

Senate Bill 218

By: Senators Walker III of the 20th, Dugan of the 30th, Kirkpatrick of the 32nd, Miller of the 49th, Kennedy of the 18th and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 5 of Title 45 of the Official Code of Georgia Annotated, relating to
2 vacation of office, so as to provide for the suspension of compensation for certain public
3 officers who are suspended because of indictment for a felony; to provide for related matters;
4 to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Chapter 5 of Title 45 of the Official Code of Georgia Annotated, relating to vacation of
8 office, is amended by revising Code Section 45-5-6, relating to public official investigated
9 by special commission upon indictment, gubernatorial review if commission recommends
10 suspension, suspension, reinstatement, and replacement or temporary officer, as follows:

11 "45-5-6.

12 (a) As used in this Code section, the term 'public official' means any elected county
13 officer; any elected member of a county governing authority; any elected member of a
14 city-county consolidated government; any member of a county, area, or independent board
15 of education; any school superintendent of a county, area, or independent school system;

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16 any solicitor-general of a state court; any elected member of any municipal governing
17 authority; any member of the Public Service Commission; and any district attorney.

18 (b) Upon indictment for a felony by a grand jury of this state or by the United States,
19 which felony indictment relates to the performance or activities of the office of any public
20 official, the Attorney General or district attorney shall transmit a certified copy of the
21 indictment to the Governor who shall, subject to subsection (e) of this Code section,
22 appoint a review commission. Except as provided in this subsection, the commission shall
23 be composed of the Attorney General and two public officials who hold the same office as
24 the individual indicted. The members of the commission shall receive no compensation
25 for their services but shall be reimbursed for any expenses incurred in connection with the
26 investigation. The funds necessary to conduct the investigation shall come from funds
27 appropriated to the executive branch of government. If the Attorney General brings the
28 indictment against the public official, the Attorney General shall not serve on the
29 commission. In place of the Attorney General, the Governor shall appoint a retired
30 Supreme Court Justice or a retired Court of Appeals Judge.

31 (c) Unless a longer period of time is granted by the Governor, the commission shall make
32 a written report to the Governor within 14 days. If the commission determines that the
33 indictment relates to and adversely affects the administration of the office of the indicted
34 public official and that the rights and interests of the public are adversely affected thereby,
35 the commission shall recommend that the public official be suspended from office. If, and
36 only if, the commission recommends suspension, then the Governor shall review the
37 findings and recommendations of the commission and may suspend the public officer from
38 office immediately and without further action pending the final disposition of the case or
39 until the expiration of his or her term of office, whichever occurs first. During the term of
40 office to which such officer was elected and in which the indictment occurred, if a nolle
41 prosequi is entered, if the public official is acquitted, or if after conviction the conviction
42 is later overturned as a result of any direct appeal or application for a writ of certiorari, the

43 public official shall be immediately reinstated to the office from which he or she was
44 suspended. While a public official is suspended under this Code section ~~and until initial~~
45 ~~conviction by the trial court, the public official shall continue to receive the compensation~~
46 ~~from his office. After initial conviction by the trial court, the public official shall not be~~
47 entitled to receive the compensation from his or her office. If the public official is
48 reinstated to office, he or she shall be entitled to receive any compensation withheld under
49 the provisions of this Code section.

50 (d)(1) For the duration of any suspension of any elected member of any municipal or
51 consolidated city-county governing authority under this Code section, a replacement
52 officer for the public officer suspended shall be appointed as provided for in any general
53 law, local law, ordinance, or resolution governing the filling of a temporary vacancy in
54 the public office affected. For the duration of any suspension of any other public official
55 under this Code section, a replacement officer for the public official shall be appointed
56 as provided for in any applicable general or local law governing the filling of a temporary
57 vacancy in the public office affected. If no such general law, local law, ordinance, or
58 resolution governing the filling of a temporary vacancy is applicable, then the Governor
59 shall appoint a replacement officer for the public official suspended.

60 (2) Upon the final conviction, the office of the public official shall be vacated
61 immediately without further action. Said vacancy shall be filled in the manner provided
62 by law for filling vacancies in such office.

63 (e) No commission shall be appointed for a period of 14 days from the day the Governor
64 receives the indictment. This period may be extended by the Governor. During this period
65 of time, the indicted public official may, in writing, authorize the Governor to suspend him
66 or her from office. Any such voluntary suspension shall be subject to the same conditions
67 for review, reinstatement, or declaration of vacancy as are provided in this Code section
68 for nonvoluntary suspensions.

69 (f) After any suspension under this Code section, the suspended public official may
70 petition the Governor for a review. The Governor may reappoint the commission to review
71 the suspension. The commission shall make a written report in 14 days. If the commission
72 recommends that the public official be reinstated, ~~he~~ such public official shall immediately
73 be reinstated to office.

74 (g) The report and records of the commission and the fact that the public official has or has
75 not been suspended shall not be admissible in evidence in any court for any purpose. The
76 report and records of the commission shall not be open to the public.

77 (h) The provisions of this Code section shall not apply to any indictment handed down
78 prior to January 1, 1985.

79 (i) If a public official who is suspended from office under the provisions of this Code
80 section is not first tried at the next regular or special term following the indictment, the
81 suspension shall be terminated and the public official shall be reinstated to office. The
82 public official shall not be reinstated under this subsection if he or she is not so tried based
83 on a continuance granted upon a motion made only by the defendant.

84 (j) Unless otherwise provided by local law, in the event the Governor appoints a member
85 of a governing authority as a temporary replacement for a suspended public official under
86 paragraph (1) of subsection (d) of this Code section, the governing authority, by majority
87 vote, shall select a temporary replacement who is qualified by law to serve as such member
88 of the governing authority, to fill such member's seat on the governing authority until such
89 time as the suspension of the public official is terminated or the end of such member's
90 current term on the governing authority, whichever is earlier. Before selecting such
91 temporary replacement, the governing authority shall advertise its intention to select such
92 temporary replacement in the applicable legal organ at least once a week for two weeks and
93 on the governing authority's website, if it has one, and shall solicit applicants for such
94 temporary replacement position."

95

SECTION 2.

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