against him or her, and the names of any new witnesses shall be provided as soon  
43 as practicable; and

44 (C) That the judge, upon request, shall be furnished with compulsory process or  
45 subpoena legally requiring the attendance of witnesses and the production of documents  
46 and other evidence as provided by law.

47 (3) Upon submission of the petition to remove the judge to such governing authority, the  
48 governing authority may consider the petition and determine if the petition relates to and  
49 adversely affects the administration of the office of the judge and the rights and interests  
50 of the public. If it is determined at a public meeting by a majority vote of the governing  
51 authority of the municipal corporation that there is an adverse impact, the judge may be  
52 suspended immediately and without further action for up to 60 days pending the final  
53 determination pursuant to subsection (e) of this Code section. A judge suspended  
54 pursuant to this subsection shall continue to receive the compensation from his or her  
55 office until the final determination on the petition or expiration of the suspension."

56 "(e)(1)(A) Removal proceedings shall consist of an open and public hearing held by the  
57 governing authority of the municipal corporation, provided that the judge against whom  
58 such charges have been brought shall be furnished notice of the time and place where  
59 the hearing will be held and a copy of the charges at least ~~ten~~ 20 days prior to the  
60 hearing.

61 (B) The notice required by subparagraph (A) of this paragraph shall be served by  
62 certified mail or statutory overnight delivery and shall be deemed to be perfected by  
63 certified mail when the notice is deposited in the United States mail addressed to the  
64 last known address of the addressee with sufficient postage affixed to the envelope.

65 (C) The judge shall be entitled to be represented by counsel at his or her expense and,  
66 upon request, shall be entitled to have subpoenas or other compulsory process issued  
67 for the attendance of witnesses and the production of documents and other evidence.

68 Such subpoenas and compulsory process shall be issued in the name of the governing  
69 authority of the municipal corporation and shall be signed by the chief elected official  
70 or chief executive officer of the municipal corporation. In all other respects, such  
71 subpoenas and other compulsory process shall be subject to Article 2 of Chapter 13 of  
72 Title 24.

73 (D) The hearing shall be recorded at the expense of the municipal corporation. Such  
74 recording should contain at least the audio and may contain video. The audio recording  
75 of the hearing shall be transcribed at the judge's expense if he or she requests certiorari  
76 review by the superior court.

77 (E) The following oath or affirmation shall be administered to all witnesses by the  
78 presiding officer provided for in paragraph (2) of this subsection;

79 'You do solemnly swear or affirm that the testimony you give shall be the truth, the  
80 whole truth, and nothing but the truth. So help you God.'

81 (F) All questions relating to the admissibility of evidence or other legal matters shall  
82 be decided by the presiding officer provided for in paragraph (2) of this subsection.  
83 The governing authority of the municipal corporation shall have the burden of proving  
84 by a preponderance of the evidence that removal is warranted pursuant to subsection  
85 (b) of this Code section, and such governing authority shall have the right to open and  
86 to conclude arguments. Except as otherwise provided in this Code section, hearings  
87 shall be governed by the same rules as govern the introduction of evidence in nonjury  
88 civil trials in the superior court.

89 (G) At the conclusion of the hearing, the governing authority of the municipal  
90 corporation shall determine whether or not to remove the judge from office. ~~The~~  
91 ~~governing authority of the municipal corporation may adopt rules governing the~~  
92 ~~procedures at such hearings, provided that such hearings comport with due process.~~  
93 The governing authority of the municipal corporation shall state the basis for its  
94 decision to remove or not remove the judge from office. Said decision and its basis

95 shall be rendered at the hearing and shall be in writing. The right of certiorari from the  
96 decision to remove a judge from office shall exist, and such certiorari shall be obtained  
97 under the sanction of a judge of the superior court of the circuit in which the governing  
98 authority of the municipal corporation, or any portion of it, is situated.

99 (2) The chief judge of the superior court of the circuit in which the governing authority  
100 of the municipal corporation, or any portion of it, is situated shall appoint a senior  
101 superior court judge or a senior state court judge to act as the presiding officer at a  
102 hearing conducted pursuant to this subsection. If the municipal corporation lies in two  
103 superior court circuits, the most senior chief judge of the circuits shall appoint such  
104 presiding officer. The governing authority of the municipal corporation shall be  
105 responsible for compensating the presiding officer for his or her services at a rate not to  
106 exceed \$500.00 per diem, plus reasonable and necessary expenses."

107 ~~"(g) Any vacancy in a judgeship created by the removal of a judge pursuant to this Code~~  
108 ~~section may be temporarily filled by the governing authority of the municipal corporation~~  
109 ~~for a period not longer than 90 days by any individual qualified by law to serve as a~~  
110 ~~municipal court judge. In the event that a vacancy in a judgeship is created by the removal~~  
111 ~~of a judge pursuant to this Code section, the governing authority of the municipal~~  
112 ~~corporation may fill such vacancy by appointing any individual qualified by law to serve~~  
113 ~~as a municipal court judge for a period of not less than 30 days nor more than 60 days. If~~  
114 ~~after the conclusion of the removal proceedings, including the appeal period, there is a~~  
115 ~~vacancy for such judgeship, the governing authority of the municipal corporation may~~  
116 ~~appoint a judge in the same manner as set forth in Code Section 36-32-2.~~

117 (h) The provisions of this Code section shall expressly supersede any conflicting local law  
118 of this state; ~~provided, however, that this Code section shall not apply to a local Act~~  
119 ~~creating a municipal court for a consolidated government."~~

120

**SECTION 3.**

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