

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 17 of the Official Code of Georgia Annotated, the "Georgia
2 Indigent Defense Act of 2003," so as to reconstitute the Georgia Public Defender Standards
3 Council with new membership; to provide for definitions; to change certain provisions
4 relating to the director of the council; to create the Division of Alternative Defense Counsel
5 to manage cases in which a circuit or assistant public defender or the capital defender
6 division has a conflict of interest; to provide for duties, responsibilities, and budgeting of the
7 division; to provide for an executive director of the division and powers and duties of the
8 executive director; to change provisions relating to the utilization of third-year law students;
9 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

12 Chapter 12 of Title 17 of the Official Code of Georgia Annotated, the 'Georgia Indigent
13 Defense Act of 2003,' is amended by revising Code Section 17-12-2, relating to definitions,
14 by adding two new paragraphs to read as follows:

15 "(.5) 'ADC' means the Division of Alternative Defense Counsel."

16 "(5.1) 'Executive director' means the director of the Division of Alternative Defense
17 Counsel."

SECTION 2.

18 Said chapter is further amended by repealing in its entirety Code Section 17-12-3, relating
19 to the creation of the Georgia Public Defender Standards Council, and adding a new Code
20 section to read as follows:

21 "17-12-3.

22 (a) There is created the Georgia Public Defender Standards Council to be composed of 11
23 members. Other than county commission members, members of the council shall be
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26 individuals with significant experience working in the criminal justice system or who have
27 demonstrated a strong commitment to the provision of adequate and effective
28 representation of indigent defendants.

29 (b) Effective July 1, 2010, the council shall be reconstituted. The members serving on the
30 council immediately prior to July 1, 2010, shall cease to serve on that date, but such prior
31 members shall be eligible for reappointment to succeed themselves or to fill another
32 position on the council.

33 (c) Ten members of the council shall be appointed as follows:

34 (1) Six members shall be appointed by the Governor, three of whom shall be county
35 commissioners who have been elected and are serving as members of a county governing
36 authority in this state. The Governor may solicit recommendations for such appointees
37 from the Association County Commissioners of Georgia. Each county commissioner
38 councilmember shall serve a term of four years; provided, however, that the initial
39 appointments shall be for one, two, and three years, respectively, as designated by the
40 Governor for each appointment, and thereafter, such members shall serve terms of four
41 years. A county commission councilmember shall be eligible to serve so long as he or
42 she retains the office by virtue of which he or she is serving on the council. The other
43 three members appointed by the Governor shall serve terms of four years;

44 (2) Two members shall be appointed by the Lieutenant Governor and shall serve terms
45 of four years; provided, however, that the initial appointments shall be for one and four
46 years, respectively, as designated by the Lieutenant Governor for each appointment, and
47 thereafter, such members shall serve terms of four years; and

48 (3) Two members shall be appointed by the Speaker of the House of Representatives and
49 shall serve terms of four years; provided, however, that the initial appointments shall be
50 for two and three years, respectively, as designated by the Speaker of the House of
51 Representatives for each appointment, and thereafter, such members shall serve terms of
52 four years.

53 (d) The eleventh member of the council shall be one circuit public defender who shall be
54 elected by a majority vote of all the circuit public defenders. The circuit public defender
55 councilmember shall serve a term of two years.

56 (e) All initial appointments' terms shall begin on July 1, 2010, and their successors' terms
57 shall begin on July 1 following their appointment. Any vacancy for a member shall be
58 filled by the appointing authority, and such appointee shall serve the balance of the
59 vacating member's unexpired term. Any vacancy for a member elected pursuant to
60 subsection (d) of this Code section shall be filled by a circuit public defender as set forth
61 in subsection (e) of Code Section 17-12-20. Any member of the council may be appointed
62 to successive terms.

63 (f) In making the appointments of members of the council who are not county
 64 commissioners, the appointing authorities shall seek to identify and appoint persons who
 65 represent a diversity of backgrounds and experience and shall solicit suggestions from the
 66 State Bar of Georgia, local bar associations, the Georgia Association of Criminal Defense
 67 Lawyers, the councils representing the various categories of state court judges in Georgia,
 68 and the Prosecuting Attorneys' Council of the State of Georgia, as well as from the public
 69 and other interested organizations and individuals within this state. The appointing
 70 authorities shall not appoint to serve on the council a prosecuting attorney as defined in
 71 paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney's office,
 72 or an employee of the Prosecuting Attorneys' Council of the State of Georgia."

73 **SECTION 3.**

74 Said chapter is further amended by revising subsection (a) of Code Section 17-12-5, relating
 75 to the director, qualifications, and selection, and adding a new paragraph (9.1) to subsection
 76 (d) as follows:

77 "(a) To be eligible for appointment as the director, a candidate shall be a member in good
 78 standing of the State Bar of Georgia with at least seven years' experience in the practice of
 79 law. The director shall be selected on the basis of training and experience and such other
 80 qualifications as the council deems appropriate. ~~The director shall be appointed by the~~
 81 ~~Governor and shall serve at the pleasure of the Governor.~~ The council, with the approval
 82 of the Governor, shall be responsible for appointing and terminating the director of the
 83 council."

84 "(9.1) Ensure that the terms of any contract for employment of attorneys, other than
 85 circuit public defenders or assistant public defenders, shall be consistent with and not
 86 exceed the funding appropriated and allocated for such purposes."

87 **SECTION 4.**

88 Said chapter is further amended by adding a new Code section to read as follows:

89 "17-12-6.1.

90 When a private attorney is representing an indigent person in a case that is not pursuant to
 91 a contract with the ADC, such attorney shall submit reimbursement requests in accordance
 92 with time frames established by the director for such submission. Failure to comply with
 93 this Code section shall void the council's obligation to reimburse such attorney for services
 94 rendered."

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SECTION 5.

Said chapter is further amended by revising subsections (a) and (b) of Code Section 17-12-8, relating to approval by council of programs for representation of indigents, as follows:

"(a) The council shall approve the development and improvement of programs which provide legal representation to indigent persons and juveniles and shall consider the fiscal impact of such programs.

(b) The council shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary to fulfill the purposes and provisions of this chapter, taking into consideration all fiscal impact of such matters. ~~and to~~ The council shall also comply with all applicable laws governing the rights of indigent persons accused of violations of criminal law."

SECTION 6.

Said chapter is further amended by revising subsection (b) of Code Section 17-12-12, relating to the Georgia capital defender division, as follows:

"(b) Whenever any person accused of a capital felony for which the death penalty is being sought has been determined to be an indigent person who has requested the assistance of counsel, the court in which the charges are pending shall notify the Georgia capital defender division, and the division shall assume the defense of such person except as provided in Code Section ~~17-12-12.~~ 17-12-15."

SECTION 7.

Said chapter is further amended by repealing in their entirety Code Sections 17-12-12.1 and 17-12-13, relating to conflicts of interest in capital cases and effective date, respectively, and inserting in lieu thereof the following:

17-12-13.

(a) The Division of Alternative Defense Counsel is hereby created and shall be an independent division within the council.

(b) The ADC shall be responsible for assuring that adequate and effective legal representation is provided, independently of political considerations or private interests, to indigent persons who are entitled to representation under this chapter in circumstances where the circuit public defender office has a conflict of interest in providing legal representation. A conflict of interest may include, but need not be limited to, circumstances in which a circuit public defender or assistant public defender represents a codefendant or a person who is a witness in the indigent person's case or other circumstances identified in the Georgia Rules of Professional Conduct as creating a conflict

129 of interest. Case overload, lack of resources, and other similar circumstances shall not
130 constitute a conflict of interest.

131 (c) The council, with the approval of the Governor, shall be responsible for appointing and
132 terminating the executive director of the ADC. To be eligible for appointment as executive
133 director, a candidate shall be a member in good standing of the State Bar of Georgia with
134 at least five years' experience in the practice of law. The executive director shall not
135 engage in the private practice of law.

136 (d) The executive director shall collect, maintain, review, and publish records and statistics
137 for the purpose of evaluating the delivery of indigent defense representation in indigent
138 defendant conflict of interest cases in Georgia.

139 17-12-14.

140 (a) The ADC shall provide legal representation in cases involving conflicts of interest for
141 circuit public defender offices as determined pursuant to policies, rules, or regulations of
142 the council.

143 (b) The ADC shall provide legal representation for indigent persons by either contracting
144 with licensed attorneys and investigators or by utilizing the office's own staff attorneys and
145 investigators.

146 (c)(1) The ADC may contract, where feasible, without prior approval of the court, for the
147 provision of attorney services for conflict of interest cases. Such contract may be by the
148 establishment of an alternative defense counsel office in those circuits where the volume
149 of cases may warrant a separate alternative defense counsel office. To provide for
150 adequate legal representation of indigent persons, the ADC may contract, where feasible,
151 without prior approval of the court, for the provision of investigative services for conflict
152 of interest cases.

153 (2) The ADC shall establish, where feasible, a list of approved contract attorneys to serve
154 as counsel and a list of approved investigators to provide investigative services in conflict
155 of interest cases.

156 (3) As a condition of placement on the approved list, the contracting attorney or
157 investigator shall agree to provide services based on the terms to be established in a
158 contract at either a fixed fee or the hourly rate for reimbursement set by the executive
159 director. Terms of the contract shall be negotiated between the executive director and the
160 contracting attorney or investigator. Terms of the contract shall be consistent with and
161 not exceed the funding appropriated and allocated for the purpose of providing
162 representation in conflict of interest cases. Contracts made with an attorney shall specify
163 that the services shall be provided subject to the Georgia Rules of Professional Conduct.

164 (4) Attorneys who seek to be a contracting attorney shall have such experience or
165 training in the defense of criminal cases as is necessary in light of the complexity of the
166 case to which he or she is appointed and shall meet such qualifications, regulations, and
167 standards for the representation of indigent defendants as are established by the council.

168 (d) Contracts made pursuant to this Code section shall provide for reasonable
169 compensation and reimbursement for expenses necessarily incurred, to be fixed and paid
170 from funds appropriated therefor. The ADC shall review the expense requests submitted
171 for reimbursement by any contracting attorney or investigator and may approve or deny the
172 payment of such expense requests in whole or in part based on the terms set forth in the
173 contract negotiated between the executive director and the contracting attorney or
174 investigator.

175 17-12-15.

176 (a) If there is a conflict of interest such that the Georgia capital defender division and the
177 ADC are unable to defend any indigent person accused of a capital felony for which the
178 death penalty is being sought, the executive director shall determine and appoint counsel
179 to represent the defendant. The executive director shall exclusively establish the contractual
180 agreement with the defendant's counsel for payment for representing the defendant, and,
181 when feasible and prudent, a flat fee structure shall be utilized.

182 (b) A maximum of two attorneys shall be paid by the ADC pursuant to a contractual
183 agreement or at an hourly rate established by the executive director with state funds
184 appropriated to the council. State funds shall be appropriated to the council for use by the
185 Georgia capital defender division for the first \$150,000.00 paid for each death penalty case.
186 Funding for attorney's fees and expenses between \$150,000.01 and \$250,000.00 for each
187 death penalty case shall be paid through state appropriations for 75 percent of such
188 attorney's fees and expenses, and the county governing authority where the indictment was
189 returned shall pay 25 percent of such attorney's fees and expenses. Funding for all
190 attorney's fees and expenses in excess of \$250,000.00 for each death penalty case shall be
191 paid through state appropriations for 50 percent of such attorney's fees and expenses, and
192 the county governing authority where the indictment was returned shall pay 50 percent of
193 such attorney's fees and expenses.

194 (c) The ADC, with the assistance of the Georgia capital defender division, shall establish
195 guidelines for all expense requests for cases in which the death penalty is sought, including,
196 but not limited to, attorney's fees, expert witness fees, investigative fees, travel and
197 accommodation expenses, and copy and transcription costs.

198 (d) A county governing authority may provide supplemental compensation to counsel
199 appointed pursuant to this Code section.

200 17-12-16.

201 (a) When representing an indigent person, the attorney under contract with the ADC shall:

202 (1) Counsel and defend such person at every stage of the proceedings;

203 (2) Prosecute any direct or interlocutory appeal before or after conviction that the
 204 executive director and the contracting attorney consider to be in the interest of justice;

205 and

206 (3) Submit reimbursement requests in accordance with time frames established by the
 207 executive director for such submission. Failure to comply with this paragraph shall void
 208 the ADC's obligation to reimburse such attorney for services rendered.

209 (b) In no case shall the executive director or a contracting attorney be required to prosecute
 210 any appeal or other remedy unless the executive director and contracting attorney are
 211 satisfied that there is arguable merit to the proceeding.

212 17-12-17.

213 (a)(1) The executive director shall work with and provide support services and programs
 214 for the ADC and other attorneys representing indigent persons in criminal or juvenile
 215 cases in order to improve the quality and effectiveness of legal representation of such
 216 persons. Such services and programs shall include, but shall not be limited to, technical,
 217 research, and administrative assistance; educational and training programs for attorneys,
 218 investigators, and other staff; assistance with the representation of indigent defendants
 219 with mental disabilities; assistance with the representation of juveniles; assistance with
 220 death penalty cases; and assistance with appellate advocacy.

221 (2) The executive director may hire and supervise such staff employees and may contract
 222 with outside consultants on behalf of the ADC as may be necessary to provide the
 223 services contemplated by this article.

224 (b) The executive director shall have and may exercise the following powers and
 225 authorities:

226 (1) The power and authority to take or cause to be taken any or all action necessary to
 227 perform any indigent defense services or otherwise necessary to perform any duties,
 228 responsibilities, or functions which the ADC is authorized by law to perform or to
 229 exercise any power or authority which the ADC is authorized by law to exercise; and

230 (2) The power and authority to make, promulgate, enforce, or otherwise require
 231 compliance with any and all rules, regulations, procedures, or directives necessary to
 232 perform any indigent defense services and to carry into effect the minimum standards and
 233 procedures promulgated by the council or otherwise necessary to perform any duties,
 234 responsibilities, or functions which the ADC is authorized by law to perform.

235 (c) The executive director shall:

- 236 (1) Prepare and submit the budget for the ADC. The executive director shall also
 237 prepare and submit an annual report containing pertinent data on the operations, costs,
 238 and needs of the ADC and such other information as the council may require;
 239 (2) Develop such rules, policies, procedures, regulations, and standards as may be
 240 necessary to carry out the functions of the ADC, taking into consideration the fiscal
 241 impact of such matters;
 242 (3) Comply with all applicable laws, standards, and regulations;
 243 (4) Administer and coordinate the operations of the ADC and supervise compliance with
 244 rules, policies, procedures, and regulations adopted by the council;
 245 (5) Maintain proper records of all financial transactions related to the operation of the
 246 ADC;
 247 (6) At the executive director's discretion, solicit and accept on behalf of the ADC any
 248 funds, services, training, or educational opportunities that may become available from
 249 any source, including government, nonprofit, or private grants, gifts, or bequests;
 250 (7) Coordinate the services of the ADC with any federal, county, or private programs
 251 established to provide assistance to indigent persons in cases subject to this chapter and
 252 consult with professional bodies concerning the implementation and improvement of
 253 programs for providing indigent services;
 254 (8) Provide for the training of attorneys and other staff involved in the legal
 255 representation of persons subject to this chapter;
 256 (9) Attend all council meetings;
 257 (10) Ensure that the expenditures of the ADC are not greater than the amounts budgeted
 258 or available from other revenue sources; and
 259 (11) Ensure that the terms of any contract for employment of attorneys, other than circuit
 260 public defenders or assistant public defenders, shall be consistent with and not exceed the
 261 funding appropriated and allocated for such purposes."

262 **SECTION 8.**

263 Said chapter is further amended by revising subsection (c) of Code Section 17-12-20, relating
 264 to selection and removal of circuit public defenders, as follows:

265 ~~"(c) A circuit public defender may be removed for cause by a majority vote of the council~~
 266 ~~and may be removed without cause by a vote of two-thirds of the members of the entire~~
 267 ~~council as provided in Code Section 17-12-20.1."~~

268 **SECTION 9.**

269 Said chapter is further amended by adding a new Code section to read as follows:

270 "17-12-20.1.
 271 (a) Whenever the director determines that an investigation of a circuit public defender
 272 should be made as a result of a finding by the director that the circuit public defender is
 273 performing in a less than satisfactory manner or finds information of specific misconduct,
 274 the director shall notify the Governor and the circuit public defender of such finding. The
 275 circuit public defender may agree to a voluntary suspension or may resign. Within 30 days
 276 of such notice, the Governor shall appoint two circuit public defenders and a member of
 277 the council who shall constitute a committee to conduct an investigation of the circuit
 278 public defender. The members of any such committee shall receive no compensation for
 279 their services but shall be reimbursed for any expenses directly incurred in connection with
 280 the investigation from funds available to the council in the discretion of the director. The
 281 committee shall make a report and recommendation regarding the circuit public defender
 282 to the Governor within 30 days from the date of the appointment of the committee.
 283 (b) If the committee by majority vote recommends the suspension of the circuit public
 284 defender, the Governor shall be authorized to suspend the circuit public defender for a
 285 period of up to 90 days. The Governor may extend such period of suspension once for an
 286 additional 30 days. If the committee by majority vote recommends the removal of the
 287 circuit public defender, he or she may appeal pursuant to subsection (c) of this Code
 288 section.
 289 (c) A removal petition provided for in subsection (b) of this Code section shall be filed in
 290 the superior court of the county of the circuit public defender's residence. The charges shall
 291 be presented to the court in writing, with a copy provided to the circuit public defender at
 292 least two weeks prior to trial. Grounds for removal from office shall be any sufficient
 293 cause, including criminal charges, misconduct in office, or incapacity to perform the
 294 functions of the office. The petition shall be heard by a superior court judge; provided,
 295 however, that upon the motion of the circuit public defender, the facts shall be tried by a
 296 jury."

297 **SECTION 10.**

298 Said chapter is further amended by revising Code Section 17-12-22, relating to provision of
 299 counsel in event of a conflict of interests, as follows:

300 "17-12-22.

301 (a) The council shall establish a procedure for providing legal representation in cases
 302 where the circuit public defender office has a conflict of interest. Such procedure may
 303 include, but shall not be limited to, the appointment of individual counsel on a case-by-case
 304 basis, ~~or~~ the utilization of another circuit public defender office when feasible, ~~or~~ use of the
 305 ADC. It is the intent of the General Assembly that the council consider the most efficient

306 and effective system to provide legal representation where the circuit public defender office
307 has a conflict of interest.

308 (b) The circuit public defender shall establish a method for identifying conflicts of interest
309 at the earliest possible opportunity. If there is a conflict of interest such that the circuit
310 public defender office cannot represent a defendant ~~and an attorney who is not employed~~
311 ~~by the circuit public defender office is appointed, such attorney shall have a contractual~~
312 ~~relationship with the council to represent indigent persons in conflict of interest cases, and~~
313 ~~such relationship may include, but shall not be limited to, a flat fee structure, an attorney~~
314 employed by or contracted with the ADC shall provide legal representation.

315 ~~(c) Attorneys who seek appointment in conflict cases shall have such experience or~~
316 ~~training in the defense of criminal cases as is necessary in light of the complexity of the~~
317 ~~case to which he or she is appointed and shall meet such qualifications, regulations, and~~
318 ~~standards for the representation of indigent defendants as are established by the council."~~

319 SECTION 11.

320 Said chapter is further amended by revising subsection (d) of Code Section 17-12-23, relating
321 to representation by circuit public defenders, as follows:

322 "(d) A city or county may contract with the circuit public defender office or the Division
323 of Alternative Defense Counsel for the provision of criminal defense for indigent persons
324 accused of violating city or county ordinances or state laws. If a city or county does not
325 contract with the circuit public defender office or ADC, the city or county shall be subject
326 to all applicable rules, regulation, policies, and standards adopted by the council for
327 representation of indigent persons in this state."

328 SECTION 12.

329 Said chapter is further amended by revising subsections (a) and (c) of Code Section
330 17-12-24, relating to operations of circuit public defenders, as follows:

331 "(a) The circuit public defender; or any other person or entity providing indigent defense
332 services; ~~or~~ using the system established pursuant to Code Section 17-12-80 shall
333 determine if a person or juvenile arrested, detained, or charged in any manner is an indigent
334 person entitled to representation under this chapter."

335 "(c) The circuit public defender shall keep and maintain appropriate records, which shall
336 include the number of persons represented, including cases assigned to the ADC or other
337 counsel based on conflict of interest; the offenses charged; the outcome of each case; the
338 expenditures made in carrying out the duties imposed by this chapter; and any other
339 information requested by the council. Failure to maintain accurate records may be grounds
340 for suspension or removal from office."

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SECTION 13.

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Said chapter is further amended by revising Code Sections 17-12-41 through 17-12-45, which Code sections relate to assistance by third-year law students or staff instructors and the effective date of this article, as follows:

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"17-12-41.

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An authorized third-year law student or staff instructor, when under the supervision of a circuit public defender or attorney employed by the ADC, may assist in criminal proceedings within this state as if admitted and licensed to practice law in this state except that all pleadings and other entries of record ~~must~~ shall be signed by a circuit public defender or ~~by his or her duly appointed assistant~~ attorney employed by the ADC and that, in the conduct of a trial or other criminal proceeding, a circuit public defender or ~~his or her duly appointed assistant~~ attorney employed by the ADC shall be physically present.

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17-12-42.

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A third-year law student or staff instructor may be authorized to assist a circuit public defender or attorney employed by the ADC in such form and manner as the judge of the court may prescribe, taking care that the requirements of this article and the good moral character of the third-year law student or staff instructor are properly certified by the dean of the law school.

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17-12-43.

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As to each third-year law student or staff instructor authorized to assist a circuit public defender or attorney employed by the ADC, there shall be kept on file ~~in the office of the~~ with the clerk of the court in the county where such authority is to be exercised the dean's certificate, the student's and instructor's oaths, and the judge's order as contemplated under Code Section 17-12-42. The authority to assist a circuit public defender or attorney employed by the ADC as allowed under this Code section shall extend for no longer than 18 months. If during this period any change occurs in the status of the student or instructor at the law school in which he or she was enrolled or employed, that is, if the student ceases his or her enrollment, is suspended, or is expelled or if the instructor ceases his or her employment or is released by the school, any such authority shall terminate and be revoked.

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17-12-44.

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Any third-year law student or staff instructor authorized to assist a circuit public defender or attorney employed by the ADC under this article ~~is~~ shall ~~not be~~ required to possess the

374 qualifications for appointment to the office of circuit public defender or appointment as an
 375 assistant circuit public defender as provided in ~~Article 1~~ of this chapter.

376 ~~17-12-45.~~

377 ~~This article shall become effective on January 1, 2005."~~

378 **SECTION 14.**

379 Said chapter is further amended by revising paragraph (1) of Code Section 17-12-50, relating
 380 to definitions for recovery of attorney's fees and costs, as follows:

381 "(1) 'Paid in part' means payment by a county or municipality for a part of the cost of the
 382 provision of indigent defense services pursuant to a contract with a circuit public
 383 defender office or the Division of Alternative Defense Counsel as set forth in subsection
 384 (d) of Code Section 17-12-23. The term shall not include payment by a county or
 385 municipality for office space and other supplies as set forth in Code Section 17-12-34."

386 **SECTION 15.**

387 This Act shall become effective July 1, 2010, except that for purposes of making the
 388 appointments called for by this Act, it shall become effective upon its approval by the
 389 Governor or upon its becoming law without such approval.

390 **SECTION 16.**

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