

COMMITTEES OF CONFERENCE SUBSTITUTE TO SB 218

LOSTA 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.

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

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

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

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

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

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

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

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

35 (B) Issuing disciplinary and incapacity orders;

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

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

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

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

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

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

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

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

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

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

62 (iii) Two practicing attorneys shall be appointed by the Speaker of the House of
63 Representatives and each shall serve terms of four years; provided, however, that the
64 initial appointment of one attorney member as designated by the Speaker of the House
65 of Representatives shall be for four years and the initial appointment of the other

66 attorney member as designated by the Speaker of the House of Representatives shall
67 be for one year, and thereafter, successors to such members shall serve terms of four
68 years; and

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

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

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

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

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

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

87 (5) All members shall be appointed by December 1, 2022, and their initial terms shall
88 begin on April 1, 2023; provided, however, that the initial term of a member under this
89 paragraph shall not be construed as counting toward the limit of two full terms of service
90 as provided for under paragraph (6) of this subsection.

91 (6) A commission member shall be eligible to serve so long as he or she retains his or
92 her status as an attorney, citizen, or district attorney, but a vacancy shall be created by

93 operation of law when he or she no longer has the designation for which he or she was
94 appointed. Any vacancy for a member shall be filled by the appointing authority, and
95 such appointee shall serve the balance of the vacating member's unexpired term;
96 provided, however, that, if the appointing authority fails to fill a vacancy within 60 days
97 of being notified of such vacancy by the commission, the Governor shall appoint a
98 replacement member from the same category of member. Any member of the
99 commission shall serve no more than two full terms.

100 (e)(1) The names of the appointees by the Governor pursuant to this Code section shall
101 be submitted by the Governor to the Senate no later than December 31, 2022. Any
102 member appointed by the Governor to the commission shall serve until the Senate
103 confirms such appointee, and if an individual's name is not submitted by such deadline,
104 he or she shall not be eligible for confirmation.

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

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

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

115 (g)(1) Each member of the commission shall be entitled to vote on any matter coming
116 before his or her respective panel unless otherwise provided by rules adopted by the
117 commission concerning recusal. The chairperson of the investigative panel and the
118 presiding officer of the hearing panel shall retain a vote on all matters except those in
119 which such chairperson or presiding officer has been recused. No commission member

120 present at a panel meeting shall abstain from voting unless he or she is recused. The rules
121 of the commission shall establish grounds for recusal and the process for allowing a
122 temporary replacement of a commission member in such circumstance.

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

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

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

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

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

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

145 (h) The commission, with the assistance of the Prosecuting Attorneys' Council of the State
146 of Georgia, shall promulgate standards of conduct and rules for the commission's

147 governance which will comport with due process and enforce the provisions of subsections
148 (i) and (j) of this Code section; provided, however, that such standards and rules shall be
149 effective only upon review and adoption by the Supreme Court. Such standards and rules
150 shall allow for a full investigation of a district attorney or solicitor-general only upon
151 majority vote of the investigative panel. When a commission member receives information
152 relating to the conduct of a district attorney or solicitor-general, such member shall provide
153 such information to the commission's director for appropriate action. Any standards of
154 conduct adopted shall be in aid of the judiciary in the performance of its functions and shall
155 function jointly with the Georgia Rules of Professional Conduct of the State Bar of
156 Georgia. The standards of conduct shall include a list of actions that will be grounds for
157 discipline of a district attorney or solicitor-general or for his or her removal or involuntary
158 retirement from office.

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

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

163 (2) Willful misconduct in office;

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

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

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

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

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

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

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

187 (A) Undue bias;

188 (B) A lack of probable cause;

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

190 (D) An undisclosed conflict of interest;

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

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

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

- 201 (2) After the filing and service of formal charges:
- 202 (A) With respect to an incapacity matter of a district attorney or solicitor-general, all
- 203 pleadings, information, hearings, and proceedings shall remain confidential; and
- 204 (B) With respect to a disciplinary matter of a district attorney or solicitor-general, all
- 205 pleadings and information shall be subject to disclosure to the public, and all hearings
- 206 and proceedings shall be open and available to the public, except to the extent that such
- 207 pleadings and information or hearings and proceedings could be properly sealed or
- 208 closed under Chapter 14 or Article 4 of Chapter 18 of Title 50 or by a court as provided
- 209 by law.
- 210 (3) With respect to administrative and other matters, all records and information shall be
- 211 subject to disclosure to the public, and all meetings, or portions thereof, shall be open and
- 212 available to the public, except to the extent that such records, information, and meetings
- 213 would:
- 214 (A) Disclose disciplinary matters of a district attorney or solicitor-general protected in
- 215 paragraph (1) of this subsection;
- 216 (B) Disclose incapacity matters of a district attorney or solicitor-general protected in
- 217 paragraph (1) or subparagraph (A) of paragraph (2) of this subsection;
- 218 (C) Be considered a matter subject to executive session, if the commission were
- 219 considered to be an agency under Chapter 14 of Title 50; or
- 220 (D) Not be required to be publicly disclosed under Code Section 50-18-72, if the
- 221 commission were considered to be an agency under Article 4 of Chapter 18 of Title 50.
- 222 (4) The work product of the commission and its staff and the deliberations of the
- 223 commission shall remain confidential.
- 224 (l) Notwithstanding subsection (k) of this Code section, information regarding a
- 225 disciplinary or incapacity matter of a district attorney or solicitor-general may be disclosed
- 226 or the confidentiality of such information may be removed when:

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

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

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

231 (B) If an emergency situation exists; or

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

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

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

244 (o) The commission shall commence by April 1, 2023, and the rules and regulations
245 promulgated by such commission shall be established no later than October 1, 2023. No
246 complaint shall be filed before January 1, 2024.

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

251

SECTION 2.

252 This Act shall become effective for purposes of appointing members of the commission upon
253 the approval of this Act by the Governor or upon its becoming law without such approval.
254 This Act shall become effective for all other purposes on July 1, 2022.

255

SECTION 3.

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