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HB 927 - Supreme Court, Appellate Court Efficiencies

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COURTS

Supreme Court: Amend Title 15 of the Official Code of Georgia Annotated, Relating to Courts, so as to Enact Reforms Recommended by the Georgia Appellate Jurisdiction Review Commission Relating to Appellate Court Efficiencies; Improve Law Assistant Selection for the Appellate Courts; Provide the Court of Appeals with Greater Procedural Flexibility in its Decisional Process; Transfer Jurisdiction over Certain Appeals in Civil Cases from the Supreme Court to the Court of Appeals; Amend the Official Code of Georgia Annotated, so as to Conform Appellate References; Amend Chapter 2 of Title 15 of the Official Code of Georgia Annotated, Relating to the Supreme Court, so as to Increase the Number of Supreme Court Justices and Provide for Their Appointment and Election; Change Provisions Relating to Reversals and Affirmance; Change Provisions Relating to the Terms of Court; Provide for Effective Dates and a Contingent Effective Date and Applicability; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 5-6-14, -34, -37, -38, -39, -40, -41, -42, -43, -44, -48, -49 (amended); 5-7-1 (amended); 7-1-155 (amended); 9-6-1, -28 (amended); 15-2-1.1, -4, -10, -16, -19 (amended); 15-3-1 (amended), -3.1 (new), -9 (amended); 21-2-171, -528 (amended); 23-4-33 (amended); 31-14-8.2 (amended); 37-3-150 (amended); 37-4-110 (amended); 37-7-15 (amended); 44-2-84, -103 -136 (amended); 48-5-17 (amended)
BILL NUMBER:	HB 927
ACT NUMBER:	626
GEORGIA LAWS:	2016 Ga. Laws. 883
SUMMARY:	The Act expands the jurisdiction of the Georgia Court of Appeals and

increases the number of Supreme Court Justices from seven to nine to alleviate the overly burdened Supreme Court of Georgia. The Supreme Court had exclusive appellate jurisdiction over cases involving title to land, wills, and divorce. The Act allows the Court of Appeals to hear appeals on these matters.

Effective Date: May 3, 2016

History

Historically, the Georgia legislature has had an antagonistic relationship with Georgia's appellate courts.¹ For example, in the wake of the financial crisis, in June 2009 the General Assembly enacted the most severe budget cuts endured by any state judiciary, slashing Georgia courts' budgets by twenty-five percent.² The budget cuts forced both the Georgia Court of Appeals and the Supreme Court of Georgia to lay off experienced clerks and staff.³ Appellate judges and Supreme Court Justices were forced to take up to twelve unpaid furlough days during 2009.⁴ In 2010 and 2011, the state budget included additional cuts to the judiciary.⁵ This led to a backlog of cases on Georgia's appellate court dockets.⁶

Even before the budget cuts, Georgia's growing population placed an increasingly heavy burden on appellate court dockets.⁷ The cuts

1. Kyle G.A. Wallace, Andrew J. Tuck & Max Marks, *Symposium Article: Division of Labor: The Modernization of the Supreme Court of Georgia and Concomitant Workload Reduction Measures in the Court of Appeals*, 30 GA. ST. U. L. REV. 925, 927 (2014).

2. Paulo Prada & Corey Dade, *Cases Pile Up in Georgia Courts: Budget Squeeze Forces Cuts in Spending for Judiciary, Creating Months-Long Delays*, WALL ST. J. (Sept. 8, 2009), <http://online.wsj.com/news/articles/SB125236538620490881>.

3. Michael B. Terry, *Symposium Article: Historical Antecedents of Challenges Facing the Georgia Appellate Courts*, 30 GA. ST. U. L. REV. 965, 973 (2014). *See also* Wallace et al., *supra* note 1.

4. Terry, *supra* note 3, at 972.

5. *See* GA. GOVERNOR'S OFFICE OF PLANNING AND BUDGET, BUDGET IN BRIEF; AMENDED FISCAL YEAR 2009 AND FISCAL YEAR 2010, 36-50 (2010); GA. GOVERNOR'S OFFICE OF PLANNING AND BUDGET, BUDGET IN BRIEF; AMENDED FISCAL YEAR 2010 AND FISCAL YEAR 2011, 36-50 (2010).

6. Terry, *supra* note 3, at 973.

7. 175 Ga. Gov't Reg. 5 (LexisNexis Nov. 2015).

by the legislature exacerbated the problem.⁸ In 2015, the General Assembly passed a law that added three judges to the Court of Appeals in an effort to address the growing backlog in that court.⁹ In October of the same year, Governor Deal issued an executive order that established the Georgia Appellate Jurisdiction Review Commission.¹⁰ The Governor tasked this Commission with formulating solutions to address the appellate court backlog.¹¹

In addition to budgetary constraints, the Georgia Court of Appeals and the Supreme Court of Georgia have a unique constitutional time requirement that forces them to dispose of a case within two terms of its appearance on the court's docket.¹² This "two-term rule," placed additional pressure on an already strained judiciary.¹³

Budget cuts, a docket backlog, and time constraints led the Appellate Jurisdiction Review Commission to recommend a realignment of Georgia appellate court jurisdiction.¹⁴ Aside from the addition of two Supreme Court Justices—the most widely reported aspect of the bill—the rest of the Commission's recommendations form the bulk of what became House Bill 927.¹⁵

The primary sponsor, Representative Christian Coomer (R-14th), introduced HB 927, referred to as the "Appellate Jurisdiction Reform Act of 2016."¹⁶ Representative Coomer cited the business community's desire for efficient appellate courts that can promptly establish stable precedent as the main incentive behind proposing the Act.¹⁷

8. See Terry, *supra* note 3, at 973.

9. HB 279 § 1, p. 2, ll. 41–49 (2015).

10. See Ga. Gov't Reg., *supra* note 7.

11. *Id.*

12. GA. CONST. art. VI, § 9, para. 2.

13. See Terry, *supra* note 3, at 973.

14. See generally REPORT OF THE APPELLATE JURISDICTION REVIEW COMMISSION (Jan. 2016), https://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/press_release/Final__Appellate%20Jurisdiction%20Review%20Commission%20Report.pdf.

15. *Id.*

16. Kathleen Foody & Katie Brumback, *Georgia House Backs Expansion of State Supreme Court*, DAILY REPORT (Feb. 18, 2016, 8:16 PM), <http://www.dailyreportonline.com/id=1202750002815/Georgia-House-backs-expansion-of-state-Supreme-Court?mcode=1202616187678&curindex=1&curpage=ALL>.

17. Telephone Interview with Rep. Christian Coomer (R-14th) (Mar. 15, 2016) [hereinafter Coomer Interview].

*Bill Tracking of HB 927**Consideration and Passage by the House*

Representatives Coomer (R-14th), Wendell Willard (R-51st), Robert Dickey (R-140th), Chad Nimmer (R-178th), Terry Rogers (R-10th), and Jon Burns (R-159th) sponsored HB 927.¹⁸ The House read the bill for the first time on February 8, 2016, and for the second time on February 9, 2016.¹⁹ Speaker David Ralston (R-7th) assigned the bill to the House Judiciary Committee, which amended the bill and reported it by substitute on February 16, 2016.²⁰

The Committee substitute made only minor changes. The substitute bill removed the list of the specific code sections affected by HB 927 and replaced it with language stating “to amend Official Code of Georgia Annotated, so as to conform appellate references.”²¹ The substitute bill also added Sections 3-9, 3-10, 3-13, 4-3, and Part V.²²

Section 3-9 provides that all appeals of superior court judgments related to recording and registration of deeds and other instruments will be reviewed in the first instance by the Georgia Court of Appeals rather than the Supreme Court of Georgia.²³ Section 3-10 allows land examiner’s decisions to be appealed to the Georgia Court of Appeals.²⁴ Section 3-13 amends several code sections to say “Court of Appeals, or the Supreme Court” instead of “Court of Appeals, and the Supreme Court.”²⁵ Section 4-3 changes the total number of justices required for a majority from four to five because the number of total justices changed from seven to nine.²⁶ Part V was added to adjust beginning and ending term dates for the Supreme Court.²⁷

18. Georgia General Assembly, HB 927, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/927>.

19. State of Georgia Final Composite Status Sheet, HB 927, May 5, 2016.

20. *Id.*

21. 2016 Ga. Laws 883, Preamble, at 883.

22. *See generally* HB 927 (HCS), 2016 Ga. Gen. Assemb.

23. 2016 Ga. Laws 883, § 3, at 888.

24. *Id.* at 889.

25. *Id.* at 890.

26. 2016 Ga. Laws 883, § 4, at 891.

27. 2016 Ga. Laws 883, § 5, at 891.

The House read the bill for the third time on February 18, 2016.²⁸ The Committee substitute passed, without change, by a vote of 120 to 45.²⁹

Consideration and Passage by the Senate

The Majority Caucus Chair, Senator Bill Cowsert (R-46th) sponsored HB 927 in the Senate.³⁰ The Senate first read HB 927 on February 19, 2016 and assigned it to the Senate Judiciary Non-Civil Committee.³¹ The Committee did not make any changes to the bill and passed it on to the Senate Floor for consideration.³² On March 8, 2016, the Senate withdrew the bill and recommitted it to the Senate Judiciary Committee.³³ The Committee made no changes, and favorably reported HB 927 on March 16, 2016.³⁴ The Senate read the bill for the second time the same day.³⁵

Senators Joshua McKoon (R-29th) and Elena Parent (D-42nd) proposed a floor amendment, which would strike the portion of the bill changing the justices from seven to nine.³⁶ Senator Mike Crane (R-28th) proposed a floor amendment requiring the two new justices be elected in 2018, rather than appointed in 2017.³⁷ The Senate did not adopt either of the proposed amendments.³⁸

On March 22, 2016, the Senate tabled the bill by a 40 to 16 vote.³⁹ Later that day, the bill was taken from the table, read for the third time, and passed by a 36 to 18 vote.⁴⁰ On March 29, 2016, the House transmitted HB 927 to Governor Nathan Deal (R); Governor Deal

28. State of Georgia Final Composite Status Sheet, HB 927, May 5, 2016.

29. *Id.*

30. Georgia General Assembly, HB 927, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/927>.

31. State of Georgia Final Composite Status Sheet, HB 927, May 5, 2016.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. Failed Senate Floor Amendment to HB 927 [hereinafter Senate Floor Amendment 1], introduced by Sen. Joshua McKoon (R-29th) and Sen. Elena Parent (D-42nd), Mar. 22, 2016.

37. Failed Senate Floor Amendment to HB 927 [hereinafter Senate Floor Amendment 2], introduced by Sen. Mike Crane (R-28th), Mar. 22, 2016.

38. Senate Floor Amendment 1; Senate Floor Amendment 2.

39. Georgia General Assembly, HB 927, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/927>.

40. *Id.*

signed the bill into law on May 3, 2016, and it took effect immediately.⁴¹

The Act

Part I, Section 1-1 titles the Act the “Appellate Jurisdiction Reform Act of 2106.”⁴² The “Appellate Jurisdiction Reform Act of 2016” adds two new justices to the Supreme Court of Georgia and alters the jurisdiction of Georgia’s appellate courts.⁴³

Part I, Sections 1-2 and 1-3 amend Code sections 15-2-19 and 15-3-9 respectively, to grant the Justices of the Supreme Court and the Judges of the Court of Appeals the authority to appoint law assistants who have graduated law school but not yet passed the bar, provided they are admitted to the bar within one year of their appointment.⁴⁴

Part II, Section 2-1 amends Code section 15-3-1 to allow the Court of Appeals to require certain types of cases be heard by more than one three-member division.⁴⁵ It also allows the Court of Appeals to establish the way precedent is set, and prior decisions are overruled within their jurisdiction.⁴⁶

Part III, expands the jurisdiction of the Court of Appeals to allow it to hear cases that were previously within the exclusive appellate jurisdiction of the Supreme Court. Section 3-1 establishes Code section 15-3-3.1 which grants appellate jurisdiction to the Court of Appeals in cases involving title to land, equity, wills, extraordinary remedies, divorce and alimony, and all other cases not reserved to the Supreme Court.⁴⁷ The Supreme Court retains jurisdiction over all death penalty cases.⁴⁸ Section 3-2 amends Code section 5-6-14 to permit superior court judges to give immediate effect to all

41. *Id.*

42. 2016 Ga. Laws 883, § 1, at 884.

43. *See* Coomer Interview, *supra* note 17.

44. O.C.G.A. § 15-2-19 (Supp. 2016); O.C.G.A. § 15-3-9 (Supp. 2016).

45. O.C.G.A. § 15-3-1 (Supp. 2016).

46. *Id.*

47. 2016 Ga. Laws 883, § 3, at 885–86.

48. *Id.*

judgments rendered on appeal involving injunctions or other extraordinary remedies.⁴⁹

Sections 3-3 to 3-7 allow the Court of Appeals to hear cases involving injunctions related to receivership, mandamus or quo warranto, writs of prohibition, denial of nomination petitions, and denial of contest decisions by amending Code sections 7-1-55, 9-6-1, 9-6-28, 21-2-171, and 21-2-528, respectively.⁵⁰

Sections 3-8 to 3-12 allow the Court of Appeals to hear cases involving wills and real property, including decrees in will or contract matters, recordation of deeds and other instruments, title examiner's reports, cancellation of mortgages, by amending Code sections 23-4-33, 44-2-84, 44-2-103, 44-2-136, and 48-5-17, respectively.⁵¹

Section 3-13 and 3-14 amend Code sections 5-7-1, 31-14-8.2, 37-3-150, 37-4-110, and 37-7-150 to allow either the Court of Appeals or the Supreme Court to hear appeals relating to the defendant's right to cross appeal; orders regarding costs and the right to counsel; the orders of probate courts, juvenile courts, or hearing examiners; and the rights of clients, their representatives, or their attorneys to appeal.⁵²

Supreme Court Changes

Part IV, Section 4-1 amends Code section 15-2-1.1 to change the number of Supreme Court Justices from seven to nine.⁵³ Section 4-2 amends Code section 15-2-10 to allow the Governor to appoint the additional Justices for terms beginning on January 1, 2017 until their successors are elected in 2018.⁵⁴ Section 4-3 amends Code section 15-2-16 to change the number of Justices required for the Supreme Court to affirm or reverse a decision from four to five.⁵⁵

49. *Id.* at 886.

50. 2016 Ga. Laws, § 3, at 886–888; O.C.G.A. § 21-2-171 (Supp. 2016).

51. 2016 Ga. Laws, § 3, at 888–89.

52. 2016 Ga. Laws, § 3, at 890.

53. O.C.G.A. § 15-2-1.1 (Supp. 2016).

54. O.C.G.A. § 15-2-10 (Supp. 2016).

55. 2016 Ga. Laws, § 4, at 890–91.

Part V, Section 5-1 amends Code section 15-2-4 to change the start and end dates of Supreme Court terms.⁵⁶

Analysis

The Georgia Appellate Jurisdictional Review Commission made several recommendations that the legislature adopted in HB 927 in an attempt to modernize Georgia's appellate courts.⁵⁷ The legislature adopted all of the Commission's recommendations related to jurisdictional changes without much opposition.⁵⁸ However, the provisions adding two more Justices to the Georgia Supreme created controversy.⁵⁹ The Commission did not recommend the additional Justices in their report, but lawmakers believed that the additional Justices would ease the Supreme Court's workload.⁶⁰

Jurisdictional Changes

The jurisdictional component of HB 927 affects both the Court of Appeals and the Supreme Court. First, HB 927 allows the Court of Appeals to require more judges to hear certain types of cases for greater consistency.⁶¹ Second, HB 927 alters jurisdiction for cases involving title of land, divorces, and wills.⁶² Prior to the Act the Supreme Court had exclusive appellate jurisdiction over these cases, but HB 927 expands jurisdiction to allow the Court of Appeals to review these cases as well.⁶³

Since HB 279 added three positions to the appellate bench, the Georgia Court of Appeals has been made up of fifteen judges who hear cases in panels of three.⁶⁴ Occasionally, the panels render inconsistent opinions on the same issue.⁶⁵ In an effort to reduce inconsistent rulings, HB 927 allows the Court of Appeals to require

56. 2016 Ga. Laws, § 5, at 891.

57. See Ga. Gov't Reg., *supra* note 7.

58. See Coomer Interview, *supra* note 17.

59. *Id.*

60. *Id.*

61. 2016 Ga. Laws, § 2, at 884–85.

62. 2016 Ga. Laws, § 3, at 885–86.

63. *Id.*

64. HB 279 § 1, p. 2, ll. 41–49 (2015); see Coomer Interview, *supra* note 17.

65. See Coomer Interview, *supra* note 17.

multiple panels to decide certain types of cases.⁶⁶ Representative Coomer predicts this will reduce the need for the Supreme Court to resolve these inconsistencies, providing a more stable and predictable set of precedents.⁶⁷ Proponents believe that this stability will appeal to business interests.⁶⁸ The practical effect of these provisions remains to be seen, as the Act does not establish criteria for the frequency or types of cases requiring use of these multiple panel provisions.

The legislature's intent in expanding the jurisdiction of the Court of Appeals is to allow the Supreme Court to focus on what the legislature hopes will be a reduced number of inconsistent rulings on more substantive issues.⁶⁹ Supreme Court Chief Justice Hugh Thompson believes the jurisdictional changes will allow "the state's highest court to devote more time and energy to the most complex and the most difficult cases that have the greatest implications for the law and society at large."⁷⁰ Cases involving title of land, divorces, and wills made up nearly one quarter of all cases heard by the Supreme Court and HB 927's jurisdictional expansion will undoubtedly result in the Court of Appeals resolving many of these cases instead.⁷¹

Additional Justices

The one provision of HB 927 that the Appellate Review Commission did not include in their report was the addition of two justices to the Supreme Court.⁷² Georgia's Supreme Court is operating with a reduced budget and no reduction in caseload.⁷³ Lawmakers' primary motivation for the addition of the Justices was

66. O.C.G.A. § 15-3-1 (Supp. 2016); see Coomer Interview, *supra* note 17.

67. See Coomer Interview, *supra* note 17.

68. *Id.*

69. *Id.*

70. Foody & Brumback, *supra* note 16.

71. Foody & Brumback, *supra* note 16; see also GA. CONST. art. VI, § 9, para. 2. Because the "two-term rule" constitutionally requires all appellate cases to be decided within two terms of their appearance on the docket, the Court of Appeals will be forced to decide over which it will now have jurisdiction as a result of the Act.

72. Coomer Interview, *supra* note 17 ("The only thing that was in the bill in addition to what was included that was not recommended by the Commission was the addition of the two Justices of the Supreme Court. That was not a part of the original Commission's bill recommendations.").

73. See Terry, *supra* note 3, at 974.

the desire to spread the workload amongst nine Justices instead of seven.⁷⁴ Presumably, the legislature believes the additional Justices will allow the Supreme Court to focus on the cases that have the greatest impact.

Criticisms

Why are nine Justices better than seven? It is unclear how two additional Justices will speed the resolution of the issues facing the Supreme Court. Opponents fear Governor Deal will have tremendous long-term influence on the make-up of the Supreme Court because he will appoint two new Justices in the summer of 2016.⁷⁵ Governor Deal already appointed Justice Keith Blackwell in 2012, and will replace two other current Justices—Chief Justice Hugh Thompson and Presiding Justice Harris Hines—who plan to retire before Deal’s tenure is up in 2018.⁷⁶ Potentially, Governor Deal will have the opportunity to appoint a majority of the Justices on Georgia’s highest court before he leaves office.⁷⁷

Within one week of Governor Deal signing HB 927 into law, Arizona Governor Doug Ducey signed a bill that expands Arizona’s Supreme Court from five Justices to seven.⁷⁸ Additionally, over the past decade several other states have sought to change the size of their states’ supreme courts.⁷⁹ The sponsor of the Arizona bill, Representative J.D. Mesnard (R-17th) concedes “there’s no separating policy from politics when you’re talking about the highest court in the state”; suggesting that the primary motivation for expanding supreme courts is partisan politics.⁸⁰

The leading sponsor of HB 927, Representative Christian Coomer suggests the argument that Georgia’s expansion was driven by

74. *Id.*

75. Kristina Torres, *House Backs Expansion of Georgia’s Supreme Court*, ATLANTA J. CONST. (February 19, 2016), <http://www.ajc.com/news/news/state-regional-govt-politics/house-backs-expansion-of-georgias-supreme-court/nqSDQ/>.

76. *Id.*

77. *Id.*

78. Alan Greenblatt, *Does Size Matter? The Latest Battle Over State Supreme Courts*, GOVERNING.COM (May 19, 2016, 11:20 AM), <http://www.governing.com/topics/politics/gov-georgia-arizona-supreme-court-expansion.html>.

79. *Id.*

80. *Id.*

politics “does not carry a lot of water.”⁸¹ Coomer believes the bill passed because most Georgians want to make sure their state is “a place where companies want to do business.”⁸² “[I]t is important for us to be able to give [businesses] clear guidance in the judiciary—let me say this another way. It is important for the judiciary to give clear guidance to practicing lawyers as well as business community participants.”⁸³ Although HB 927 will allow Georgia’s Republican governor to appoint a majority of Supreme Court Justices, it may help to more efficiently allocate Georgia’s judicial resources.

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81. Coomer Interview, *supra* note 17.

82. *Id.*

83. Coomer Interview, *supra* note 17.