House Bill 229
By: Representatives Gaines of the 120th, Gullett of the 19th, Wiedower of the 121st, Hilton of the 48th, Petrea of the 166th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting attorneys, so as to provide for the duty to examine every case for probable cause; to amend Chapter 4 of Title 21 of the Official Code of Georgia Annotated, relating to recall of public officers, so as to revise provisions relating to grounds for recall of district attorneys of judicial circuits and solicitors-general of state courts; to revise the number of electors needed to demand recall of a district attorney of a judicial circuit or solicitor-general of a state court; to revise the number of official sponsors necessary for a recall of a district attorney of a judicial circuit or solicitor-general of a state court; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting attorneys, is amended by revising Code Section 15-18-6, relating to duties of district attorney, as follows:

The duties of the district attorneys within their respective circuits are:
(1) To attend each session of the superior courts unless excused by the judge thereof and to remain until the business of the state is disposed of;
(2) To attend on the grand juries, advise them in relation to matters of law, and swear and examine witnesses before them;
(3) To administer the oaths the laws require to the grand and trial jurors and to the bailiffs or other officers of the court and otherwise to aid the presiding judge in organizing the courts as he may require;
(4) To review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances of each individual case under oath of duty as provided in Code Section 15-18-2;
(4)(5) To draw up all indictments or presentments, when requested by the grand jury, and to prosecute all indictable offenses;
(5)(6) To prosecute civil actions to enforce any civil penalty set forth in Code Section 40-6-163 and to prosecute or defend any other civil action in the prosecution or defense of which the state is interested, unless otherwise specially provided for;
(6)(7) To attend before the appellate courts when any criminal case emanating from their respective circuits is tried, to argue the same, and to perform any other duty therein which the interest of the state may require;
(7)(8) To advise law enforcement officers concerning the sufficiency of evidence, warrants, and similar matters relating to the investigation and prosecution of criminal offenses;
(8)(9) To collect all money due the state in the hands of any escheators and to pay it over to the educational fund, if necessary, compelling payment by rule or order of court or other legal means;
(9)(10) To collect all claims of the state which they may be ordered to collect by the state revenue commissioner and to remit the same within 30 days after collection; and on
October 1 of every year to report to the state revenue commissioner the condition of the claims in their hands in favor of the state, particularly specifying:

(A) The amounts collected and paid, from what sources received and for what purposes, and to whom paid;

(B) What claims are unpaid and why;

(C) What judgments have been obtained, when, and in what court; and

(D) What actions are instituted, in what courts, and their present progress and future prospects;

(10) To ensure disposition information is submitted in accordance with subsection (g) of Code Section 35-3-36 when a final disposition decision is made by a district attorney;

(11) To assist victims and witnesses of crimes through the complexities of the criminal justice system and ensure that the victims of crimes are apprised of the rights afforded them under the law; and

(12) To perform such other duties as are or may be required by law or which necessarily appertain to their office.

SECTION 2.

Said chapter is further amended by revising paragraph (1) of subsection (b) of Code Section 15-18-66, relating to duties and authority regarding solicitors-general, as follows:

“(1) To review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances of each individual case under oath of duty as provided in Code Section 15-18-2, and, if necessary, investigate all criminal cases which may be prosecuted in state court;”
SECTION 3.

Chapter 4 of Title 21 of the Official Code of Georgia Annotated, relating to recall of public officers, is amended by revising paragraph (7) of Code Section 21-4-3, relating to definitions, as follows:

"(7) 'Grounds for recall' means:

(A) That the official has, while holding public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her office and adversely affects the rights and interests of the public; and

(B) That the official:

(i) Has committed an act or acts of malfeasance while in office;

(ii) Has violated his or her oath of office;

(iii) Has committed an act of misconduct in office;

(iv) Is guilty of a failure to perform duties prescribed by law; or

(v) Has willfully misused, converted, or misappropriated, without authority, public property or public funds entrusted to or associated with the elective office to which the official has been elected or appointed.

Discretionary performance of a lawful act or a prescribed duty shall not constitute a ground for recall of an elected public official; provided, however, that a judicial circuit district attorney's failure to perform the duties provided for in Code Section 15-18-6 or a state court solicitor-general's failure to perform the duties provided for in Code Section 15-18-66 shall constitute grounds for a recall of such elected official."

SECTION 4.

Said chapter is further amended by revising Code Section 21-4-4, relating to officers subject to recall, number of electors needed to demand recall, limitation on number of public officials who may be subjects of a particular recall petition, and grounds for recall, as follows:
(a) Every public official who holds elective office, either by election or by appointment, is subject to recall from office by electors who are registered and qualified to vote in the recall election and who reside in the electoral district from which candidates are elected to that office:

(1) In the case of a state officer whose electoral district encompasses the entire state, the number of electors necessary to petition the recall of the officer shall be equal to at least 15 percent of the number of electors who were registered and qualified to vote at the last preceding election for any candidate offering for the office held by the officer. At least one-fifteenth of the number of electors necessary to petition the recall of the officer must reside in each of the United States congressional districts in the state as said congressional districts may now or hereafter exist; or

(2) In the case of a state officer whose electoral district encompasses only a part of the state or in the case of a local officer, the number of electors necessary to petition the recall of the officer shall be equal to at least 30 percent of the number of electors registered and qualified to vote at the last preceding election for any candidate offering for the office held by the officer; or

(3) In the case of a district attorney of a judicial circuit or the solicitor-general of a state court, the number of electors necessary to petition the recall of the officer shall be equal to at least 2 percent of the number of electors registered and qualified to vote at the last preceding election for any candidate offering for the office held by the officer.

(b) No recall petition shall demand the recall of more than one public official.

(c) Every public official who holds elective office, either by election or by appointment, is subject to recall on the grounds that such public official has, while holding any public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her current office and adversely affects the rights and interests of
the public if one or more additional grounds for recall exist as set forth in subparagraph (B) of paragraph (7) of Code Section 21-4-3."

SECTION 5.
Said chapter is further amended by revising subsection (c) of and adding a new subsection to Code Section 21-4-5, relating to recall petition - application for and time of filing, sponsors, withdrawal of signature, duties of election superintendent, and printing and distribution of recall petition forms by Secretary of State, to read as follows:
"(c) The number of official sponsors necessary to file an application for a recall petition must be equal in number to at least 100 electors or equal in number to at least 10 percent of the number of electors who were registered to vote at the last preceding election for any of the candidates offering for the office held by the public official sought to be recalled, whichever is smaller.
(c.1) For the office of district attorney of a judicial circuit or solicitor-general of a state court, the number of official sponsors necessary to file an application for a recall petition must be least 50 electors who were registered to vote at the last preceding election for any of the candidates offering for the office held by the public official sought to be recalled."

SECTION 6.
All laws and parts of laws in conflict with this Act are repealed.