

The Senate Committee on Judiciary offered the following substitute to HB 411:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 18 of Title 15 of the Official Code of Georgia Annotated,  
2 relating to general provisions regarding prosecuting attorneys, so as to create the Prosecuting  
3 Attorneys Oversight Commission; to provide for definitions; to provide for the powers,  
4 composition, appointment, and confirmation of such commission; to provide for commission  
5 members' terms, vacancies, and removals; to provide for procedures and confidentiality; to  
6 provide for related matters; to provide for effective dates; to repeal conflicting laws; and for  
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to  
11 general provisions regarding prosecuting attorneys, is amended by adding a new Code  
12 section to read as follows:

13 "15-18-32.

14 (a) Pursuant to Article VI, Section VIII, Paragraph II of the Constitution of Georgia in  
15 reference to district attorneys and Article 3 of this chapter in reference to solicitors-general  
16 of state courts, there is hereby created the Prosecuting Attorneys Oversight Commission,

17 which shall have the power to discipline, remove, and cause involuntary retirement of  
18 appointed or elected district attorneys or solicitors-general in accordance with such  
19 Paragraph. As used in this Code section, the term 'commission' means the Prosecuting  
20 Attorneys Oversight Commission.

21 (b) The commission shall consist of eight members who shall be subject to confirmation  
22 by the Senate.

23 (c)(1) The commission shall be divided into a five-member investigative panel and a  
24 three-member hearing panel.

25 (2) The investigative panel shall be responsible for:

26 (A) The investigative, prosecutorial, and administrative functions of the commission;

27 (B) Investigation of alleged conduct constituting grounds for discipline under  
28 subsection (h) of this Code section;

29 (C) The selection of an individual to serve as the director of the commission who shall  
30 be an active status member of the State Bar of Georgia and who shall not engage in the  
31 practice of law, other than to represent the commission; and

32 (D) Authorization of employment of such additional staff as the commission deems  
33 necessary to carry out the powers assigned to the commission.

34 (3) The hearing panel shall be responsible for:

35 (A) Adjudicating formal charges filed by the investigative panel;

36 (B) Issuing disciplinary and incapacity orders;

37 (C) Issuing formal advisory opinions on its own initiative or on the recommendation  
38 of the investigative panel regarding the grounds for discipline set forth under subsection  
39 (h) of this Code section; and

40 (D) Issuing standards on its own initiative or on the recommendation of the  
41 investigative panel. Any such standards shall elaborate, define, or provide context for  
42 the grounds for discipline as set forth in subsection (h) of this Code section.

43 (d)(1) As used in this subsection, the term:

44 (A) 'Attorney' means a lawyer who has been an active status member of the State Bar  
45 of Georgia for at least ten years and is a registered voter in this state.

46 (B) 'Citizen' means an individual who is neither an attorney nor a judge and who is a  
47 registered voter in this state.

48 (C) 'Judge' means an elected or appointed public official who presides over a court of  
49 record.

50 (2) The Prosecuting Attorneys' Council may recommend to the respective appointing  
51 authorities a list of the names of individuals for consideration to serve as attorney  
52 commission members.

53 (3)(A) The five members of the commission's investigative panel shall be appointed  
54 as follows:

55 (i) One attorney with prosecutorial experience shall be appointed by the Governor  
56 and shall serve a term of four years; provided, however, that the initial appointment  
57 shall be for three years, and thereafter, successors to such member shall serve terms  
58 of four years;

59 (ii) One attorney with prosecutorial experience shall be appointed by the Lieutenant  
60 Governor and shall serve a term of four years; provided, however, that the initial  
61 appointment shall be for two years, and thereafter, successors to such member shall  
62 serve terms of four years;

63 (iii) Two practicing attorneys shall be appointed by the Speaker of the House of  
64 Representatives and each shall serve terms of four years; provided, however, that the  
65 initial appointment of one attorney member as designated by the Speaker of the House  
66 of Representatives shall be for four years and the initial appointment of the other  
67 attorney member as designated by the Speaker of the House of Representatives shall  
68 be for one year, and thereafter, successors to such members shall serve terms of four  
69 years; and

70 (iv) One attorney with prosecutorial experience shall be appointed by the Senate  
71 Committee on Assignments and shall serve a term of four years; provided, however,  
72 that the initial appointment shall be for three years, and thereafter, successors to such  
73 member shall serve terms of four years.

74 (B) The investigative panel members shall annually elect a chairperson and vice  
75 chairperson for such panel.

76 (4) The three members of the commission's hearing panel shall be appointed as follows:

77 (A) One citizen member shall be appointed by the Governor for a term of four years  
78 and his or her successors shall serve terms of four years;

79 (B) One district attorney shall be elected by vote of the Senate and shall be presiding  
80 officer of the hearing panel and shall serve a term of four years; provided, however, that  
81 the initial appointment shall be for one year, and thereafter, successors to such member  
82 shall serve terms of four years; and

83 (C) One former judge of the superior court or Court of Appeals or former Justice who  
84 shall have at least ten years of service as a judge or Justice shall be elected by vote of  
85 the House of Representatives and shall serve a term of four years; provided, however,  
86 that the initial appointment shall be for three years, and thereafter, successors to such  
87 member shall serve terms of four years.

88 (5) All members' initial terms shall begin on April 1, 2022; provided, however, that the  
89 initial term of a member under this paragraph shall not be construed as counting toward  
90 the limit of two full terms of service as provided for under paragraph (6) of this  
91 subsection.

92 (6) A commission member shall be eligible to serve so long as he or she retains his or  
93 her status as an attorney, citizen, or district attorney, but a vacancy shall be created by  
94 operation of law when he or she no longer has the designation for which he or she was  
95 appointed. Any vacancy for a member shall be filled by the appointing authority, and  
96 such appointee shall serve the balance of the vacating member's unexpired term;

97 provided, however, that, if the appointing authority fails to fill a vacancy within 60 days  
98 of being notified of such vacancy by the commission, the Governor shall appoint a  
99 replacement member from the same category of member. Any member of the  
100 commission shall serve no more than two full terms.

101 (e)(1) The names of the appointees required by this Code section shall be submitted by  
102 the appointing authorities to the Senate no later than the third Monday in January. Any  
103 member appointed to the commission shall serve until the Senate confirms such  
104 appointee, and if an individual's name is not submitted by such deadline, he or she shall  
105 not be eligible for confirmation.

106 (2) If an appointee is not confirmed by the Senate, the appointing authority shall promptly  
107 submit another appointee's name, notwithstanding the deadline expressed in paragraph (1)  
108 of this subsection.

109 (3) If the Senate is not in session at the time an appointee's term begins or a vacancy is  
110 created, an appointee for such term or to fill such vacancy shall be effective until his or  
111 her name can be submitted to the Senate and his or her appointment can be confirmed at  
112 the next regular session.

113 (f) Members and staff of the hearing panel shall not engage in any ex parte  
114 communications regarding a disciplinary or incapacity matter of a district attorney or  
115 solicitor-general, including with members and staff of the investigative panel.

116 (g)(1) Each member of the commission shall be entitled to vote on any matter coming  
117 before his or her respective panel unless otherwise provided by rules adopted by the  
118 commission concerning recusal. The chairperson of the investigative panel and the  
119 presiding officer of the hearing panel shall retain a vote on all matters except those in  
120 which such chairperson or presiding officer has been recused. No commission member  
121 present at a panel meeting shall abstain from voting unless he or she is recused. The rules  
122 of the commission shall establish grounds for recusal and the process for allowing a  
123 temporary replacement of a commission member in such circumstance.

124 (2)(A) As used in this paragraph, the term 'for cause' shall include indictment for or  
125 conviction of a felony or any offense involving moral turpitude; misconduct,  
126 malpractice, malfeasance, misfeasance, nonfeasance, or incapacity; failure to attend  
127 three or more panel meetings or hearings in a one-year period without good and  
128 sufficient reason; or abstaining from voting, unless recused.

129 (B) Removal of a panel member for cause shall be by a unanimous vote of all members  
130 of the commission; provided, however, that the panel member who is the subject of the  
131 vote shall not vote.

132 (3) A quorum of the investigative panel shall require any three members of such panel.

133 (4)(A) Members of the commission shall serve without compensation but shall receive  
134 the same daily expense allowance as members of the General Assembly receive, as set  
135 forth in Code Section 28-1-8, for each day such member is in physical attendance at a  
136 panel meeting or hearing, plus either reimbursement for actual transportation costs  
137 while traveling by public transportation or the same mileage allowance for use of a  
138 personal motor vehicle in connection with such attendance as members of the General  
139 Assembly receive.

140 (B) Notwithstanding subparagraph (A) of this paragraph, no member shall receive such  
141 expense allowance or travel reimbursement if he or she is entitled to receive an expense  
142 allowance, travel reimbursement, or salary for performance of duties as a state  
143 employee.

144 (C) Expense allowances and travel reimbursements shall be paid from moneys  
145 appropriated or otherwise available to the commission.

146 (h) The commission, with the assistance of the Prosecuting Attorneys' Council of the State  
147 of Georgia, shall promulgate standards of conduct and rules for the commission's  
148 governance which will comport with due process and enforce the provisions of subsections

149 (i) and (j) of this Code section; provided, however, that such standards and rules shall be  
150 effective only upon review and adoption by the Supreme Court. Such standards and rules

151 shall allow for a full investigation of a district attorney or solicitor-general only upon  
152 majority vote of the investigative panel. When a commission member receives information  
153 relating to the conduct of a district attorney or solicitor-general, such member shall provide  
154 such information to the commission's director for appropriate action.

155 (i) The following shall be grounds for discipline of a district attorney or solicitor-general  
156 or for his or her removal or involuntary retirement from office:

157 (1) Mental or physical incapacity interfering with the performance of his or her duties  
158 which is, or is likely to become, permanent;

159 (2) Willful misconduct in office;

160 (3) Willful and persistent failure to perform his or her duties;

161 (4) Conviction of a crime involving moral turpitude;

162 (5) Conduct prejudicial to the administration of justice which brings the office into  
163 disrepute;

164 (6) Knowingly authorizing or permitting an assistant district attorney or assistant  
165 solicitor-general to commit any act constituting grounds for removal under paragraphs (1)  
166 through (5) of this subsection; or

167 (7) Violation of the Georgia Rules of Professional Conduct of the State Bar of Georgia,  
168 including, but not limited to, Rule 3.8 of the Georgia Rules of Professional Conduct of  
169 the State Bar of Georgia regarding special responsibilities of a prosecutor.

170 (j)(1) In any complaint filed with the commission alleging a violation of subsection (h)  
171 and requesting an investigation of an elected or appointed district attorney or  
172 solicitor-general, the complainant shall be required to file with the commission a sworn  
173 affidavit detailing the personal knowledge of the facts supporting the complaint,  
174 including any interest the complainant may have in the outcome of the case. The  
175 complainant may attach documents to support the complaint. Nothing in this Code  
176 section shall be construed to limit the ability of the commission to bring a complaint  
177 pursuant to this Code section on its own motion.

178 (2) The commission may not entertain a complaint on the basis of a charging decision,  
179 plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar,  
180 or recommendation regarding bond unless the affidavits and any documents attached to  
181 the complaint show it is plausible that the district attorney or solicitor-general made or  
182 knowingly authorized the decision based on:

183 (A) Undue bias or prejudice against the accused or in favor of persons with interests  
184 adverse to the accused;

185 (B) A lack of probable cause;

186 (C) An undisclosed financial interest in the outcome of the prosecution;

187 (D) An undisclosed conflict of interest;

188 (E) Factors that are completely unrelated to the duties of prosecution; or

189 (F) A stated policy, written or otherwise, which demonstrates that the district attorney  
190 or solicitor-general categorically refuses to prosecute any offense or offenses of which  
191 he or she is required by law to prosecute.

192 (k)(1) All information regarding a disciplinary or incapacity matter of a district attorney  
193 or solicitor-general shall be kept confidential by the investigative panel and commission  
194 staff before formal charges are filed; provided, however, that, if prior to filing formal  
195 charges such district attorney or solicitor-general and investigative panel agree to a  
196 satisfactory disposition of a disciplinary matter other than by a private admonition or  
197 deferred discipline agreement, a report of such disposition shall be publicly filed in the  
198 Supreme Court.

199 (2) After the filing and service of formal charges:

200 (A) With respect to an incapacity matter of a district attorney or solicitor-general, all  
201 pleadings, information, hearings, and proceedings shall remain confidential; and

202 (B) With respect to a disciplinary matter of a district attorney or solicitor-general, all  
203 pleadings and information shall be subject to disclosure to the public, and all hearings  
204 and proceedings shall be open and available to the public, except to the extent that such



205 pleadings and information or hearings and proceedings could be properly sealed or  
206 closed under Chapter 14 or Article 4 of Chapter 18 of Title 50 or by a court as provided  
207 by law.

208 (3) With respect to administrative and other matters, all records and information shall be  
209 subject to disclosure to the public, and all meetings, or portions thereof, shall be open and  
210 available to the public, except to the extent that such records, information, and meetings  
211 would:

212 (A) Disclose disciplinary matters of a district attorney or solicitor-general protected in  
213 paragraph (1) of this subsection;

214 (B) Disclose incapacity matters of a district attorney or solicitor-general protected in  
215 paragraph (1) or subparagraph (A) of paragraph (2) of this subsection;

216 (C) Be considered a matter subject to executive session, if the commission were  
217 considered to be an agency under Chapter 14 of Title 50; or

218 (D) Not be required to be publicly disclosed under Code Section 50-18-72, if the  
219 commission were considered to be an agency under Article 4 of Chapter 18 of Title 50.

220 (4) The work product of the commission and its staff and the deliberations of the  
221 commission shall remain confidential.

222 (l) Notwithstanding subsection (j) of this Code section, information regarding a  
223 disciplinary or incapacity matter of a district attorney or solicitor-general may be disclosed  
224 or the confidentiality of such information may be removed when:

225 (1) The privilege of confidentiality has been waived by the individual who was the  
226 subject of the commission's investigation; or

227 (2) The commission's rules provide for disclosure:

228 (A) In the interest of justice and to protect the public;

229 (B) If an emergency situation exists; or

230 (C) If a district attorney or solicitor-general is under consideration for another state or  
231 federal position.

232 (m) Information submitted to the commission or its staff, and testimony given in any  
233 proceeding before the commission or one of its panels, shall be absolutely privileged, and  
234 no civil action predicated upon such information or testimony shall be instituted against  
235 any complainant, witness, or his or her counsel.

236 (n) A respondent who is subjected to public reprimand, censure, limitation on the  
237 performance of prosecutorial duties, suspension, retirement, or removal shall be entitled  
238 to a copy of the proposed record to be filed with the Supreme Court and, if the respondent  
239 has objections to it, to have the record settled by the hearing panel's presiding officer. The  
240 hearing panel's order in a disciplinary or incapacity matter may be reviewed by the  
241 Supreme Court in accordance with its rules and the rules of the commission.

242 (o) The commission shall commence by April 1, 2022, and the rules and regulations  
243 promulgated by such commission shall be established no later than April 1, 2023. No  
244 complaint shall be filed before July 1, 2023.

245 (p) The authority of the commission shall be limited to incapacity or discipline regarding  
246 the conduct of a district attorney or solicitor-general as a holder of such office. Nothing  
247 in this Code section shall be construed as diminishing the authority of the Supreme Court  
248 or the State Bar of Georgia to regulate the practice of law in this state."

249 **SECTION 2.**

250 This Act shall become effective for purposes of appointing members of the commission upon  
251 its approval by the Governor or upon its becoming law without such approval and shall  
252 become effective for all other purposes on July 1, 2021.

253 **SECTION 3.**

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